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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG46

Revision of the Interest Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations governing how FSA guaranteed farm loan borrowers may obtain a subsidized interest rate on their guaranteed farm loan. This program is known as the interest assistance (IA) program. Changes include deletion of annual review requirements, limitations on maximum subsidy payments and period of assistance, and streamlining of claim submission. The changes are intended to reduce paperwork burden on program participants and agency employees, make IA available to more farmers, reduce the costs of the program, and enhance the fiscal integrity of the program.

EFFECTIVE DATE: June 8, 2007.

FOR FURTHER INFORMATION CONTACT: Tracy L. Jones, Senior Loan Officer, Farm Service Agency; *telephone:* (202) 720–3889; *Facsimile:* (202) 720–6797; *e-mail: Tracy.Jones@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Summary of Public Comments

FSA published a proposed rule on June 22, 2005, (69 FR 36055–36060) to amend its regulations governing loans made under the guaranteed farm loan program, IA program. The initial comment period deadline of August 22, 2005, was extended to September 6, 2005, due to a change in the e-mail address of the information contact. Comments were received from 144 respondents from 18 states and the District of Columbia. Many of the respondents provided multiple comments.

Six respondents supported the proposed rule in its entirety, stating that the entire proposed rule was well written and easy to understand, or commenting that the proposed rule looks good and will save a lot of time.

Three respondents did not approve of the IA program at all; however, they did not give specific reasons as to why they opposed the IA program.

Two respondents asked that the Agency keep the program the same because they really needed to keep receiving the money. Another indicated that the assistance received makes the difference between making a profit or not. While the Agency understands the importance of the assistance, there were no specific recommendations provided to support their general comments.

One respondent generally asked how the changes would affect those serving in Iraq. No specific changes were made to address this issue. Borrowers called to active duty will continue to be handled in accordance with existing procedures.

One respondent indicated under the discussion of the proposed rule, the Agency gave a negative connotation of borrowers receiving IA by stating those recipients were ''underdeveloped''. The Agency in no way intended to portray farmers in a negative connotation, so this terminology has not been used in the final rule.

While these comments received in opposition to the proposed changes were reviewed, they did not provide specific recommendations, so no changes were made in the final rule to address them.

Following is a review of specific comments and the changes made in the final rule in response to the comments.

Loans Eligible for Interest Assistance

The Agency proposed to delete references to providing IA on Farm Ownership (FO) loans and existing guaranteed Operating Loans (OL) in conjunction with a rescheduling action because Congress has not appropriated IA funds for these purposes since 1992. Seven comments supported this change. One respondent indicated that FO's would be too costly for the program. However, 35 comments received were opposed to the change citing that it would be a mistake to eliminate regulations governing the use of IA for FO's and/or existing OL's. In the event that funds were appropriated to fund IA for these other types of loans, implementation would be delayed while FSA implemented regulations again to govern these aspects of the program. The respondents stated that they recognize the desire to streamline the Code of Federal Regulations, but believe it does no harm to leave regulations in place for currently unfunded applications of IA. The Agency carefully considered the comments and determined that because funding has not been provided since fiscal year 1992 and such funding would be prohibitively expensive, the proposed change is warranted. Therefore, the final rule implements the proposal to limit IA to new guaranteed OL's only.

One respondent stated the Agency should eliminate the requirement to consider IA after loan default. The Agency agrees with this comment, however, this requirement is required by 7 U.S.C. 1999 and can only be changed by Congress.

One respondent recommended that the Agency prohibit the use of a loan with IA to refinance debt owed by the applicant to another lender. The Agency agrees that this change would prevent lenders from using IA to unfairly market their loans to their competitor's customers and would extend limited program funds. However, this is a localized problem and would be a significant program change that would make a large number of applicants ineligible. Thus, the agency decided not to include this change in the final rule.

One respondent requested additional guidance on the definition of nonessential assets. The Agency feels that the definition and discussion in the rule are sufficiently clear. No changes are made in the final rule; however, additional guidance will be provided in the FSA field office handbook for the Guaranteed Loan Program. Also, as was suggested by one respondent, direction will be added to this handbook for FSA employees on when it is appropriate to encourage lenders to use the FO

program rather than IA to fund an applicant's needs.

Debt-to-Asset Ratio

As stated in the proposed rule, current regulations provide for IA based simply on cash flow. Agency reviews have revealed that some borrowers who receive IA have a significant net worth, with adequate financial strength that would allow them to restructure their liabilities to meet their credit needs without receiving IA. To address this concern the Agency proposed to limit IA to applicants who possess a debt-to-asset ratio in excess of 50 percent prior to receiving the new loan. There were 18 comments that supported this change. These comments pointed out that this would limit subsidy to the more highly stressed borrowers and reduce the number of large loans that have used a large portion of the funding allocation.

Conversely, 73 comments received did not support this change. Seven respondents disagreed with this proposal in general but did not give specific reasons for their concern. Another had strong objection to the change, although the respondent went on to comment that most of the loans on IA have a 50 percent or higher debt-to-asset ratio. Nine respondents were concerned that the ratio would limit eligibility and may screen out needy operations. Three respondents suggested that a 50 percent debt-to-asset ratio was too liberal, and suggested that a ratio between 35 to 40 percent would be more appropriate. Three other respondents indicated that 50 percent was too low and suggested the agency adopt a 65 percent ratio. Six respondents were concerned that this proposed change would only cause problems, would not simplify the program, and could lead to burdensome documentation and applicants' manipulation of balance sheets.

The Agency's proposed limit for new IA applicants to possess a debt to asset ratio in excess of 50 percent prior to the new loan is reasonable. The 50 percent level was proposed after the Agency performed an analysis of the financial characteristics of borrowers in the guaranteed loan program to determine the correlation between debt to asset ratio, loan performance, and the need for interest subsidy. The Agency found that one-third of the borrowers in the current guaranteed portfolio have a debt to asset ratio of 50 percent or greater while approximately one-fourth of the guaranteed operating loans receive IA. Additionally, a 50 percent debt to asset ratio is the most common capital standard used by those lenders who have achieved the Agency's preferred lender status. The Agency acknowledges that some applicants will become ineligible, but believes that applicants below the 50 percent threshold have the financial strength to restructure their debt and cash flow without an interest subsidy. Guidance will be provided in the Agency's handbook on how to address fraud or misrepresentation of asset values.

Forty-six respondents recommended that the Agency use a measure of repayment ability rather than one of solvency. Thirteen respondents indicated that it would be difficult to impossible to lend money solely based on this change; a true depiction of the need for IA should be based instead on a producer's cash flow. Three respondents indicated that this proposal was unfair, because it does not take into account each individual operation, unfairly penalized those who have owned real estate for some time, or unfairly impacted agricultural operators in their areas who need IA initially to have adequate repayment capacity.

The Agency acknowledges that an applicant with a strong net worth does not necessarily have strong cash flow and vice versa. This rule maintains the current IA capacity provision which requires that an applicant be unable to repay the debt at the note rate of interest without a subsidy. However, this control by itself has been inadequate. The Agency's long standing policy is that IA is intended for farmers with inadequate financial resources. Producers with a strong net worth have assets with which to restructure their debt and improve their cash flow. Therefore, this rule provides that applicants with such resources cannot receive an interest subsidy.

One respondent suggested the Agency calculate the applicant's debt to asset ratio as it would be after the loan is closed. The Agency seriously considered this recommendation. However, it was determined that this limitation would be subject to manipulation in that an applicant could possibly purchase assets or acquire debt in order to achieve a debt/asset ratio that would qualify them for the subsidy. The Agency, therefore, is not adopting this suggestion.

One respondent suggested using an applicant's current ratio, not debt to asset ratio. The Agency chose to not adopt this recommendation because of the volatility of this ratio throughout the operating year.

Of the comments opposed to the change, five indicated that the proposal would unjustly impact beginning farmers and ranchers because they typically have smaller operations with less debt. For example, a beginning farmer or rancher may have a pickup truck with very few other assets and almost no debt, and could very easily have greater than 50 percent equity and, therefore, be ineligible for IA subsidy. This was not the Agency's intent. Beginning farmers are specifically targeted by FSA for increased assistance because of their inability to access private credit programs. In addition, this program could provide such applicants with the assistance needed to get them through the difficult early years as they accumulate farm assets and become financially viable. By specifically targeting funds to beginning farmers in the statute, Congress has clearly signaled its intent that the Agency should endeavor to address the specific needs of this group. Therefore, the rule has been modified to exclude beginning farmers and ranchers from this debt to asset restriction. The 50 percent equity limitation will be applied to applicants not defined as beginning farmers. This will target the limited amount of IA funds to those most in need of the assistance.

Maximum Assistance Period

Existing regulations limit IA for each borrower to a maximum of 10 years from the date of the first IA agreement signed by the loan applicant, including entity members, or the outstanding term of the loan, whichever is less. The proposed rule would limit each borrower to a total of 5 consecutive years of IA eligibility. Seventy-nine comments received were opposed to this change. These comments stated that this change would be detrimental to some borrowers and suggested that the current 10-year limitation is the minimum time needed to give farmers and ranchers adequate opportunity to establish their operations considering the realities of weather. One respondent indicated that he believed the Agency had ''sold out'', and the Agency should extend and not shorten the program. Three respondents suggested a 7-year maximum assistance period. There were 25 comments that supported the change and stated that 5 years was an adequate period of time for a farm to achieve, or return to, profitability.

Two respondents stated that the maximum assistance period should be for the life of the borrower, not consecutive years. To adopt this suggestion, the need for subsidy would need to be determined each year and the Agency could not eliminate the annual needs test. Of the changes in this rule, elimination of the annual needs test will result in the most significant reduction

in burden on the public. The advantage to a borrower receiving 5 years of subsidy in intermittent 1-year periods, rather than in one 5-year block, would be minimal when compared to the increased administrative burden to all parties involved with adopting such a proposal. Some producers will receive less total subsidy due to the reduced term. Nonetheless, budget constraints force the Agency to make difficult decisions regarding the best use of Government resources. The IA program is intended to provide temporary relief, and the Agency has determined that 5 years is an adequate maximum subsidy period within which an applicant's operation should become sufficiently profitable to eliminate the need for an interest subsidy.

One respondent supported the reduction to 5 years only if the annual renewal process is eliminated as proposed. The Agency agrees.

The Agency is making an additional change in the final rule with regard to the maximum IA period for beginning farmers and ranchers. It was determined that 5 years may be too short a period of time for beginning farmers and ranchers to accumulate assets and reduce debt load to a level necessary for the operation to be viable without IA. The final rule permits beginning farmers to receive a second 5-year period of IA eligibility if their cash flow requires the subsidy, and they are still beginning farmers at the end of the first 5-year period. Non-beginning farmers are still limited to one 5-year period of eligibility as provided in the proposed rule.

Some respondents expressed concern that this rule would reduce the term on existing IA agreements. That is incorrect. Existing agreements will remain in effect as written. In addition, the rule provides existing borrowers time to prepare for the reduced period of eligibility to ease the transition to this new maximum period.

Maximum Interest Assistance Payment

The proposed rule did not restrict the maximum guaranteed loan that could be received, but did limit the maximum amount of debt on which an applicant may receive IA to $400,000. With the percentage rate of IA subsidy established at 4 percent, this change would limit the amount of subsidy that may be paid to a maximum of $16,000 annually ($400,000 × .04). Twenty-four comments supported this change, stating that this would permit FSA to assist a larger number of young, beginning, and small producers and reduce abuse in the program. There were 76 comments opposed to the change. The opposing comments stated that this change was too restrictive, arbitrary, limits legitimate borrowers from accessing the program, and was inappropriate considering that the costs required for farming have increased.

Another four respondents suggested the subsidized debt limit be indexed to inflation and adjusted annually accordingly. The Agency concedes that indexing the maximum amount of debt on which an applicant may receive IA would be minimally advantageous to farmers. However, changing the maximum amount annually would increase the cost of the program each year, would be administratively complex, and would make planning difficult because the amount would be changing each year. Therefore, the final rule does not link the maximum subsidy amount to inflation.

Thirty-two respondents stated that this change would limit a benefit that Congress intended to be available across the board. However, the Agency feels that Congress intended that IA be provided to those who need it most. If Congress had intended that borrowers of all sizes receive the maximum benefit it seems the level of IA funds appropriated annually would have kept pace with demand. However, this is not the case. In recent fiscal years, IA funds have been depleted early in the fiscal year. The numbers of large loans receiving IA are a main cause for this rapid depletion of funds and the result is a decrease in the number of borrowers assisted with IA. Appropriations to the program have not increased while the sizes of guaranteed loans, including those with IA, have increased. Therefore, the Agency believes the respondent's rationale is misplaced, and reducing the maximum amount of subsidy payable to each producer does not violate Congressional intent for the program.

A number of respondents implied that the Agency was proposing to decrease the maximum guaranteed loan to $400,000. This is not correct; a borrower with IA may still incur the maximum allowable guaranteed loan debt; however, subsidy payments will be limited to $16,000 per year. As clarified in the final rule, this maximum guaranteed loan level with interest assistance is a lifetime limit.

In summary, the Agency, as proposed, will limit subsidy payments to $16,000 per year, for a term of 5 years. The IA program is the most expensive of the Agency's guaranteed farm loan programs. These limits will help control costs, allow limited funds to reach more borrowers, and target those funds to applicants with the most need. These changes will not prevent borrowers from accessing the program; the Agency still expects all available funds to be utilized each year.

Guarantee Fees

The proposed rule proposed to eliminate the waiver of a guarantee fee for IA loans. Seventy-five comments were opposed to this change. These respondents stated that a fee is counter-productive and adds stress to farmers already in financial trouble. Four respondents expressed an additional concern about how the fee would affect beginning farmers and ranchers.

Since the IA proposed rule was published on June 22, 2005, the Agency published another rule proposing to increase the fees charged for guaranteed loans (71 FR 27978, May 15, 2006). To comply with anticipated budget requirements and maintain new loan activity at the proposed level, the Agency must increase fees.

The Agency has decided to leave this issue open and will finalize it with the proposed rule (71 FR 27978) regarding fees. All comments on this issue will be carefully considered at that time. No change of the guarantee fee for IA loans is being made in this rule.

Reduced Application Requirements

The existing regulation requires lenders to submit a repayment schedule for the guaranteed loan and a projected monthly cash flow budget on lines of credit. The Agency proposed to delete these requirements as the forms are not necessary to make the evaluation, and impose significant burdens on program participants. Sixty-seven comments supported this change to make the program more attractive to lenders due to the reduced paperwork burden. Twelve respondents opposed the change, indicating that the monthly budgets are important financial analysis documents and the requirement for lines of credit should not be removed. The Agency acknowledges that monthly cash flow budgets can be useful tools and certainly may be used when needed, at the lender's discretion. However, they are not always necessary and should not be required by the Agency. The final rule adopts the proposed rule as written with regard to the application requirements.

Removal of Annual Review Requirements

Current regulations require a lender to submit to FSA—once a year, each year, for each IA borrower, for the term of the IA agreement—a form requesting the previous year's interest subsidy payment and a ''needs test''. This needs test must document that the borrower

needs IA in the next production cycle, usually a year, in order to achieve a feasible business plan. The proposed rule proposed to reduce the submission requirements for annual claims for IA payment. In the proposal, IA would simply be authorized for 5 years for the borrower from the date of the first IA agreement. The lender would only be required to submit an Agency IA payment form and the average daily principal balance for the claim period, with supporting documentation.

Comments were received from 58 respondents supporting this change. These comments stated that this streamlined claim process should make the program much more attractive to all participants. There were 11 comments opposed to the change stating that although the existing submission requirements may be burdensome, they were necessary to determine if IA was actually needed. One respondent stated that this would remove a ''supervision tool''.

As discussed in the preamble to the proposed rule, the annual review requirements have not been a meaningful control for the program. Approximately 93 percent of the borrowers operating under an IA agreement receive a subsidy payment each year, regardless of the amount and scope of documentation that has been required. Clearly, the significant administrative burden has not been cost effective and is not warranted. In addition, this burden has resulted in an unbalanced program as it discourages many lenders from participating at all, effectively making the program unavailable to producers in certain parts of the country. The Agency feels that the few producers who may receive a subsidy payment at a time when they may not need it is far outweighed by the improved delivery and more equitable distribution of the program throughout the country that will result from these reduced annual review requirements. The Agency will continue to honor existing Interest Assistance agreements that require an annual needs test.

Two respondents suggested that the producer be required to keep loan agreements, such as accounting for collateral and supplying requested financial information, to receive annual subsidy payments. The Agency believes that it is the lender's responsibility to enforce its loan agreements. FSA will make subsidy payments upon the lender's request in accordance with the Interest Assistance Agreement and FSA regulations. No changes have been made in relation to these comments.

Fees Charged by Lenders for IA Claims Submissions

Agency reviews of guaranteed lenders indicate that some lenders charge fees to the borrower for the preparation of documentation and claims for payment of IA that are submitted to FSA. The Agency proposed to prohibit these fees. There were 36 comments opposed to this change, stating that the Agency should not be in the business of regulating fees charged by lenders, and that banks should be allowed to recover their preparation costs. Respondents opposed to the change also stated that it was contradictory to prohibit a fee when the Agency will be increasing its guarantee fee. Twenty-three respondents supported this change, stating that borrowers are in financially stressed circumstances, additional fees are counter-productive, and lenders did not charge a fee anyway. The Agency has carefully considered the comments and has adopted as final the prohibition on fees as proposed. Most of the requirements for IA claims are eliminated in this rule, greatly reducing lender administrative costs. Since IA claims are now very easy to submit charging fees for IA claims is not appropriate.

First and Final Claims

Existing regulations require final IA claims to be submitted concurrently with the submission of any estimated loss claims. The Agency proposed that, upon liquidation of a loan, the lender complete the Request for Interest Assistance and submit it to the Agency concurrently with any estimated or final loss claims. Approximately 15 comments supported this change; however, some comments indicated that it should be more clearly stated. Based on these comments, the Agency has clarified this section regarding final IA claims being submitted with the estimated loss claim or final loss claim if an estimated loss claim was not previously provided, and added that the IA accrual date cannot exceed the last date of interest accrual for a loss claim.

Servicing

The proposed rule proposed to clarify numerous servicing actions concerning IA including: transfers, assumptions, writedown, interest reduction due to court order in bankruptcy reorganization, and loan restructuring. There were 15 comments received supporting these changes.

One respondent objected to allowing the rescheduling of loans subject to IA, but not allowing the IA agreement term to be extended beyond 5 years from the date of the first IA agreement. This comment stated that such IA loans are in need of maximum assistance and these interest assistance agreements should be extended to 10 years. Extending the term due to restructuring would be difficult to control, as even performing loans might be restructured in an effort to assure that every borrower has IA available for an additional time period. This would defeat the purpose of limiting the term to 5 years per borrower. For consistency purposes, all borrowers will be treated the same, and the Agency did not adopt this comment.

Another respondent requested that entities be allowed to assume a loan with IA. The Agency agrees and will allow this to occur if the entity is eligible and one of the entity members was liable for the debt when the original agreement was signed. Since the entity is eligible for a loan with IA, this is a reasonable way to accommodate the situation, and save loan funds. Otherwise, the entity would have to make an application for a new loan, requiring expenditure of more loan funds and more subsidized funding, all to achieve the same result, a loan with IA.

Two respondents suggested that the Agency was not clear on how it would handle restructuring of a guaranteed loan above the authorized IA amount. One of the respondents thought that the amount restructured above the IA portion of the loan would not be guaranteed. In response, the Agency has clarified and expanded on § 762.150(k) to more specifically state that lenders are able to capitalize interest when restructuring up to the original loan amount under the remaining terms and still have interest assistance available for the full amount of the original loan. This clarification mirrors the existing practice and has no impact on funding because IA funds have already been set aside at loan origination. When restructuring, if terms are increased or interest is capitalized to the extent that additional funds are needed, Agency approval is subject to funding availability. Interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.

A final technical correction is being made to remove the requirement for an IA claim to be submitted through the effective date of rescheduling. Claims are required to be submitted annually on the date identified on the interest assistance agreement and in the event of rescheduling; only an annual claim is needed. The claim submission is already addressed in this rule and more details on administrative processing

will be elaborated on in the Agency Handbook.

Miscellaneous Changes

The proposed rule proposed to update, clarify, and remove references to forms and internal administrative processes to be completed for IA loans. There were 5 comments that supported these changes. The Agency adopts the proposed rule on these miscellaneous changes as written. In addition, the Agency is removing the definitions for ''Interest Assistance Review'' and ''Interest Assistance Anniversary Date'' as unnecessary. It is also revising the definition of ''Average Farm Customer'' to ''Average Agricultural Loan Customer.''

Average Customer Rate

The proposed rule provided in § 762.150(b)(6) that the lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average farm customer. One respondent stated that FSA should not dictate rates and a guaranteed customer should not be compared with a non-guaranteed customer because of increased risk. Another indicated that they had not used the program; however, higher risk borrowers should pay a higher rate like the rest of the borrowing community. The Agency does not agree. This limitation has been in place many years under § 762.124 and the proposed rule did not propose a change in this area. The guarantee from FSA compensates the lender for most of its risk of loss. Lenders ordinarily charge higher risk customers a higher interest rate to compensate for the higher probability of loss associated with such loans. The guarantee eliminates most of that risk, so the lender cannot justify charging a ''risk premium'' as a part of the interest rate on guaranteed loans. The lender, when it comes to alleviating the higher risk from a loan to a borrower that they may not normally extend credit, may charge that customer a higher rate of interest, or obtain an FSA guarantee, not both.

Thirty-one respondents objected to FSA using the term ''average farm customers'' to describe the maximum interest rate that could be charged. These respondents stated that there is no single, clear definition of this term. Respondents also recommended that the Agency clarify the limitation on the maximum interest rate that can be charged under § 762.124(a)(3). They pointed out that this provision discusses ''average agricultural loan customer'' while the term ''average farm customers'' is defined in § 762.102(a). FSA and guaranteed lenders historically have considered these terms synonymous; however for clarity, the Agency is amending the definition in § 762.102(a) and reference in § 762.124(a)(2) to ''average agricultural loan customer'', instead of ''average farm customers.'' The definition also is being clarified to refer to the conventional farm borrower who is required to pledge their crops, livestock, other chattel, ''and/or'' real estate security for the loan. As has always been the case, depending on the type of loan, available security and market conditions, different types of security may be required from conventional farm borrowers and not all types of security listed will be required of all borrowers. No substantive policy changes are made at this time.

Exception Authority

The proposed rule failed to provide exception authority as provided in the current § 762.150(k). The Agency is reinserting the exception authority rule. Based upon past experience and the need in the final for flexibility in implementing the new requirements in this rule, exception authority is needed to address unusual situations that may arise. If a case is not adverse to the Government or contrary to statute, and is in the Government's best financial interest, the Agency may use this exception authority to waive a regulatory provision involving interest assistance.

Executive Order 12866

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

Regulatory Flexibility Act

The Agency certifies that this rule will not have significant economic effect on a substantial number of small entities, because it does not require any specific actions on the part of the borrower or the lenders. The Agency made this certification in the proposed rule, and no comments were received in this area. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601).

Environmental Evaluation

The environmental impacts of this final rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 1940 subpart G. FSA concluded that the rule does not require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; it will not affect IA agreements entered into prior to the effective date of the rule to the extent that it is inconsistent with the terms of those agreements; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

This rule contains no Federal mandates, as defined by Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that are currently approved by OMB under control number 0560–0155. A proposed rule containing an estimate of the information collection burden of this rule was published on June 22, 2005 (70 FR 36055–36060). No comments

regarding the burden estimates were received.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans

List of Subjects in 7 CFR Part 762

Agriculture; Loan programs; Banks, banking; Credit.

■ For the reasons stated in the preamble, the Farm Service Agency is amending 7 CFR Chapter VII as set forth below:

PART 762—GUARANTEED FARM LOANS

■ 1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 2. Amend § 762.102(b) by removing the definitions of the terms ''average farm customers'', ''interest assistance anniversary date'' and ''interest assistance review'' and adding the following definition in alphabetical order:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) * * *

Average agricultural loan customer. The conventional farm borrower who is required to pledge crops, livestock, other chattels and/or real estate security for the loan. This does not include the high-risk farmer with limited security and management ability that is generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include the low-risk farm customer who obtains financing on a secured or unsecured basis, who has as collateral items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance to pledge for the loan.

* * * * *

§ 762.124 [Amended]

■ 3. Amend § 762.124(a)(2) to replace the phrase ''average farm customers'' with ''average agricultural loan customer'' in the second sentence.

■ 4. Amend § 762.145 by revising paragraph (b)(2)(i) and the first sentence of paragraph (b)(8) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(2) * * *

(i) A feasible plan as defined in § 762.102(b).

* * * * *

(8) Any holder agrees to any changes in the original loan terms. * * *

* * * * *

■ 5. Revise § 762.150 to read as follows:

§ 762.150 Interest assistance program.

(a) *Requests for interest assistance.* In addition to the loan application items required by § 762.110, to apply for interest assistance the lender's cash flow budget for the guaranteed loan applicant must reflect the need for interest assistance and the ability to cash flow with the subsidy. Interest assistance is available only on new guaranteed Operating Loans (OL).

(b) *Eligibility requirements.* The lender must document that the following conditions have been met for the loan applicant to be eligible for interest assistance:

(1) A feasible plan cannot be achieved without interest assistance, but can be achieved with interest assistance.

(2) If significant changes in the borrower's cash flow budget are anticipated after the initial 12 months, then the typical cash flow budget must demonstrate that the borrower will still have a feasible plan following the anticipated changes, with or without interest assistance.

(3) The typical cash flow budget must demonstrate that the borrower will have a feasible plan throughout the term of the loan.

(4) The borrower, including members of an entity borrower, does not own any significant assets that do not contribute directly to essential family living or farm operations. The lender must determine the market value of any such non-essential assets and prepare a cash flow budget and interest assistance calculations based on the assumption that these assets will be sold and the market value proceeds used for debt reduction. If a feasible plan can then be achieved, the borrower is not eligible for interest assistance.

(5) A borrower may only receive interest assistance if their total debts (including personal debts) prior to the new loan exceed 50 percent of their total assets (including personal assets). An entity's debt to asset ratio will be based upon a financial statement that consolidates business and personal debts and assets of the entity and its members. Beginning farmers and ranchers, as defined in § 762.102, are excluded from this requirement.

(c) *Maximum assistance.* The maximum total guaranteed OL debt on which a borrower can receive interest assistance is $400,000, regardless of the number of guaranteed loans outstanding. This is a lifetime limit.

(d) *Maximum time for which interest assistance is available.* (1) A borrower may only receive interest assistance for one 5-year period. The term of the interest assistance agreement executed under this section shall not exceed 5 consecutive years from the date of the initial agreement signed by the loan applicant, including any entity members, or the outstanding term of the loan, whichever is less. This is a lifetime limit.

(2) Beginning farmers and ranchers, as defined in § 762.102, however, may be considered for two 5-year periods. The applicant must meet the definition of a beginning farmer or rancher and meet the other eligibility requirements outlined in paragraph (b) of this section at the onset of each 5-year period. A needs test will be completed in the fifth year of IA eligibility for beginning farmers, to determine continued eligibility for a second 5-year period.

(3) Notwithstanding the limitation of paragraph (d)(1) of this section, a new interest assistance agreement may be approved for eligible borrowers to provide interest assistance through June 8, 2009, provided the total period does not exceed 10 years from the effective date of the original interest assistance agreement.

(e) *Multiple loans.* In the case of a borrower with multiple guaranteed loans with one lender, interest assistance can be applied to each loan, only to one loan or any distribution the lender selects, as necessary to achieve a feasible plan, subject to paragraph (c) of this section.

(f) *Terms.* The typical term of scheduled loan repayment will not be reduced solely for the purpose of maximizing eligibility for interest assistance. A loan must be scheduled over the maximum term typically used by lenders for similar type loans within the limits in § 762.124. An OL for the purpose of providing annual operating and family living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and/or livestock products which will serve as security for the loan. An OL for purposes other than annual operating and family living expenses (i.e. purchase of equipment or livestock, or refinancing existing debt) will be scheduled over 7 years from the effective date of the proposed interest assistance agreement, or the life of the security, whichever is less.

(g) *Rate of interest.* The lender may charge a fixed or variable interest rate, but not in excess of what the lender charges its average agricultural loan customer.

(h) *Agreement.* The lender and borrower must execute an interest assistance agreement as prescribed by the Agency.

(i) *Interest assistance claims and payments.* To receive an interest assistance payment, the lender must prepare and submit a claim on the appropriate Agency form. The following conditions apply:

(1) Interest assistance payments will be four (4) percent of the average daily principal loan balance prorated over the number of days the loan has been outstanding during the payment period. For loans with a note rate less than four (4) percent, interest assistance payments will be the weighted average interest rate multiplied by the average daily principal balance.

(2) The lender may select at the time of loan closing the date that they wish to receive an interest assistance payment. That date will be included in the interest assistance agreement.

(i) The initial and final claims submitted under an agreement may be for a period less than 12 months. All other claims will be submitted for a 12-month period, unless there is a lender substitution during the 12-month period in accordance with this section.

(ii) In the event of liquidation, the final interest assistance claim will be submitted with the estimated loss claim or the final loss claim if an estimated loss claim was not submitted. Interest will not be paid beyond the interest accrual cutoff dates established in the loss claims according to § 762.149(d)(2).

(3) A claim should be filed within 60 days of its due date. Claims not filed within 1 year from the due date will not be paid, and the amount due the lender will be permanently forfeited.

(4) All claims will be supported by detailed calculations of average daily principal balance during the claim period.

(5) Requests for continuation of interest assistance for agreements dated prior to June 8, 2007 will be supported by the lender's analysis of the applicant's farming operation and need for continued interest assistance as set out in their Interest Assistance Agreements. The following information will be submitted to the Agency:

(i) A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

(ii) A narrative description of the causes of any major differences between the previous year's projections and actual performance, including a detailed income and expense statement.

(iii) A current balance sheet.

(iv) A cash-flow budget for the period being planned. A monthly cash-flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either an annual or monthly cash-flow budget.

(v) A copy of the interest assistance needs analysis portion of the application form which has been completed based on the planned period's cash-flow budget.

(6) Interest Assistance Agreements dated June 8, 2007 or later do not require a request for continuation of interest assistance. The lender will only be required to submit an Agency IA payment form and the average daily principal balance for the claim period, with supporting documentation.

(7) Lenders may not charge or cause a borrower with an interest assistance agreement to be charged a fee for preparation and submission of the items required for an annual interest assistance claim.

(j) *Transfer, consolidation, and writedown.* Loans covered by interest assistance agreements cannot be consolidated. Such loans can be transferred only when the transferee was liable for the debt on the effective date of the interest assistance agreement. Loans covered by interest assistance can be transferred to an entity if the entity is eligible in accordance with § 762.120 and § 762.150(b) and at least one entity member was liable for the debt on the effective date of the interest assistance agreement. Interest assistance will be discontinued as of the date of any writedown on a loan covered by an interest assistance agreement.

(k) *Rescheduling and deferral.* When a borrower defaults on a loan with interest assistance or the loan otherwise requires rescheduling or deferral, the interest assistance agreement will remain in effect for that loan at its existing terms. The lender may reschedule the loan in accordance with § 762.145. For Interest Assistance Agreements dated June 8, 2007 or later increases in the restructured loan amount above the amount originally obligated do not require additional funding; however, interest assistance is not available on that portion of the loan as interest assistance is limited to the original loan amount.

(l) *Bankruptcy.* In cases where the interest on a loan covered by an interest assistance agreement is reduced by court order in a reorganization plan under the bankruptcy code, interest assistance will be terminated effective on the date of the court order. Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible for interest assistance.

(m) *Termination of interest assistance payments.* Interest assistance payments will cease upon termination of the loan guarantee, upon reaching the expiration date contained in the agreement, or upon cancellation by the Agency under the terms of the interest assistance agreement. In addition, for loan guarantees sold into the secondary market, Agency purchase of the guaranteed portion of a loan will terminate the interest assistance.

(n) *Excessive interest assistance.* Upon written notice to the lender, borrower, and any holder, the Agency may amend or cancel the interest assistance agreement and collect from the lender any amount of interest assistance granted which resulted from incomplete or inaccurate information, an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

(o) *Condition for Cancellation.* The Interest Assistance Agreement is incontestable except for fraud or misrepresentation, of which the lender or borrower have actual knowledge at the time the interest assistance agreement is executed, or which the lender or borrower participates in or condones.

(p) *Substitution.* If there is a substitution of lender, the original lender will prepare and submit to the Agency a claim for its final interest assistance payment calculated through the effective date of the substitution. This final claim will be submitted for processing at the time of the substitution.

(1) Interest assistance will continue automatically with the new lender.

(2) The new lender must follow paragraph (i) of this section to receive their initial and subsequent interest assistance payments.

(q) *Exception Authority.* The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any requirement involving interest assistance if it is in the best interest of the Government and is not inconsistent with other applicable law.

Signed in Washington, DC, on March 15, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 07–1748 Filed 4–4–07; 3:38 pm]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. AMS–FV–07–0043; FV07–959–2 IFR]

Onions Grown in South Texas; Exemption of Onions for Export

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule exempts onions being shipped to export markets from regulations prescribed under the South Texas onion marketing order. The marketing order regulates the handling of onions grown in South Texas, and is administered locally by the South Texas Onion Committee (Committee). This rule provides a special purpose shipment exemption for onions being shipped to export markets. Under this change, onion shipments for export will be exempt from the grade, size, quality, and inspection requirements of the marketing order. This rule will provide handlers additional flexibility in marketing onions of different grades and quality in various markets outside of the U.S. This change is expected to help the South Texas onion industry develop additional markets for its onions, while increasing returns to producers and providing an increased supply of onions to help satisfy a rapidly developing export market.

DATES: Effective April 10, 2007. Comments received by June 8, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956) 682–5942, or E-mail: *Belinda.Garza@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This action, unanimously recommended by the Committee at its March 16, 2007, meeting, exempts onion export shipments from the grade, size, quality and inspection requirements prescribed under the South Texas onion marketing order. To effectuate the exemption, paragraphs (e)(1) and (f) of § 959.322 are modified by adding the term ''export'' to the list of authorized special purpose shipment categories.

Section 959.52 of the order authorizes the issuance, amendment, modification, suspension, or termination of regulations for grade, size, quality, maturity, pack, and container for any variety of onions grown in the production area. Section 959.53 provides that regulations in effect pursuant to §§ 959.42, 959.52, or 959.60 may be modified, suspended or terminated to facilitate the handling of onions for specified special purpose shipments, including export. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, such onions must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Section 959.322 contains the order's handling regulations and includes provisions for grade, size, and inspection requirements, as well as a minimum quantity exemption, certain special purpose shipment exemptions, and experimental shipments. The handling regulations also provide safeguards to ensure that onions being shipped for special purposes are handled in accordance with order provisions.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for South Texas onions which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Based on discussion at the March 16, 2007, meeting, the Committee has conveyed to USDA that there currently exists an extremely short supply of onions in Mexico and other countries. This shortage has fueled a greater demand for all grades of onions. The Committee indicated that there is a great deal of interest in various foreign markets for onions of varying grade, size, and quality. Texas producers and handlers are characterized by the Committee as being eager to supply this demand and are thus fully in support of relaxing the handling regulations in an effort to provide onions for the developing export markets.

The Committee also reports that the onion supply situation in Texas is hampered by a very short onion crop—

approximately 12,500 acres this year compared with approximately 18,000 acres in past seasons—and recent cold weather that has caused some quality issues in certain areas of the South Texas onion production area.

By exempting onions for export from the handling regulations, this rule will provide handlers additional flexibility in marketing onions of different grades and quality in various markets outside of the U.S. This change is expected to help the South Texas onion industry develop additional markets for its onions, while increasing returns to producers and providing an increased supply of onions to help satisfy a rapidly developing export market.

Currently, all handlers making onion shipments for relief, charity, processing, or experimental purposes are required to apply for and obtain a Certificate of Privilege from the Committee to make such shipments. Once handlers are approved for such shipments, a Report of Special Purpose Onion Shipment form must be submitted to the Committee for each such onion shipment in order to ensure that the shipments are in accordance with Committee requirements. This action will allow all shipments to export markets to also be exempt from grade, size, quality, and inspection requirements and will be tracked through the use of the Report of Special Purpose Onion Shipment form.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,500,000.

There are approximately 114 producers of onions in the production area and approximately 38 handlers subject to regulation under the order. Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $1.6 million and $1.12 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other farming enterprises could result in a number of these handlers being above the $6,500,000 annual receipt threshold. All of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule exempts onion export shipments from the grade, size, quality and inspection requirements prescribed under the South Texas onion marketing order. To realize the exemption, paragraphs (e) and (f) of § 959.322 are modified by adding the term ''export'' to the list of authorized special purpose shipment categories.

Section 959.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of onions grown in the production area. Section 959.53 provides for the exemption from the handling regulations certain kinds of onion shipments, including export.

The Committee anticipates that this rule will not negatively impact small businesses. This rule exempts onions being shipped to export markets from the order's handling regulations, and thus should provide enhanced marketing opportunities for all handlers, increased income for South Texas onion producers, and increased purchasing flexibility for foreign consumers.

The Committee considered alternatives to this recommendation. One consideration would have relaxed the minimum quality requirement of all onion shipments, both domestic and export, from U.S. No. 1 to U.S. No. 2. Although this option may have taken care of the export market demands, it was rejected early in the discussion due to the problems associated with trying to market onions that grade less than U.S. No. 1 to U.S. consumers. Also briefly considered was the option of suspending the entire handling regulation, either on a temporary basis or indefinitely. The Committee also rejected this option as being too extreme for the current situation.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule are currently approved by the Office of Management and Budget (OMB), under OMB No. 0581–0178, Vegetable and Specialty Crops. This rule will impose minimal additional reporting or recordkeeping requirements, deemed to be insignificant, on both small and large onion handlers that export onions.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

The Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 16, 2007, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Furthermore, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned

address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the exemption of onions for export from the handling regulations prescribed under the Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the order's regulatory requirements by exempting South Texas onions shipped to the export market from the order's handling regulations; (2) onion handlers are aware of this recommendation and need no additional time to comply with the relaxed requirements; (3) the shipping season for South Texas onions started around March 1, thus this rule should be effective as soon as possible to ensure that all handlers can take advantage of the relaxation for as much of the season as possible; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Onions, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.322 is amended by revising paragraph (e)(1) and the introductory sentence of paragraph (f) to read as follows:

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, quality, and inspection requirements set forth in paragraphs (a) through (c) of this section shall not be applicable to shipments of onions for charity, relief, export, and processing if handled in accordance with paragraph (f) of this section.

* * * * *

(f) *Safeguards.* Each handler making shipments of onions for charity, relief, export, processing, or experimental purposes shall:

* * * * *

Dated: April 4, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1749 Filed 4–4–07; 4:27 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS–FV–07–0027; FV07–989–1 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2006–07 Crop Natural (sun-dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 2006–07 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 90 percent free and 10 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective April 10, 2007. The volume regulation percentages apply to acquisitions of NS raisins from the 2006–07 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by June 8, 2007, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or *Internet: http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: *Rose.Aguayo@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS raisins for the 2006–07 crop year, which began August 1, 2006, and ends July 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA

would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes final volume regulation percentages for 2006–07 crop NS raisins covered under the order. The volume regulation percentages are 90 percent free and 10 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended final percentages for NS raisins on November 21, 2006, and on January 23, 2007.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 15, 2006, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced the 2006–07 trade demand for NS raisins at 219,870 tons as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	NS raisins
Prior year's shipments	301,460
Multiplied by 90 percent	0.90
Equals adjusted base	271,314
Minus carryin inventory	111,444
Plus desirable carryout	60,000
Equals computed NS trade Demand	219,870

Computation of Preliminary Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

The Committee met on September 6, 2006, and announced preliminary percentages for Zante Currant (ZC) raisins. They met again on October 4, 2006, and announced preliminary percentages and a preliminary crop estimate for NS raisins of 259,557 tons, which is about 21 percent lower than the 10-year average of 327,410 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 111,444 tons to the 259,557-ton crop estimate resulted in a total available supply of 371,001 tons, which was significantly higher (169 percent) than the 219,870-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for NS raisins, which released 85 percent of the computed trade demand since a minimum field price (price paid by handlers to producers for their free tonnage raisins) had been established. The preliminary percentages were 72 percent free and 28 percent reserve.

In addition, preliminary percentages were also announced for Dipped Seedless, Golden Seedless, and Other Seedless raisins. It was ultimately determined at Committee meetings held on November 21, 2006, and January 23, 2007, that volume regulation was only warranted for NS raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), at its November 21, 2006, meeting, the Committee announced interim percentages for NS raisins to release slightly less than the full trade demand. Based on a revised NS crop estimate of 244,300 tons (down from the October estimate of 259,557 tons), interim percentages for NS raisins were announced at 89.75 percent free and 10.25 percent reserve.

Pursuant to § 989.54(d), the Committee also recommended final percentages at its November 21, 2006, meeting to release the full trade demands for NS raisins. Final percentages were recommended at 90 percent free and 10 percent reserve. The Committee's calculations and determinations to arrive at final percentages for NS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS raisins
Trade demand	219,870
Divided by crop estimate	244,300
Equals the free percentage	90.00
100 minus free percentage equals the reserve percentage	10.00

By the week ending February 3, 2007, data showed that deliveries of NS raisins exceeded the Committee's crop estimate of 244,300 tons. By that date deliveries totaled 262,477 tons. Thus, deliveries are likely to be at least 18,000 tons higher than estimated by the Committee during the fall. Based on this, the Committee's recommendation will provide handlers 6.2 percent more raisins than would be provided if a 262,477 ton estimate had been used, but the additional tonnage is not expected to result in disorderly marketing conditions.

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority.

This goal will be met for NS raisins by the establishment of final percentages, which release 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For NS raisins, the first 10 plus 10 offer was made in February 2007. A total of 30,146 tons was made available to raisin handlers. The second 10 plus 10 offer of 20,923 tons (the balance remaining in the reserve pool) will be made available to handlers by July 31, 2007. Adding the total figure of 51,648 tons of 10 plus 10 raisins to the 219,870 ton trade demand figure, plus the 111,444 tons of 2005–06 carryin NS inventory, equates to 382,962 tons of natural condition raisins, or 360,819 tons of packed raisins, that are available to handlers for free use or primary markets. This is about 127 percent of the quantity of NS raisins shipped during the 2005–06 crop year (301,460 natural condition tons or 284,030 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments during a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with USDA's Guidelines.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Eleven of the 20 handlers subject to regulation have annual sales estimated to be at least $6,500,000, and the remaining 9 handlers have sales less than $6,500,000. No more than 9 handlers and a majority of producers of California raisins may be classified as small entities.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions. If the primary market (the normal domestic market) is over-supplied with raisins, grower prices decline substantially.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 2006–07 crop NS raisins. The volume regulation percentages are 90 percent free and 10 percent reserve. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season because the revised crop estimate of 244,300 tons combined with the carryin inventory of 111,444 tons results in a total available supply of 355,744 tons, which is about 162 percent higher than the 219,870 ton trade demand.

Handlers provide their best estimate on the amount of tonnage growers will deliver each crop year. By the week ending February 3, 2007, data showed that deliveries of NS raisins exceeded the Committee's crop estimate of 244,300 tons by 18,177 tons. The higher deliveries further warrant volume regulation, as the total available supply is currently expected to be 373,921 tons, which is about 170 percent higher than the 219,870 ton trade demand.

The volume regulation procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, about 64 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1993–94 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94.

According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $904.60 in 1993–94 to a high of $1,049.20 in

1996–97. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Record large crops followed and producer prices dropped dramatically for the 2000–01 through 2003–04 crop years, as inventories grew while demand stagnated. However, the producer prices were higher for the 2004–05 and the 2005–06 crop years, as noted below:

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Deliveries (natural condition tons)	Producer prices (per ton)
2005–06	319,126	[1] $998.25
2004–05	265,262	[2] 1210.00
2003–04	296,864	[1] 567.00
2002–03	388,010	[1] 491.20
2001–02	377,328	650.94
2000–01	432,616	603.36
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60

[1] Return-to-date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. Domestic shipments have been generally increasing in recent years. Although domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000, they increased from 174,117 packed tons during the 2000–01 crop year to 186,358 tons during the 2005–06 crop year. Export shipments ranged from a high of 107,931 packed tons in 1991–92 to a low of 91,599 packed tons in the 1999–2000 crop year. Since that time, export shipments increased to 106,755 tons of raisins during the 2004–05 crop year, but fell to 97,672 tons in 2005–06.

The per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.44 pounds in 2005. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has increased in two out of the last three years (as reflected in increased commercial shipments), production has been decreasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Deliveries for the 2001–02 crop year were at 377,328 tons, 388,010 tons for the 2002–03 crop year, 296,864 for the 2003–04 crop year, and 265,262 tons for the 2004–05 crop year. After three crop years of high production and a large 2001–02 carryin inventory, the industry diverted raisin production to other uses or removed bearing vines. Diversions/removals totaled 41,000 acres in 2001; 27,000 acres in 2002; and 15,000 acres of vines in 2003. These actions resulted in declining deliveries of 296,864 tons for the 2003–04 crop year and 265,262 tons for the 2004–05 crop year. Although deliveries increased in 2005–06 to 319,126 tons, this may have been because fewer growers opted to contract with wineries, as raisin variety grapes crushed in 2005–06 decreased by 161,000 green tons, the equivalent of over 40,000 tons of raisins.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

The reserve percentage limits what handlers can market as free tonnage. Data available as of February 7, 2007, showed that deliveries of NS raisins were at 262,477 tons. The 10 percent reserve would limit the total free tonnage to 236,229 natural condition tons (.90 × the 262,477 ton crop). Adding the 236,229 ton figure with the carryin of 111,444 tons, plus the 51,648 tons of reserve raisins that are available for purchase and release to handlers during the 2006–07 crop year under the 10 plus 10 offers, would make the total free supply equal to 399,321 natural condition tons.

To assess the impact that volume control has on the prices producers receive for their product, a price dependent econometric model was estimated. This model is used to estimate producer prices both with and without the use of volume control. The volume control used by the raisin industry would result in decreased shipments to primary markets. Without volume control the primary market (domestic) could be over-supplied resulting in lower producer prices and the build-up of unwanted inventories.

With volume controls, producer prices are estimated to be approximately $65 per ton higher than without volume controls. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin

that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it was determined that volume regulation is warranted this season for only one of the nine raisin varietal types defined under the order.

The free and reserve percentages established by this rule release the full trade demand and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 and 2004–05 crop years, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the raisin industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the August 15, 2006, September 6, 2006, October 4, 2006, November 21, 2006, and January 23, 2007, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Reserve Sales and Marketing Subcommittee met on August 15, 2006, September 6, 2006, October 4, 2006, November 21, 2006, and January 23, 2007, and discussed these issues in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the establishment of final volume regulation percentages for 2006–07 crop NS raisins covered under the order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 2006–07 crop year apply to all NS raisins acquired from the beginning of that crop year; (2) handlers are currently marketing their 2006–07 crop NS raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demand available to handlers; (3) handlers are aware of this action, which was unanimously recommended at a public meeting, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.257 is revised to read as follows:

§ 989.257 Final free and reserve percentages.

(a) The final percentages for the respective varietal type(s) of raisins acquired by handlers during the crop year beginning August 1, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Crop year	Varietal type	Free percentage	Reserve percentage
2003–2004	Natural (sun-dried) Seedless	70	30
2005–2006	Natural (sun-dried) Seedless	82.50	17.50
2006–2007	Natural (sun-dried) Seedless	90	10

(b) The volume regulation percentages apply to acquisitions of the varietal type of raisins for the applicable crop year until the reserve raisins for that crop are disposed of under the marketing order.

Dated: April 3, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–6530 Filed 4–6–07; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

RIN 3245–AF20

Record Disclosure and Privacy

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Direct Final Rule.

SUMMARY: This rule updates the U.S. Small Business Administration's (SBA) regulations implementing the Privacy Act of 1974. This rule ensures the security and confidentiality of personally identifiable records and protects against hazards to their integrity. Specifically, Subpart B of the Privacy Act regulations is revised to include SBA's procedures for maintaining appropriate administrative, technical and physical safeguards to ensure the security of the records. Also included are Privacy Act standards of conduct for Agency employees; training and reporting requirements pursuant to Privacy Act guidelines and the Office of Management and Budget (OMB) guidance; and the Privacy Act responsibilities of the Chief, Freedom of Information/Privacy Acts (FOI/PA) Office.

DATES: This rule is effective June 8, 2007 without further action, unless significant adverse comment is received by May 9, 2007. If significant adverse comment is received, the SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AF20, by any of the following methods: (1) Federal rulemaking portal at *http://www.regulations.gov;* (2) e-mail: *lisa.babcock@sba.gov,* include RIN number 3245–AF20 in the subject line of the message; (3) mail to: Delorice P. Ford, Agency Chief FOIA Officer, 409 3rd Street, SW., Mail Code: 2441, Washington, DC 20416; and (4) Hand Delivery/Courier: 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Delorice P. Ford, Agency Chief FOIA Officer, (202) 401–8203.

SUPPLEMENTARY INFORMATION: SBA is revising Subpart B of Part 102 to include more in-depth information about Privacy Act (PA) responsibilities, and to further ensure the security and confidentiality of the Agency's personally identifiable records, including the standards for disclosure of information under computer matching programs. This rule will further assist the SBA in focusing on the four basic policy objectives of the Privacy Act. Those objectives are: the restriction of disclosure of personally identifiable information; individuals' increased right of access to records maintained on them; individuals' right to seek amendment of records maintained on them; and the establishment of fair information practices. SBA is substantially revising this rule to present it in a statement and narrative format rather than question and answer, which conforms to the current writing style of Subpart A. As a result, the headings and section numbers are different than current SBA rule 13 CFR part 102, Subpart B.

SBA is publishing this rule as a direct final rule because it believes the rule is non-controversial since it merely enforces the basic policy objectives of the Privacy Act and does not present novel or unusual policies or practices. Because the rule follows routine, standard government-wide Privacy Act practices, SBA believes that this direct final rule will not elicit any significant adverse comments. However, if such comments are received, SBA will publish a timely notice of withdrawal in the **Federal Register**.

Section-by Section Analysis

General provisions, § 102.20, provides an overview of the scope of regulations contained in Subpart B as well as definitions for terms that are not previously defined in Part 102.

New *§ 102.21 Agency officials responsible for the Privacy Act,* describes the various Agency personnel responsible for the PA and a listing of their duties. Some of this information is currently included in SBA PA rules at 13 CFR 102.29 and 102.32.

Section 102.22 Requirements relating to systems of records, this section expands current SBA PA rules at §§ 102.24 and 102.25 and establishes parameters for the type of information that SBA may collect from an individual, including the prohibition on maintaining records concerning First Amendment rights in certain circumstances. Section 102.22 also addresses how to ensure the accurate and secure maintenance of records on individuals, and how to report new systems of records.

*Section 102.23—Publication in the **Federal Register** Notices of systems of records* explains that SBA will publish notice of new or modified systems of records and routine uses in the **Federal Register**. This section is not currently included in SBA rules.

Section 102.24—Requests for access to records describes procedures for individuals on how and where to make requests for access to records under the PA. This section is similar to current SBA rule at 13 CFR 102.34.

Section 102.25—Responsibility for responding to requests for access to records provides a description of responsibilities for Agency respondents to requests for access to records, while *§ 102.26—Responses to requests for access to record* describes what to include in those responses. Current SBA rule at 13 CFR 102.36 provides similar information.

New *§ 102.27—Appeals from denials of requests for access to records* provides procedures for individuals on how and where to make appeals from denials of requests for access to records.

Section 102.28—Requests for amendment or correction of records, provides a description of how and where to make requests and appeals for amendment or correction of records, including how to file Statements of Disagreement if appeals under this section are denied in whole or part.

Section 102.29—Requests for an accounting of record disclosures describes procedures for individuals to make requests and appeals for an accounting of records disclosures.

Section 102.30—Preservation of records this section describes how SBA will implement the record retention requirements of Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14.

Section 102.31—Fees this section states that for PA matters, SBA charges only for duplication of records and all fees under $25 are waived.

Section 102.32—Notice of court-ordered and emergency disclosures this section explains SBA's compliance with court-ordered and emergency disclosures. SBA will notify individuals by mailing a notice to their last known address.

Section 102.33—Security of systems of records this section requires SBA offices that maintain PA records to establish controls to protect records on individuals and ensure that record access is limited to only those

individuals who must have access to the records to perform their duties.

Section 102.34—Contracts for the operation of record systems this section establishes that SBA contractors are subject to the PA and this rule. The contractor and its employees are considered SBA employees during the contract and can be subject to the sanctions of the PA.

Section 102.35—Use and collection of Social Security Numbers under this section, individuals may not be negatively affected if they refuse to provide their social security numbers, unless such numbers are required under a statute or regulation adopted prior to 1975, or the collection in general is authorized by statute. Individuals must be informed whether submitting the social security number is mandatory or voluntary; the authority for collecting it; and the purpose for which it will be used.

Section 102.36—Privacy Act standards of conduct this section requires SBA to inform its employees how the Agency enforces PA provisions, including civil liability and criminal penalty provisions. The section sets forth standards for collecting, maintaining, accessing, or disclosing information in a system of records, in order to comply with those standards.

Section 102.37—Training requirements according to this section all SBA employees with PA duties must periodically attend Agency PA training.

Section 102. 38—Other rights and services this section limits the rights of persons to access any record they are not entitled to under the PA.

Section 102.39—SBA's Exempt Privacy Act Systems of Records this section identifies the systems of records that are exempt from disclosure and the basis for their exemption. In general such systems contain Office of Inspector General (OIG) investigatory materials, Equal Employment Opportunity records, personnel records, and litigation records that contain personally identifiable criminal, investigative, and financial information. The exemption of these systems will help protect the investigative process, information sources, and classified information.

Section 102.40—Computer matching agreements this section establishes that SBA may not disclose information on an individual for use in a computer matching program unless the Agency has entered into a written agreement governing the use of the information with the recipient of such information. Among other things, matching agreements must specify the purpose, legal authority, description and approximate number of records, estimate of savings, procedures for individualized notice, information verification, record retention and security, prohibitions on duplication and re-disclosure, assessments on record accuracy, and record access by the Comptroller General. Copies of all matching agreements must be provided to appropriate Congressional committees.

This section also establishes a Data Integrity Board to oversee and coordinate the matching programs, approve and maintain all written agreements, and if OMB requests, compile a report on SBA's matching activities that will be available to the public. Finally, this section sets forth the process for filing an appeal with OMB of any matching agreement the Data Integrity Board disapproves. OMB may approve such a matching agreement, if it finds that the program will be consistent with all applicable legal, regulatory and policy requirements, is cost-effective and is in the public interest. If the Board and OMB disapprove a matching program proposed by OIG, the IG may report such disapproval to the Administrator and to Congress.

Section 102.41—Other provisions this section explains that SBA personnel records are maintained in accordance with Office of Personnel Management regulations, describes the conditions for disclosing an individual's medical records, and notifies individuals that SBA will not profit from the sale of an individual's name or address.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Executive Order 12866

The Office of Management and Budget has determined that this rule does not constitute a significant regulatory action within the meaning of Executive Order 12866. This rule merely makes SBA's Privacy Act program more compliant with current law and facilitates greater public understanding of why personal information is collected, how that information will be used and shared, how it may be accessed, and securely stored.

Executive Order 12988

This rule meets the applicable standards set forth in §§ 3(a) and (3)(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. This rule would not have retroactive or preemptive effect.

Executive Order 13132

This rule would 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. Therefore, for purposes of Executive Order 13132, SBA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or record keeping requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. The RFA requires agencies to prepare an analysis which describes the impact of each rule on such entities. However, in lieu of preparing an analysis, section 605 of the RFA allows an agency to certify that the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule concerns the rights of individuals under the Privacy Act and outlines the responsibilities of the Agency to ensure that information it collects on those individuals is used and maintained in a manner that ensures its confidentiality. An individual is not a small entity as defined in the RFA. Furthermore, the Privacy Act does not concern small entities. Accordingly, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 102

Freedom of information, Privacy.

■ For the reasons stated in the preamble, the Small Business Administration amends 13 CFR Chapter I, part 102, as follows:

PART 102—RECORD DISCLOSURE AND PRIVACY

■ 1. The authority citation for part 102 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 31 U.S.C. 9701; 44 U.S.C. 3501, *et seq.*, E.O. 12600, 52 FR 23781, 3 CFR, 187 Comp., p. 235.

■ 2. Revise subpart B of part 102 to read as follows:

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Sec.
102.20 General provisions.
102.21 Agency officials responsible for the Privacy Act of 1974.
102.22 Requirements relating to systems of records.
102.23 Publication in the **Federal Register**—Notices of systems of records.
102.24 Requests for access to records.
102.25 Responsibility for responding to requests for access to records.
102.26 Responses to requests for access to records.
102.27 Appeals from denials of requests for access to records.
102.28 Requests for amendment or correction of records.
102.29 Requests for an accounting of record disclosures.
102.30 Preservation of records.
102.31 Fees.
102.32 Notice of court-ordered and emergency disclosures.
102.33 Security of systems of records.
102.34 Contracts for the operation of record systems.
102.35 Use and collection of Social Security Numbers.
102.36 Privacy Act standards of conduct.
102.37 Training requirements.
102.38 Other rights and services.
102.39 SBA's exempt Privacy Act systems of records.
102.40 Computer matching.
102.41 Other provisions.

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

§ 102.20 General provisions.

(a) *Purpose and scope.* This subpart implements the provisions of the Privacy Act of 1974, *5 U.S.C. 552a.* These regulations apply to all records which are contained in systems of records maintained by the U.S. Small Business Administration (SBA) and that are retrieved by an individual's name or personal identifier. These regulations set forth the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the SBA. These regulations also set forth the requirements applicable to SBA employees maintaining, collecting, using or disseminating records pertaining to individuals. This subpart applies to SBA and all of its offices and is mandatory for use by all SBA employees.

(b) *Definitions.* As used in this subpart:

(1) *Agency* means the U.S. Small Business Administration (SBA) and includes all of its offices wherever located;

(2) *Employee* means any employee of the SBA, regardless of grade, status, category or place of employment;

(3) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence. This term shall not encompass entrepreneurial enterprises (e.g. sole proprietors, partnerships, corporations, or other forms of business entities);

(4) *Maintain* includes maintain, collect, use, or disseminate;

(5) *Record* means any item, collection, or grouping of information about an individual that is maintained by the SBA, including, but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or an identifying number, symbol, or other identifying particular assigned to the individual such as a finger or voice print or photograph;

(6) *System of records* means a group of any records under the control of SBA from which information is retrieved by the name of the individual or by an identifying number, symbol, or other identifying particular assigned to the individual;

(7) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual;

(8) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(9) *Request for access* to a record means a request made under Privacy Act subsection (d)(1) allowing an individual to gain access to his or her record or to any information pertaining to him or her which is contained in a system of records;

(10) *Request for amendment or correction* of a record means a request made under Privacy Act subsection (d)(2), permitting an individual to request amendment or correction of a record that he or she believes is not accurate, relevant, timely, or complete;

(11) *Request for an accounting* means a request made under Privacy Act subsection (c)(3) allowing an individual to request an accounting of any disclosure to any SBA officers and employees who have a need for the record in the performance of their duties;

(12) *Requester* is an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act; and

(13) *Authority to request records for a law enforcement purpose* means that the head of an Agency or a United States Attorney, or either's designee, is authorized to make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

§ 102.21 Agency employees responsible for the Privacy Act of 1974.

(a) *Program/Support Office Head* is the SBA employee in each field office and major program and support area responsible for implementing and overseeing this regulation in that office.

(b) *Privacy Act Systems Manager* (PASM) is the designated SBA employee in each office responsible for the development and management of any Privacy Act systems of records in that office.

(c) *Senior Agency Official for Privacy* is SBA's Chief Information Officer (CIO) who has overall responsibility and accountability for ensuring the SBA's implementation of information privacy protections, including the SBA's full compliance with Federal laws, regulations, and policies relating to information privacy such as the Privacy Act and the E-Government Act of 2002.

(d) *Chief, Freedom of Information/ Privacy Acts (FOI/PA) Office* oversees and implements the record access, amendment, and correction provisions of the Privacy Act.

§ 102.22 Requirements relating to systems of records.

(a) *In general.* Each SBA office shall, in accordance with the Privacy Act:

(1) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by a statute or by Executive Order of the President;

(2) Collect information to the greatest extent practicable directly from the subject individual when the information may affect an individual's rights, benefits, and privileges under Federal programs;

(b) *Requests for information from individuals.* If a form is being used to collect information from individuals, either the form used to collect the information, or a separate form that can be retained by the individual, must state the following:

(1) The authority (whether granted by statute, or by Executive Order of the

President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information; and

(4) The effects on such individual, if any, of not providing all or any part of the requested information.

(c) *Report on new systems.* Each SBA office shall provide adequate advance notice to Congress and OMB through the FOI/PA Office of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals.

(d) *Accurate and secure maintenance of records.* Each SBA office shall:

(1) Maintain all records which are used in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(2) Prior to disseminating any record from a system of records about an individual to any requestor, including an agency, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for SBA purposes; and

(3) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(i) PASMs, with the approval of the head of their offices, shall establish administrative and physical controls, consistent with SBA regulations, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must ensure that records other than those available to the general public under the FOIA, are protected from public view, that the area in which the records are stored is supervised during all business hours and physically secured during non-business hours to prevent unauthorized personnel from obtaining access to the records.

(ii) PASMs, with the approval of the head of their offices, shall adopt access restrictions to insure that only those individuals within the agency who have a need to have access to the records for the performance of their duties have access to them. Procedures shall also be adopted to prevent accidental access to, or dissemination of, records.

(e) *Prohibition against maintenance of records concerning First Amendment rights.* No SBA office shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment (e.g. speech), unless the maintenance of such record is:

(1) Expressly authorized by statute, or

(2) Expressly authorized by the individual about whom the record is maintained, or

(3) Pertinent to and within the scope of an authorized law enforcement activity.

§ 102.23 Publication in the Federal Register—Notices of systems of records.

(a) *Notices of systems of records to be published in the* ***Federal Register***. (1) The SBA shall publish in the **Federal Register** upon establishment or revision a notice of the existence and character of any new or revised systems of records. Unless otherwise instructed, each notice shall include:

(i) The name and location of the system;

(ii) The categories of individuals on who records are maintained in the system;

(iii) The categories of records maintained in the system;

(iv) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(v) The policies and practices of the office regarding storage, retrievability, access controls, retention, and disposal of the records;

(vi) The title and business address of the SBA official who is responsible for the system of records;

(vii) A statement that SBA procedures allow an individual, at his or her request, to determine whether a system of records contains a record pertaining to him or her, to review such records and to contest or amend such records, located in sections 102.25 through 102.29 of these regulations.

(viii) A statement that such requests may be directed to the SBA's FOI/PA Office, 409 3rd St., SW., Washington, DC 20416 or faxed to 202–205–7059; and

(ix) The categories of sources of records in the system.

(2) Minor changes to systems of records shall be published annually.

(b) *Notice of new or modified routine uses to be published in the* ***Federal Register***. At least 30 days prior to disclosing records pursuant to a new use or modification of a routine use, as published under paragraph (a)(1)(iv) of this section, each SBA office shall publish in the **Federal Register** notice of such new or modified use of the information in the system and provide an opportunity for any individual or persons to submit written comments.

§ 102.24 Requests for access to records.

(a) *How made and addressed.* An individual, or his or her legal guardian, may make a request for access to an SBA record about himself or herself by appearing in person or by writing directly to the SBA office that maintains the record or to the FOI/PA Office by mail to 409 3rd St., SW., Washington, DC 20416 or fax to 202–205–7059. A request received by the FOI/PA Office will be forwarded to the appropriate SBA Office where the records are located.

(b) *Description of records sought.* A request for access to records must describe the records sought in sufficient detail to enable SBA personnel to locate the system of records containing them with a reasonable amount of effort. A request should also state the date of the record or time period in which the record was compiled, and the name or identifying number of each system of records in which the requester believes the record is kept. The SBA publishes notices in the **Federal Register** that describe its systems of records. A description of the SBA's systems of records also may be found at *http://www.sba.gov/foia/systemrecords.doc.*

(c) *Verification of identity.* Any individual who submits a request for access to records must verify his or her identity. No specific form is required; however, the requester must state his or her full name, current address, and date and place of birth. The request must be signed and the requester's signature must either be notarized or submitted under 28 U.S.C. 1746. This law permits statements to be made under penalty of perjury as a substitute for notarization, the language states:

(1) If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). Signature''; or

(2) If executed within the Untied States, its territories, possessions or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature''.

(d) *Verification of guardianship.* When making a request as a legal agent or the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the social security number of the individual;

(2) The requester's own identity, as required in paragraph (c) of this section;

(3) That the requester is the legal agent or parent or guardian of that individual, which may be proven by providing a copy of the individual's birth certificate showing his parentage or by providing a court order establishing guardianship; and

(4) That the requester is acting on behalf of that individual in making the request.

§ 102.25 Responsibility for responding to requests for access to records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section and in § 102.24(a), the office that first receives a request for access to a record, and has possession of that record, is the office responsible for responding to the request. That office shall acknowledge receipt of the request not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of the request in writing. In determining which records are responsive to a request, an office ordinarily shall include only those records in its possession as of the date the office begins its search for them. If any other date is used, the office shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The Program/Support Office Head, or designee, is authorized to grant or deny any request for access to a record of that office.

(c) *Consultations and referrals.* When an office receives a request for access to a record in its possession, it shall determine whether another office, or another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the receiving office determines that it is best able to process the record in response to the request, then it shall do so. If the receiving office determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the office or agency best able to determine whether the record is exempt from access and with any other office or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request to the office best able to determine whether the record is exempt from access or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily the office or agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Law enforcement information.* Whenever a request is made for access to a record containing information that relates to an investigation of a possible violation of law and that was originated by SBA's Office of the Inspector General (OIG) or another agency, the receiving office shall refer the responsibility for responding to the request regarding that information to either SBA's OIG or the other agency ''depending on where the investigation originated.''

(e) *Classified information.* Whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another office or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving office shall refer the responsibility for responding to the request regarding that information to the office or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by an office because it contains information classified by another office or agency, the office shall refer the responsibility for responding to the request regarding that information to the office or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld from a requester on the basis of Exemption (k)(1) of the Privacy Act.

(f) *Notice of referral.* Whenever an office refers all or any part of the responsibility for responding to a request to another office or agency, it shall notify the requester of the referral and inform the requester of the name of each office or agency to which the request has been referred and of the part of the request that has been referred.

(g) *Responses to consultations and referrals.* All consultations and referrals shall be processed according to the date the access request was initially received by the first office or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Offices may make agreements with other offices or agencies to eliminate the need for consultations or referrals for particular types of records.

§ 102.26 Responses to requests for access to records.

(a) *Acknowledgements of requests.* On receipt of a request, an office shall send an acknowledgement letter to the requester.

(b) *Grants of requests for access.* Once an office makes a determination to grant a request for access in whole or in part, it shall notify the requester in writing. The Program/Support Office Head or designee shall inform the requester in the notice of any fee charged under § 102.31 and shall disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the office may disclose records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, he or she shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* A Program/Support Office Head or designee making an adverse determination denying a request for access in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that the requested information is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the Program/Support Office Head or designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA or Privacy Act exemption(s) applied in denying the request; and

(3) A statement that the denial may be appealed under § 102.27(a) and a description of the requirements of § 102.27(a).

§ 102.27 Appeals from denials of requests for access to records.

(a) *Appeals.* If the requester is dissatisfied with an office's response to his or her request for access to records, the requester may make a written appeal of the adverse determination denying the request in any respect to the SBA's FOI/PA Office, 409 3rd St., SW., Washington, DC 20416. The appeal must be received by the FOI/PA Office within 60 days of the date of the letter denying the request. The requester's appeal letter should include as much information as possible, including the identity of the office whose adverse determination is being appealed. Unless otherwise directed, the Chief, FOI/PA will decide all appeals under this subpart.

(b) *Responses to appeals.* The decision on a requester's appeal will be made in writing not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such appeal. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmation, including any Privacy Act exemption applied, and will inform the requester of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, the requester will be notified in a written decision and his request will be reprocessed in accordance with that appeal decision.

(c) *Judicial review.* In order to seek judicial review by a court of any adverse determination or denial of a request, a requester must first appeal it to the FOI/PA Office under this section.

§ 102.28 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, an individual may make a request for amendment or correction of an SBA record about himself or herself by writing directly to the office that maintains the record, following the procedures in § 102.24. The request should identify each particular record in question, state the amendment or correction sought, and state why the record is not accurate, relevant, timely, or complete. The requester may submit any documentation that he or she thinks would be helpful. If the requester believes that the same record is in more than one system of records, that should be stated and the request should be sent to each office that maintains a system of records containing the record.

(b) *Office responses.* Within ten (10) days (excluding Saturdays, Sundays, and legal public holidays) of receiving a request for amendment or correction of records, an office shall send the requester a written acknowledgment of receipt, and the office shall notify the requester within 30 days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the request whether it is granted or denied. If the Program/Support Office Head or designee grants the request in whole or in part, the amendment or correction must be made, and the requester advised of his or her right to obtain a copy of the corrected or amended record. If the office denies a request in whole or in part, it shall send the requester a letter signed by the Program/Support Office Head or designee that shall state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* An individual may appeal a denial of a request for amendment or correction to the FOI/PA Office in the same manner as a denial of a request for access to records (see § 102.27), and the same procedures shall be followed. If the appeal is denied, the requester shall be advised of his or her right to file a Statement of Disagreement as described in paragraph (d) of this section and of his or her right under the Privacy Act for court review of the decision.

(d) *Statement of Disagreement.* If an appeal under this section is denied in whole or in part, the requester has the right to file a Statement of Disagreement that states the reason(s) for disagreeing with the SBA's denial of his or her request for amendment or correction. A Statement of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. An individual's Statement of Disagreement must be sent to the office that maintains the record involved, which shall place it in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 days (excluding Saturdays, Sundays, and legal public holidays) of the amendment or correction of a record, the office that maintains the record shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the office shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Pre-sentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under Privacy Act, 5 U.S.C. 552a (j) or (*k*) by notice published in the **Federal Register**.

§ 102.29 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), an individual may make a request for an accounting of any disclosure that has been made by the SBA to another person, organization, or agency of any record in a system of records about him or her. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. The request for an accounting should identify each particular record in question and should be made by writing directly to the SBA office that maintains the record, following the procedures in § 102.24.

(b) *Where accountings are not required.* Offices are not required to provide accountings where they relate to:

(1) Disclosures for which accountings are not required to be kept; disclosures that are made to employees within the SBA and disclosures that are made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the civil or criminal law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the **Federal Register**.

(c) *Appeals.* An individual may appeal a denial of a request for an accounting to the FOI/PA Office in the same manner as a denial of a request for access to records (see § 102.27), and the same procedures will be followed.

§ 102.30 Preservation of records.

Each office will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Privacy Act.

§ 102.31 Fees.

SBA offices shall charge fees for duplication of records under the Privacy Act in the same way in which they charge duplication fees under § 102.6(b)(3). No search or review fee may be charged for any record unless the record has been exempted from access under Exemptions (j)(2) or (k)(2) of the Privacy Act. SBA will waive fees under $25.00.

§ 102.32 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by order of a court of competent jurisdiction, the office that maintains the record shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after the office's receipt of the order, except that in a case in which the order is not a matter of public record, the notice shall be given only after the order becomes public. This notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed. Notice shall not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the office shall notify that individual of the disclosure. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

§ 102.33 Security of systems of records.

(a) Each Program/Support Office Head or designee shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls shall correspond to the sensitivity of the records that the controls protect. At a minimum, each office's administrative and physical controls shall ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) Each Program/Support Office Head or designee shall establish procedures that restrict access to records to only those individuals within the SBA who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

(c) The OCIO shall provide SBA offices with guidance and assistance for privacy and security of electronic systems and compliance with pertinent laws and requirements.

§ 102.34 Contracts for the operation of record systems.

When SBA contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion of the record affected, are considered to be maintained by the SBA, and subject to this subpart. The SBA is responsible for applying the requirements of this subpart to the contractor. The contractor and its employees are to be considered employees of the SBA for purposes of the sanction provisions of the Privacy Act during performance of the contract.

§ 102.35 Use and collection of Social Security Numbers.

Each Program/Support Office Head or designee shall ensure that collection and use of SSN is performed only when the functionality of the system is dependant on use of the SSN as an identifier. Employees authorized to collect information must be aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless:

(1) The collection is authorized either by a statute; or

(2) The social security numbers are required under statute or regulation adopted prior to 1975 to verify the identity of an individual; and

(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

§ 102.36 Privacy Act standards of conduct.

Each Program/Support Office Head or designee shall inform its employees of the provisions of the Privacy Act, including its civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of the SBA shall:

(a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of the SBA;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the SBA intends to use the information;

(3) The routine uses the SBA may make of the information; and

(4) The effects on the individual, if any, of not providing the information;

(d) Ensure that the office maintains no system of records without public notice and that it notifies appropriate SBA officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the SBA in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to

disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by the SBA to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Notify the appropriate SBA official of any record that contains information that the Privacy Act does not permit the SBA to maintain.

§ 102.37 Training requirements.

All employees should attend privacy training within one year of employment with SBA. All employees with Privacy Act responsibilities must attend Privacy Act training, whenever needed, that is offered by the SBA.

§ 102.38 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

§ 102.39 SBA's exempt Privacy Act systems of records.

(a) Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(k)(2), or 5 U.S.C. 552a(k)(5) or both:

(1) Office of Inspector General Records Other Than Investigation Records—SBA 4, contains records pertaining to audits, evaluations, and other non-audit services performed by the OIG;

(2) Equal Employment Opportunity Complaint Cases—SBA 13, contains complaint files, Equal Employment Opportunity counselor's reports, investigation materials, notes, reports, and recommendations;

(3) Investigative Files—SBA 16, contains records gathered by the OIG in the investigation of allegations that are within the jurisdiction of the OIG;

(4) Investigations Division Management Information System—SBA 17, contains records gathered or created during preparation for, conduct of, and follow-up on investigations conducted by the OIG, the Federal Bureau of Investigation (FBI), and other Federal, State, local, or foreign regulatory or law enforcement agency;

(5) Litigation and Claims Files—SBA 19, contains records relating to recipients classified as ''in litigation'' and all individuals involved in claims by or against the Agency;

(6) Personnel Security Files—SBA 24, contains records on active and inactive personnel security files, employee or former employee's name, background information, personnel actions, OPM, and/or authorized contracting firm background investigations;

(7) Security and Investigations Files—SBA 27, contains records gathered or created during preparation for, conduct of, and follow-up on investigations conducted by OIG, the FBI, and other Federal, State, local, or foreign regulatory or law enforcement agencies as well as other material submitted to or gathered by OIG in furtherance of its investigative function; and

(8) Standards of Conduct Files—SBA 29, contains records on confidential employment and financial statements of employees Grade 13 and above.

(b) These systems of records are exempt from the following provisions of the Privacy Act and all regulations in this part promulgated under these provisions:

(1) 552a(c)(3) (Accounting of Certain Disclosures);

(2) 552a(d) (Access to Records);

(3) 552a(e)(1), 4G, H, and I (Agency Requirements); and

(4) 552a(f) (Agency Rules).

(c) The systems of records described in paragraph (a) of this section are exempt from the provisions of the Privacy Act described in paragraph (b) of this section in order to:

(1) Prevent the subject of investigations from frustrating the investigatory process;

(2) Protect investigatory material compiled for law enforcement purposes;

(3) Fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information; or

(4) Prevent interference with law enforcement proceedings.

(d) In addition to the foregoing exemptions in paragraphs (a) through (c) of this section, the systems of records described in paragraph (a) of this section numbered SBA 4, 16, 17, 24, and 27 are exempt from the Privacy Act except for subsections (b), (c)(1) and (2), (e)(4)(A) through F, (e)(6), (7), (9), (10) and (11) and (i) to the extent that they contain:

(1) Information compiled to identify individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information, including reports of informants and investigators, associated with an identifiable individual compiled to investigate criminal activity; or

(3) Reports compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision associated with an identifiable individual.

(e) The systems of records described in paragraph (d) of this section are exempt from the Privacy Act to the extent described in that paragraph because they are records maintained by the Investigations Division of the OIG, which is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2). They are exempt in order to:

(1) Prevent the subjects of OIG investigations from using the Privacy Act to frustrate the investigative process;

(2) Protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. app. 3;

(3) Protect the confidentiality of other sources of information;

(4) Avoid endangering confidential sources and law enforcement personnel;

(5) Prevent interference with law enforcement proceedings;

(6) Assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems;

(7) Prevent the disclosure of investigative techniques; or

(8) Prevent the disclosure of classified information.

§ 102.40 Computer matching.

The OCIO will enforce the computer matching provisions of the Privacy Act. The FOI/PA Office will review and concur on all computer matching agreements prior to their activation and/or renewal.

(a) *Matching agreements.* SBA will comply with the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o), 552a notes) . The Privacy Protection Act establishes procedures Federal agencies must use if they want to match their computer lists. SBA shall not disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement

between SBA and the recipient agency or non-Federal agency specifying:

(1) The purpose and legal authority for conducting the program;

(2) The justification for the purpose and the anticipated results, including a specific estimate of any savings;

(3) A description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(4) Procedures for providing individualized notice at the time of application, and periodically thereafter as directed by the Data Integrity Board, that any information provided by any of the above may be subject to verification through matching programs to:

(i) Applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) Applicants for and holders of positions as Federal personnel.

(5) Procedures for verifying information produced in such matching program as required by paragraph (c) of this section.

(6) Procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(7) Procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(8) Prohibitions on duplication and redisclosure of records provided by SBA within or outside the recipient agency or non-Federal agency, except where required by law or essential to the conduct of the matching program;

(9) Procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by SBA, including procedures governing return of the records to SBA or destruction of records used in such programs;

(10) Information on assessments that have been made on the accuracy of the records that will be used in such matching programs; and

(11) That the Comptroller General may have access to all records of a recipient agency or non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(b) *Agreement specifications.* A copy of each agreement entered into pursuant to paragraph (a) of this section shall be transmitted to OMB, the Committee on Governmental Affairs of the Senate and the Committee on Governmental Operations of the House of Representatives and be available upon request to the public.

(1) No such agreement shall be effective until 30 days after the date on which a copy is transmitted.

(2) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(3) Within three (3) months prior to the expiration of such an agreement, the Data Integrity Board may without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if:

(i) Such program will be conducted without any change; and

(ii) Each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(c) *Verification.* In order to protect any individual whose records are used in matching programs, SBA and any recipient agency or non-Federal agency may not suspend, terminate, reduce, or make a final denial of any financial assistance or payment under the Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs until such information has been independently verified.

(1) Independent verification requires independent investigation and confirmation of any information used as a basis for an adverse action against an individual including, where applicable:

(i) The amount of the asset or income involved,

(ii) Whether such individual actually has or had access to such asset or income or such individual's own use, and

(iii) The period or periods when the individual actually had such asset or income.

(2) SBA and any recipient agency or non-Federal agency may not suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program, or take other adverse action as a result of information produced by a matching program,

(i) Unless such individual has received notice from such agency containing a statement of its findings and information of the opportunity to contest such findings, and

(ii) Until the subsequent expiration of any notice period provided by the program's governing statute or regulations, or 30 days. Such opportunity to contest may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program. The exercise of any such rights shall not affect rights available under the Privacy Act.

(3) SBA may take any appropriate action otherwise prohibited by the above if SBA determines that the public health or safety may be adversely affected or significantly threatened during the notice period required by paragraph (c)(2)(ii) of this section.

(d) *Sanctions.* Notwithstanding any other provision of law, SBA may not disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if SBA has reason to believe that the requirements of paragraph (c) of this section, or any matching agreement entered into pursuant to paragraph (b) of this section or both, are not being met by such recipient agency.

(1) SBA shall not renew a matching agreement unless,

(i) The recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(ii) SBA has no reason to believe that the certification is inaccurate.

(e) Review annually each ongoing matching program in which the Agency has participated during the year, either as a source or as a matching agency in order to assure that the requirements of the Privacy Act, OMB guidance, and any Agency regulations and standard operating procedures, operating instructions, or guidelines have been met.

(f) *Data Integrity Board.* SBA shall establish a Data Integrity Board (Board) to oversee and coordinate the implementation of the matching program. The Board shall consist of the senior officials designated by the Administrator, to include the Inspector General (who shall not serve as chairman), and the Senior Agency Official for Privacy. The Board shall:

(1) Review, approve and maintain all written agreements for receipt or disclosure of Agency records for matching programs to ensure compliance with paragraph (a) of this section and with all relevant statutes, regulations, and guidance;

(2) Review all matching programs in which SBA has participated during the year, determine compliance with applicable laws, regulations, guidelines, and Agency agreements, and assess the costs and benefits of such programs;

(3) Review all recurring matching programs in which SBA has participated

during the year, for continued justification for such disclosures;

(4) At the instruction of OMB, compile a report to be submitted to the Administrator and OMB, and made available to the public on request, describing the matching activities of SBA, including,

(i) Matching programs in which SBA has participated;

(ii) Matching agreements proposed that were disapproved by the Board;

(iii) Any changes in membership or structure of the Board in the preceding year;

(iv) The reasons for any waiver of the requirement described below for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) Any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) Any other information required by OMB to be included in such report;

(5) Serve as clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(6) Provide interpretation and guidance to SBA offices and personnel on the requirements for matching programs;

(7) Review Agency recordkeeping and disposal policies and practices for matching programs to assure compliance with the Privacy Act; and

(8) May review and report on any SBA matching activities that are not matching programs.

(g) *Cost-benefit analysis.* Except as provided in paragraphs (e)(2) and (3) of this section, the Data Integrity Board shall not approve any written agreement for a matching program unless SBA has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. The Board may waive these requirements if it determines, in writing, and in accordance with OMB guidelines, that a cost-benefit analysis is not required. Such an analysis also shall not be required prior to the initial approval of a written agreement for a matching program that is specifically required by statute.

(h) *Disapproval of matching agreements.* If a matching agreement is disapproved by the Data Integrity Board, any party to such agreement may appeal to OMB. Timely notice of the filing of such an appeal shall be provided by OMB to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(1) OMB may approve a matching agreement despite the disapproval of the Data Integrity Board if OMB determines that:

(i) The matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) There is adequate evidence that the matching agreement will be cost-effective; and

(iii) The matching program is in the public interest.

(2) The decision of OMB to approve a matching agreement shall not take effect until 30 days after it is reported to the committees described in paragraph (h) of this section.

(3) If the Data Integrity Board and the OMB disapprove a matching program proposed by the Inspector General, the Inspector General may report the disapproval to the Administrator and to the Congress.

§ 102.41 Other provisions.

(a) *Personnel Records.* All SBA personnel records and files, as prescribed by OPM, shall be maintained in such a way that the privacy of all individuals concerned is protected in accordance with regulations of OPM (5 CFR parts 293 and 297).

(b) *Mailing Lists.* The SBA will not sell or rent an individual's name or address. This provision shall not be construed to require the withholding of names or addresses otherwise permitted to be made public.

(c) *Changes in Systems.* The SBA shall provide adequate advance notice to Congress and OMB of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(d) *Medical Records.* Medical records shall be disclosed to the individual to whom they pertain. SBA may, however, transmit such information to a medical doctor named by the requesting individual. In regard to medical records in personnel files, see also 5 CFR 297.205.

Steven C. Preston,

Administrator.

[FR Doc. 07–1651 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27012; Directorate Identifier 2006–NM–188–AD; Amendment 39–15017; AD 2007–07–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–601, A300 B4–603, A300 B4–605R, A300 C4–605R Variant F, A310–204, and A310–304 Airplanes Equipped With General Electric CF6–80C2 Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. That AD currently requires a one-time inspection for damage of the integrated drive generator (IDG) electrical harness and pyramid arm, and repair if necessary. This new AD adds new repetitive inspections, which, when initiated, terminate the inspection required by the existing AD. This new AD also requires repairing damage and protecting the harness. This new AD also provides for optional terminating action for the repetitive inspections. This new AD also removes certain airplanes from the applicability of the existing AD. This AD results from a report of structural damage on the forward pyramid arm of an engine pylon due to chafing of the IDG electrical harness against the structure of the pyramid arm. We are issuing this AD to prevent electrical arcing in the engine pylon, which could result in loss of the relevant alternating current (AC) bus bar, reduced structural integrity of the engine pylon, and possible loss of control of the airplane.

DATES: This AD becomes effective May 14, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 14, 2007.

On May 13, 2004 (69 FR 23090, April 28, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A310–54A2038, dated February 19, 2004; and Airbus All Operators Telex A300–54A6037, dated February 19, 2004.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–09–01, amendment 39–13590 (69 FR 23090, April 28, 2004). The existing AD applies to certain Airbus Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes. That NPRM was published in the **Federal Register** on January 26, 2007 (72 FR 3764). That NPRM proposed to require a one-time inspection for damage of the integrated drive generator (IDG) electrical harness and pyramid arm, and repair if necessary. That NPRM proposed to add new repetitive inspections, which, when initiated, would terminate the inspection required by the existing AD. That NPRM also proposed to require repairing damage and protecting the harness. That NPRM also proposed to provide for optional terminating action for the repetitive inspections. That NPRM also proposed to remove certain airplanes from the applicability of the existing AD.

Comments

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

Change to Applicability

We have removed Airbus Model A310–308 airplanes from the applicability of this AD. That model is not listed as an FAA-certified model in our type certificate data sheets.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost of parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
One-time inspection (from AD 2004–09–01).	2	$80	$0	$160	100	$16,000.
Repetitive inspections and harness protection (new requirement).	4	80	0	$320, per inspection cycle.	100	$32,000, per inspection cycle.
New optional modification	8	80	2,460	$3,100	Up to 100	Up to $310,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13590 (69 FR 23090, April 28, 2004) and by adding the following new airworthiness directive (AD):

2007–07–15 Airbus: Amendment 39–15017. Docket No. FAA–2007–27012; Directorate Identifier 2006–NM–188–AD.

Effective Date

(a) This AD becomes effective May 14, 2007.

Affected ADs

(b) This AD supersedes AD 2004–09–01.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, A300 B4–603, A300 B4–605R, A300 C4–605R Variant F, A310–204, and A310–304 airplanes; certificated in any category; equipped with General Electric CF6–80C2 engines without full-authority digital electronic control (FADEC); excluding airplanes on which Airbus Modification 13184 was done in production.

Unsafe Condition

(d) This AD results from a report of structural damage on the forward pyramid arm of an engine pylon due to chafing of the integrated drive generator (IDG) electrical harness against the structure of the pyramid arm. We are issuing this AD to prevent electrical arcing in the engine pylon, which could result in loss of the relevant alternating current (AC) bus bar, reduced structural integrity of the engine pylon, and possible loss of control of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 2004–09–01

All Operators Telex Reference

(f) The term ''All Operators Telex,'' or ''AOT,'' as used in paragraphs (g), (h), and (j) of this AD, means the following AOTs, as applicable:

(1) For Model A300 B4–601, A300 B4–603, A300 B4–605R, and A300 C4–605R Variant F airplanes: Airbus AOT A300–54A6037, dated February 19, 2004; and

(2) For Model A310–204, and A310–304 airplanes: Airbus AOT A310–54A2038, dated February 19, 2004.

Inspection

(g) At the applicable time in paragraph (g)(1) or (g)(2) of this AD, do a one-time detailed inspection for discrepancies of the IDG harness, harness bracket, retaining fasteners, and pyramid arm, in accordance with the applicable AOT.

(1) For airplanes on which Airbus Modification 07591 has not been incorporated as of May 13, 2004 (the effective date of AD 2004–09–01): Within 10 days after May 13, 2004.

(2) For airplanes on which Airbus Modification 07591 has been incorporated as of May 13, 2004: Within 600 flight hours after May 13, 2004.

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

Related Investigative and Corrective Actions for Damaged Electrical Harness

(h) If any discrepancy in the IDG electrical harness, fretting at the convoluted conduits, or contact between the IDG electrical harness and the pyramid arms is found during the inspection required by paragraph (g) of this AD: Before further flight, do the applicable related investigative actions and corrective actions in accordance with the applicable AOT.

Corrective Action for Damaged Electrical Harness Bracket, Retaining Fasteners, or Pyramid Arm

(i) If any discrepancy in the electrical harness bracket, retaining fasteners, or pyramid arm is found during the inspection required by paragraph (g) of this AD: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent); or the European Aviation Safety Agency (EASA) (or its delegated agent). After the effective date of this AD, repair in accordance with a method approved by the FAA or the EASA.

No Reporting Requirement for Paragraph (g) of this AD

(j) Although the referenced AOTs describe procedures for submitting certain information to the manufacturer, no report is required for the inspection required by paragraph (g) of this AD.

New Requirements of this AD

Repetitive Inspections

(k) Within 6 months after the effective date of this AD, and thereafter at intervals not to exceed 12 months: Do a detailed inspection for damage of the IDG harness and the pylon pyramid arms, and protect the harness. Do the actions in accordance with Airbus Service Bulletin A300–24–6097, dated March 3, 2006 (for Model A300 B4–601, A300 B4–603, A300 B4–605R, and A300 C4–605R Variant F airplanes); or A310–24–2100, dated March 3, 2006 (for Model A310–204, and A310–304 airplanes). The initial inspection terminates the requirements of paragraph (g) of this AD. If any discrepancy is found: Before further flight, repair in accordance with the applicable service bulletin; except, where the service bulletin specifies to contact the manufacturer for repair instructions, this AD requires repair using a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

Report

(l) At the applicable times specified in paragraphs (l)(1) and (l)(2) of this AD, submit a report of the findings (both positive and negative) of each inspection required by paragraph (k) of this AD. Send the report to Airbus Customer Services Directorate, Department AI/SE–E43, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. The report must include the information specified in Appendix 01 of Airbus Service Bulletin A300–24–6097 or A310–24–2100, both dated March 3, 2006, as applicable. 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 contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For each inspection done after the effective date of this AD: Send the report within 30 days after the inspection.

(2) If an inspection was done before the effective date of this AD: Send the report within 30 days after the effective date of this AD.

Optional Terminating Action

(m) Replacement of the bracket feeder on the pylons terminates the requirements of this AD if the bracket feeder is replaced in accordance with Airbus Service Bulletin A300–54–6038, dated May 12, 2006 (for Model A300 B4–601, A300 B4–603, A300 B4–605R, and A300 C4–605R Variant F airplanes); or A310–54–2039, dated May 12, 2006 (for Model A310–204, and A310–304 airplanes); as applicable.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(o) EASA airworthiness directive 2006–0155, dated June 1, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

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

TABLE 1.—REQUIRED MATERIAL INCORPORATED BY REFERENCE

Airbus Service information	Date
All Operators Telex A300–54A6037.	February 19, 2004.
All Operators Telex A310–54A2038.	February 19, 2004.
Service Bulletin A300–24–6097, including Appendix 01.	March 3, 2006.
Service Bulletin A310–24–2100, including Appendix 01.	March 3, 2006.

You must use the service information identified in Table 2 of this AD to perform the optional terminating action, if accomplished, unless the AD specifies otherwise.

TABLE 2.—OPTIONAL MATERIAL INCORPORATED BY REFERENCE

Airbus Service information	Date
Service Bulletin A300–54–6038.	May 12, 2006.
Service Bulletin A310–54–2039.	May 12, 2006.

(1) The Director of the Federal Register approved the incorporation by reference of the service information identified in Table 3 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Date
A300–24–6097, including Appendix 01.	March 3, 2006.
A300–54–6038	May 12, 2006.
A310–24–2100, including Appendix 01.	March 3, 2006.
A310–54–2039	May 12, 2006.

(2) On May 13, 2004 (69 FR 23090, April 28, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A310–54A2038, dated February 19, 2004; and Airbus All Operators Telex A300–54A6037, dated February 19, 2004.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on March 28, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6450 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD; Amendment 39–15018; AD 2007–08–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT7–5, –7, and –9 Series Turboprop Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CT7–5A2, –5A3, –7A, –7A1, –9B, –9B1, and –9B2, –9C, –9C3, –9D, and –9D2 turboprop engines, with certain part number (P/N) and serial number stage 2 turbine aft cooling plates installed. That AD currently requires a onetime eddy current inspection (ECI) of boltholes in certain P/N stage 2 turbine aft cooling plates. This AD expands the population of affected CT7 turboprop engine models, but reduces the number of cooling plates affected. It also requires a onetime ECI of boltholes in certain P/N stage 2 turbine aft cooling plates with specific serial numbers. This AD results from the manufacturer expanding the list of affected engine models and identifying the affected stage 2 turbine aft cooling plates by serial number. We are issuing this AD to prevent separation of the stage 2 turbine aft cooling plate, resulting in uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective May 14, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 14, 2007.

ADDRESSES: You can get the service information identified in this AD from General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805.

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

FOR FURTHER INFORMATION CONTACT: Mark Bouyer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7755; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CT7–5A2, –5A3, –7A, –7A1, –9B, –9B1, and –9B2 turboprop engines, with certain P/N and serial number stage 2 turbine aft cooling plates installed. We published the proposed AD in the **Federal Register** on March 31, 2006 (71 FR 16248). That action proposed to expand the population of affected CT7 turboprop engine models required to undergo a onetime ECI of boltholes in certain P/N stage 2 turbine aft cooling plates. That action also proposed to reduce the number of cooling plates affected by identifying the serial numbers.

Examining the AD Docket

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

Comments

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

Clarification of ECI Requirements

GE suggests that we clarify paragraph (f) of this AD to limit the required ECI to stage 2 turbine aft cooling plates that are being returned to service. This change would eliminate any requirement to ECI cooling plates that are not going to be reused. We agree. If the cooling plate is not going to be reused, there is no need to ECI it immediately after it is removed. Paragraph (h) of this AD requires an ECI of all cooling plates affected by this AD before they are returned to service. We made the clarification to paragraph (f).

Clarification of Onetime Inspection

GE proposes that we add a terminating action statement to clarify that the ECI is a onetime inspection and repetitive inspections of the stage 2 turbine aft cooling plate is unnecessary. We do not agree. This information is already included in paragraph (f), which specifies that the inspection is a onetime ECI. We did not change the AD.

Question on Compliance Threshold of 6,000 Cycles-in-Service (CIS)

GE also questions whether the calculated compliance threshold of 6,000 CIS is viable given the amount of time required to publish the AD. We do not agree. The number of engine cycles that will accumulate during the AD review process will not change the safety assessment that is based on the calculated compliance time. We did not change the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 494 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per engine to perform the actions, and that the average labor rate is $80 per work-hour. Based on the number of cracks found in the inspected engines, we estimate that 2.5 percent of the 494 engines will require replacing stage 2 turbine aft cooling plates because of rejection by the onetime ECI. Required parts will cost about $17,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $243,520.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14247 70 FR 54835, September 19, 2005, and by adding a new airworthiness directive, Amendment 39–15018, to read as follows:

2007–08–01 General Electric Company: Amendment 39–15018. Docket No. FAA–2005–20944; Directorate Identifier 2003–NE–64–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 14, 2007.

Affected ADs

(b) This AD supersedes AD 2005–18–01, Amendment 39–14247.

Applicability

(c) This AD applies to General Electric Company (GE) CT7–5A2/–5A3/–7A/–7A1/–9B/–9B1/–9B2/–9C/–9C3/–9D/–9D2 turboprop engines with stage 2 turbine aft cooling plates, part number (P/N) 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01 installed. These engines are installed on, but not limited to, Construcciones Aeronauticas, SA CN–235 series and SAAB Aircraft AB SF340 series airplanes.

Unsafe Condition

(d) This AD results from the manufacturer expanding the list of affected engine models and identifying the affected stage 2 turbine aft cooling plates by serial number. We are issuing this AD to prevent separation of the stage 2 turbine aft cooling plate, resulting in uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next engine or hot section module shop visit, but before accumulating an additional 6,000 cycles-in-service after the effective date of the AD, unless already done.

Onetime Eddy Current Inspection (ECI)

(f) Perform a onetime ECI of the stage 2 turbine aft cooling plates P/N 6064T07P01, 6064T07P02, 6064T07P05, or 6068T36P01, that are listed by serial number in Section 4, Appendix A, of GE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0464, Revision 04, dated December 12, 2005, and that will be returned to service. Use 3.B.(1) through 3.B.(3) of GE ASB No. CT7–TP S/B 72–A0464, Revision 4, dated December 12, 2005 to perform the inspection.

(g) For stage 2 turbine aft cooling plates that do not pass the Return to Service Criteria, do either of the following:

(1) Replace the stage 2 turbine aft cooling plate with a new cooling plate that has a serial number that is not listed in Section 4, Appendix A, of GE ASB No. CT7–TP S/B 72–A0464, Revision 04, dated December 12, 2005, or

(2) Replace the stage 2 turbine aft cooling plate with a cooling plate that meets the acceptance criteria of 3.B.(1) through 3.B.(3) of GE ASB No. CT7–TP S/B 72–A0464, Revision 4, dated December 12, 2005.

(h) After the effective date of this AD, do not install any stage 2 turbine aft cooling plates with serial numbers identified in Section 4, Appendix A, without inspecting the cooling plate as specified in 3.B.(1) through 3.B.(3) of GE ASB No. CT7–TP S/B 72–A0464 Revision 04, December 12, 2005.

Previous Credit

(i) Eddy current inspections of the stage 2 turbine aft cooling plate boltholes done before the effective date of this AD that use GE ASB No. CT7–TP S/B 72–A0464, dated February 25, 2003; or Revision 1, dated March 12, 2003; or Revision 2, dated May 9,

2003; or Revision 3, dated July 23, 2004, comply with the requirements specified in this AD.

Definition of Engine or Hot Section Module Shop Visit

(j) For the purposes of this AD, an engine or hot section module shop visit is defined as the introduction of the engine or hot section module into a shop that includes separating major case flanges.

Alternative Methods of Compliance

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

Related Information

(l) Contact Mark Bouyer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.bouyer@faa.gov*; telephone (781) 238–7755; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(m) You must use General Electric Alert Service Bulletin No. CT7–TP S/B 72–A0464, Revision 04, dated December 12, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140; fax (781) 594–4805 for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 2, 2007.

Peter A. White,

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

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 331

[Docket OST–2006–25906]

RIN 2105–AD61

Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule provides reimbursement to fixed-base general aviation operators and providers of general aviation ground support services at five metropolitan Washington, DC area airports, for the direct and incremental financial losses they incurred while the airports were closed due to Federal government actions taken after the terrorist attacks on September 11, 2001. The airports are: Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC.

DATES: This rule is effective May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Interested persons with questions about this regulation should contact James R. Dann, U.S. Department of Transportation, Office of General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590; telephone 202–366–9154. Interested persons with questions about how to apply for assistance, the status of application reviews, etc. should contact Tim Carmody, U.S. Department of Transportation, Office of Aviation Analysis, 400 7th Street, SW., Room 6417, Washington, DC 20590; telephone 202–366–2348. Application materials and data sources that may assist applicants in preparing applications are available at the Department of Transportation, Office of the Secretary's Web site at *http://ostpxweb.dot.gov/aviation/index.html* under ''Programs,'' and then ''General Aviation Operator and Services Reimbursement: Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area.''

SUPPLEMENTARY INFORMATION: Following the terrorist attacks on the United States on September 11, 2001, general aviation activity in the Washington, DC metropolitan area was suspended. Five airports were most affected: Ronald Reagan Washington National Airport (DCA); College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC. While DCA and the three Maryland airports have since been reopened to transient general aviation traffic, the volume of general aviation activity has not returned to pre-September 11, 2001 levels due to continuing security restrictions, and the South Capitol Street Heliport was not reopened to general aviation traffic and is now used exclusively by the Washington DC Metropolitan Police. Because of the reduction in general aviation activity at these locations, the fixed-base operators and service providers that supported general aviation were also affected, with many claiming that they were incurring sustained and significant financial losses due to the closures.

These fixed-base operators and service providers were not eligible for either compensation or loan guarantees under the Air Transportation Safety and System Stabilization Act, Pub. L. 107–42 (Sept. 22, 2001), which had been enacted to provide compensation to ''air carriers'' who had incurred financial losses due to the terrorist attacks. Under that program, approximately $4.6 billion has been paid to qualifying air carriers.

In 2003, the United States House of Representatives Committee on Appropriations requested that the Department of Transportation (DOT) prepare a report detailing the documented financial losses by holders of real property leases at the five affected airports that were attributable to the Federal actions since September 11, 2001. (House Report 108–243, July 30, 2003, p. 8.) The Committee stated that such a report would assist the Congress in considering ''potential federal reimbursement for a portion of these unusual financial losses.'' In October 2005, the Secretary of Transportation submitted to the Committee the requested report, which was entitled: *Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report* (October 2005 DOT study). A copy of this Report has been placed onto the Office of the Secretary's Web site, at the address noted above. (See **FOR FURTHER INFORMATION CONTACT**).

The October 2005 DOT study identified sixteen general aviation leaseholders at the five airports, and estimated the financial losses that each incurred during its study period (which ran from September 11, 2001 to January 23, 2004) due to the Federal actions taken after the terrorist attacks. The estimates reflected the difference in net income stated on a pre-tax basis between what the companies projected for the study period and the actual pre-tax net income for that period, and included both losses in pre-tax net income and one-time costs attributable directly to compliance with new restrictions or regulations resulting from the terrorist attacks. In formulating its

estimates, the Department's consultant relied primarily on voluntary information provided by each entity, and while interviews were conducted to confirm the general reasonableness and consistency of the numbers provided, no independent analysis, audit or certification was conducted. Therefore, the October 2005 DOT study advised that these estimates were merely preliminary and meant solely to inform Congress in determining whether and in what amount to appropriate funds to reimburse these general aviation entities. The October 2005 DOT study also indicated that, if compensation were to be made available, ''the financial data establishing the basis for any payment, especially forecast revenue, cost and net income, should * * * be subject to a more rigorous verification regime.'' (*Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report, at fn. 3.*)

The total estimated financial losses for the period reviewed were $10,443,936, with more than half of that amount being reported for one firm, Signature Flight Support. The estimates were in current dollars and reflected no consideration for the time value of money.

On November 30, 2005, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006, became law. Section 185 of the Act provides for the reimbursement of ''fixed-base general aviation operators and the providers of general aviation ground support services'' at the five cited airports for the ''direct and incremental financial losses incurred while such airports were closed to general aviation operations, or as of the date of enactment of this provision in the case of airports that have not reopened to such operations, by these operators and service providers solely due to actions of the Federal government following the terrorist attacks on the United States that occurred on September 11, 2001.'' The Act provides up to $17 million to reimburse these general aviation entities; however, it states that, of the $17 million provided, an amount not to exceed $5 million, if necessary, is to be available on a pro rata basis to fixed-base general aviation operators and the providers of general aviation ground support services located at the three Maryland airports: College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland.

Section 185 further states that the appropriated funds included the cost of ''an independent verification regime''; that no funds shall be obligated or distributed to such general aviation entities until an independent audit is completed; that losses incurred as the result of violations of law, or through fault or negligence of such entities or of third parties (including airports) are not eligible for reimbursement; and that the obligation and expenditure of funds are conditional upon full release of the United States Government for all claims for financial losses resulting from such actions.

On October 4, 2006, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) in order to implement this Act (71 FR 58546 *et seq.*). There, the Department proposed definitions of various terms found in the Act; the eligibility requirements for applicants; the methodology for determining the losses to be reimbursed, including the forms by which applications would be made; the time periods at each airport for which reimbursement of losses would be made; the procedures for verifying and auditing claims; and various other matters. The Department invited comments on its proposals, and 16 responsive comments were received.

Below, we summarize the comments that we received and describe our response to those comments, including, where appropriate, the modifications we are making based upon those comments.

Eligibility of Airports Per Se To Apply for Reimbursement

One commenter, a small airport, contended that airports should be eligible for reimbursement for their losses under the Rule, because they ''provide leaseholds to those who operate, service, and otherwise support general aviation aircraft,'' and simply by doing so provide ''general aviation ground support services.''

DOT Response: DOT believes that Section 185 should not be read, and was not meant to be read, to include airports *per se* as ''providers of general aviation ground support services'' eligible for reimbursement under this program. First, providing a facility that others may use for general aviation support is not the same as itself providing ''services'' to general aviation, and the latter formulation represents an interpretation that is more faithful to the language Congress actually used. Second, Congress clearly knows what an ''airport'' is, and if it intended that airports ''as airports'' be reimbursed for losses it surely would have plainly provided for that in Section 185, rather than using the less direct ''providers of general aviation services'' language it chose. Finally, Congress, DOT, and other public authorities have used other vehicles to provide financial assistance to airports to reflect increased security and other requirements after the September 11 terrorist attacks, under which we understand various airports here recovered at least some elements of their added costs. The history of this legislation indicates that it was designed to assist those general aviation entities who were not eligible under other programs to recover their losses after 9/11.

Of course, if an airport here can show that it served as a fixed-base operator, or provider of general aviation ground support services as those terms are defined in Section 331.3 of the Rule, then it would qualify in that capacity for reimbursement under this program.

Eligibility of General Aviation Entities That Did Not Operate at One of the Five Airports on September 11, 2001

Glenwood Aviation, a leaseholder and fixed-base general aviation operator at the South Capitol Street Heliport who initiated operations there after the September 11 attacks (specifically, on October 1, 2002), expressed concern that certain language in the NPRM preamble, proposed rule, and application forms could be construed as precluding it from qualifying for reimbursement. DOT's language causing this concern generally referenced eligible applicants as limited to those that had operations at one or more of the five airports on September 11, 2001. The commenter stated that, in fact, Section 185 imposes no such restriction, and should be read more broadly to include the commenter within the class eligible for reimbursement.

DOT Response: The relevant language of Section 185 appropriates funds to reimburse general aviation operators and the providers of general aviation ground support services ''at'' the five airports for direct and incremental financial losses, incurred while the airports were closed solely due to the actions of the Federal government after the terrorist attacks of September 11, 2001. Thus, the commenter is correct in asserting that the legislative language does not limit general aviation entities eligible for reimbursement to those operating at one or more of the airports on September 11, 2001.

The commenter does not disclose, in its comment, how it became the fixed-base operator at South Capitol Street, and in particular, whether it has any contractual relationship with its predecessor, Air Pegasus. Air Pegasus

abandoned its lease to operate at that facility on September 30, 2002, and Glenwood Aviation states that it began its operations on October 1, 2002, the following day. If Glenwood is simply asserting rights to reimbursement based on an assignment of these rights to it by Air Pegasus, the Department would consider its application so long as there is a full disclosure of this basis for doing so, the necessary information from Air Pegasus was supplied, and copies of the contractual documents are attached.

However, if the commenter's theory of recovery is not as an assignee, there is a further issue: Section 185 limits reimbursement to those losses that were incurred ''solely due to the actions of the Federal government *following the terrorist attacks on the United States that occurred on September 11, 2001''* (emphasis supplied). On October 1, 2002, when the commenter began its operations at South Capitol Street, the Federal government had already taken its actions to close that facility to general aviation operations. The commenter knew or had constructive knowledge of that closure, and presumptively assumed the risk when it negotiated the lease and began its operations that security or other considerations could require that the facility remain closed for some time, and perhaps never be reopened at all. Further, the status and uncertain future of the heliport should have permitted one then negotiating for a lease to obtain terms reflecting this risk-laden situation. Thus, in these instances, the notion that a ''loss'' was incurred ''solely'' due to actions taken by the Federal government following the attacks—and not due at least in part to miscalculation of risk or failure to adequately provide for it—is difficult to envision.

Nonetheless, because the statute itself does not foreclose reimbursement to applicants that were not operating at one of the airports on September 11, we will not foreclose reimbursement to this or other similarly-situated parties without affording them an opportunity to demonstrate, to DOT's satisfaction, that they can meet the other requirements of the statute and regulation. To meet those requirements, they would still need to supply an actual or, if none exists, a reasonable forecast showing post-9/11 business expectations absent the actions of the Federal government following the September 11 terrorist attacks, and show further that any claimed losses were solely due to those actions.

DOT will therefore modify § 331.5 to read as follows: ''If you are or were a fixed-base general aviation operator or provider of general aviation ground support services (collectively ''operators or providers'') at an eligible airport or airports in the Washington, DC area, and incurred direct or incremental losses during the applicable reimbursement periods stated at § 331.13 that were solely due to the actions of the Federal government following the terrorist attacks on the United States on September 11, 2001, you may apply for reimbursement under this part * * *. ''

DOT will also modify the application form item 3 on Appendix A to read ''At which of the following airports did the applicant operate as a fixed-base operator or provider of general aviation ground support services during the eligible period for reimbursement?''

These modifications do not reflect any change to the reimbursement methodology that will be employed, or to the showing of loss and sole cause for loss that will be necessary to have an application approved.

Reimbursement Methodology

A number of commenters raised concerns about the inclusiveness of the rule's methodology for determining the eligibility of losses. They maintained that losses due to foreclosure on homes, loss in value of real property, the adverse effect on their credit, fixed expenses, required maintenance, the cost of loans, personal savings invested in the business, and debts and wages that had gone unpaid should constitute eligible losses for which there would be reimbursement. Several also indicated that DOT's ''lost profits'' approach failed to recognize that some GA entities were small businesses, which tended to reinvest in the business rather than ''take profits.''

DOT Response: As background, the reimbursement methodology proposed by DOT in the NPRM relied on an applicant's forecast of revenues and expenses had the 9/11 attacks not occurred, which would then be compared with the actual revenues and expenses that occurred for the period of eligibility. As proposed, the claimant would generally be reimbursed for the difference in forecast revenues and expenses and actual revenues and expenses for the period.

Some of the loss items asked about by commenters would be addressed within this reimbursement scheme. For example, their forecasts would presumably itemize their projected ''fixed expenses,'' ''maintenance,'' ''wages,'' etc., and their actual expenses for those same items over the reimbursement period would be tallied. However, personal (as opposed to business) losses are not compensable under Section 185, nor can DOT reimburse for speculative losses or for losses that were not fully borne, in the normal course of business, during the allowable eligibility period.

As to debt and equity investment represented by loans and use of personal funds, these would normally be reported as ''debt and equity investment'' on the balance sheet of the business as offsets to increased cash in compliance with accounting principles. The reimbursement methodology proposed by DOT would permit carrying the interest on the loan as a non-operating business expense on the income statement. This expense, along with other non-operating expenses and operating expenses would be, in essence, subtracted from forecast revenues to produce an adjusted income, to be compared against forecast income in determining the amount of any loss. Funds ''reinvested'' back into a company constitute an investment that would be carried as additional capital invested (an increase in equity), or retained earnings, on the balance sheet. These retained earnings or additional invested capital increase the value of the firm that inures to the benefit of equity holders on a continuing basis, and so would not be reimbursed as a loss within the proposed methodology.

DOT believes its methodology for determining loss is appropriately comprehensive and fully satisfies the intent of Congress. We therefore are not proposing any modifications to it as a result of the comment process.

Tax Treatment Issues

One commenter questioned whether the intent of the legislation is to reimburse for damages rather than replacement of income, in which case the Rule should specify that any reimbursements should be tax-free. Another commenter urged that the Department's reference to net income be clarified to specify income before taxes, and that any other calculations of amount should be based on income before tax.

DOT Response: DOT does not view the language or intent of the legislation as providing reimbursement for damages, and disagrees that payments under the reimbursement program should be tax-free. DOT agrees with the second comment, viewing Section 185 as providing for reimbursement of losses through payments that essentially serve as replacement revenues to offset the losses incurred while the airports were closed due to Federal government actions. These replacement revenues, like normal business revenues, would be subject to taxes. Since the reimbursements granted here would be

subject to taxation, they should not be calculated on the basis of taxes that have already been paid. For clarification, we are therefore revising § 331.7 to change four references to ''net income'' to read ''net income before taxes'' instead, and, in the application form, modifying the reimbursement claim form by using the term ''adjusted income,'' which reflects the net of operating revenues and expenses and certain prescribed non-operating expenses and revenues upon which taxes are calculated.

Mitigation of Losses

One commenter, who had been able to recapture some losses by moving operations to another, non-impacted airport, argued that ''although it is possible to estimate, it would be complex and somewhat judgmental for [it] to attempt to measure secondary effects at other locations, not reflected in any financial documents, that may be attributable in part to the closure by the government of operations at DCA and to determine how this may or may not have affected [its] DCA's losses.'' It further asserted that, as a company with operations around the world, it engaged in many aviation and non-aviation income-producing activities before and after September 11, 2001, which have no relationship with the shutdown of DCA and should not be a factor relating to its reimbursement.

DOT Response: DOT is proposing no change to the Rule in this regard. If an applicant was able to derive increased profits at another airport or airports as a result of diversion of traffic due to closure of one or more of the eligible airports, then those increases should serve to offset its reimbursable losses. While quantifying that offset amount may be ''complex and somewhat judgmental,'' the commenter conceded that it was possible to estimate, and DOT staff and, if necessary, an independent audit can help to ensure that an appropriate adjustment is made. If a narrower methodology were adopted, focusing only on an entity's revenues and expenses associated with an eligible airport and ignoring the fact that some operations had migrated to another airport and produced income there, it could produce a windfall profit for the entity that DOT believes was not intended by Congress.

Time Value of Money

The intent of Congress was to reimburse eligible claimants for ''the direct and incremental financial losses incurred.'' In the NPRM, we proposed that applicants would report forecasted net income for the applicable reimbursement period and actual net income earned for that period. We explicitly excluded from the reimbursement the time value of money through the payment of interest on lost profits for the period of time the funds were available for use, tentatively determining that, as a legal matter, the Department is precluded from payment of interest under the circumstances present here. *See, e.g., United States* v. *Alcea Bank of Tillamooks,* 341 U.S. 48, 49 (1951). While several commentators asserted that interest should be reimbursable in the context of compensation paid pursuant to a governmental taking, such as the closure of airports, we do not believe that this comparison is valid. As noted below, the analogy to a governmental taking is inapt. A closer analogy is to the compensation paid under the Air Transportation Safety and System Stabilization Act, Pub. Law 107–42. That compensation, which was distributed in up to three tranches over time, did not include interest payments in any of the three distributions, including payments made even into 2004 and 2005. While the time period for applicants under Section 185 does differ from the time periods for applicants under the Stabilization Act, we believe that the payment of interest should be excluded here as it was there.

One commenter asserted that, however the Department must treat interest, ''time value of money'' represents a different concept and may and should be paid. In its view, the time value of money reflects the erosion in the value of money due to inflation, as well as the fact that funds available for use today can be put to productive use that will increase returns in the future. However, the erosion in the value of money is compensated for by paying interest, and, as explained, DOT is precluded by law from paying interest. However, as to lost capital earnings, the reimbursement calculus does permit an applicant to receive compensation if it can successfully demonstrate that its forecast showed a likely increase in net income that was planned for further investment at a reasonable rate, which increase and investment did not occur due to Federal government actions after September 11. In doing so, applicants must provide suitable supporting documentation for their specific claims because it would be highly speculative to hypothesize as to how earnings would have been reinvested and how those investments would fare, especially in the volatile economic climate after September 11. DOT will not simply provide a generalized ''time value'' percentage to all claims, which would effectively be a payment in lieu of interest.

Fifth Amendment Taking

A large fixed-base operator argued that reimbursement under this program should follow just compensation principles of the Fifth Amendment, specifically in the payment of interest. This commenter asserted that the intent of Section 185 was to reimburse claimants for the effective taking of their property, in accordance with the Fifth Amendment to the Constitution.

DOT Response: DOT has not used a Fifth Amendment takings approach in proposing its methodology for reimbursing eligible GA entities. This action is consistent with and follows from the decision of the United States Court of Appeals for the Federal Circuit, in *Air Pegasus of DC, Inc.* v. *United States*, 424 F. 3d 1206 (2005). In affirming a decision by the United States Court of Federal Claims, the Federal Circuit there found that the Federal regulations restricting aviation activity in the District of Columbia area did not effect a taking of the private property of Air Pegasus, a lessee of real property at the South Capitol Street Heliport. Fifth Amendment takings precedents are thus not applicable to our Rulemaking here.

Lobbying Expenses

One commenter questioned the NPRM's general preclusion of legal and lobbying expenses as eligible for reimbursement. The commenter argued that general lobbying and legal expenses are reasonable expenses, and a necessary cost of doing business. However, it allowed that lobbying expenses specifically incurred in an effort to ''obtain funding for the shutdown'' may be excluded by law.

DOT Response: The Department believes this comment has merit, and accordingly will modify § 331.7(g) of the Rule to read: ''Lobbying and attorneys'' fees incurred to promote reimbursement for losses resulting from the terrorist attacks or enact Section 185 of Pub. L. 109–115 are not eligible for reimbursement.'' The Department will also modify § 331.21(i) of the Rule to change ''lobbying expenses'' to ''lobbying expenses incurred to promote reimbursement for losses resulting from the terrorist attacks or enact Section 185 of Pub. L. 109–115.''

Eligible Reimbursement Period

Section 185 provides reimbursement for losses incurred while the five airports ''were closed to general aviation operations, or [up to] the date of

enactment of this provision [i.e., November 30, 2005] in the case of airports that have not reopened to such operations. * * *'' Only one airport, the South Capitol Street Heliport, remained closed to general aviation traffic through November 30, 2005. The other four airports were reopened to general aviation in stages: (1) First, after September 11, 2001, but only via special waiver, (2) then, opened to limited general aviation operations for based aircraft, (3) and then, opened to include transient traffic. Due to continuing security restrictions, in no case has general aviation activity reached the same level as it had before September 11, 2001. Because the statute speaks in terms of binary ''closed'' and ''reopened'' airports, admitting of no intermediate stages, the issue arises as to what point during the reopening process the airports ceased to be ''closed'' and should be considered ''reopened'' for purposes of determining the ending date for any reimbursement payments.

The NPRM addressed the issue at length. It proposed that the airports be considered reopened for purposes of the statute as of the date that transient traffic was permitted back. Under that proposal, the ending date for eligibility for reimbursement at Ronald Reagan Washington National Airport would be October 18, 2005; for College Park, Potomac, and Washington Executive/Hyde Field would be February 13, 2005; and for the South Capitol Street Heliport, since it was never reopened to transient general aviation traffic, the date of enactment of the Act, or November 30, 2005.

Three commenters with interests at one of the Maryland airports, and one national association on behalf of Ronald Reagan Washington National Airport, argued that general aviation activity at these airports remains subject to security restrictions and that the airports are not operating at their pre-9/11 levels. While not contesting the fact that the four airports allow transient traffic to land, these commenters urged that the eligibility period be extended to the latest possible ending date in recognition of the fact general aviation aircraft do not have the same practical access to these airports as they did before September 11, 2001.

DOT Response: DOT agrees that the levels of general aviation activity at none of the five airports have returned to those experienced prior to September 11, 2001. However, it is clear that, aside from the South Capitol Street heliport, the airports are no longer closed to general aviation traffic and have reopened to some degree; the question is whether they have ''reopened'' in the sense that Congress provided in the Act. The commenters did not address the Department's reasoning, in the NPRM, that Congress must not have considered all five airports to be ''closed'' at the time it passed the statute. Had it done so, Congress would have simply provided for reimbursement through the date of enactment of the Act for each of the airports, and not provided for a case-by-case determination as to when each ''reopened.'' Congress of course was aware of the continuing security requirements and operational restrictions at the airports, and nothing in relevant legislative history indicates any basis other than airport ''reopening'' as the point at which eligibility for reimbursement was to terminate. The Department believes that the interpretation it proposed in the NPRM is the one most consistent with the Act's language, and provides for a reasonably generous and consistent treatment among the airports. As a result, we have not modified the ending dates for the reimbursement periods in this Final Rule.

Hyde Field Closure

A number of commenters having their businesses or interests at Hyde Field argued that excluding any reimbursements for the period that airport was closed for the second time due to a security violation is not in keeping with the intent of the legislation and would create an undue hardship for them. Typically, they further asserted that they were not responsible for any violations, that the closure was for a minor security violation that should have taken but a few days to resolve, and that the length of the closure was due to government delay.

DOT Response: Section 185 states, ''That losses incurred as a result of violations of law, or through fault or negligence, of such operators and service providers or of third parties (including airports) are not eligible for reimbursements.'' While the commenters may be correct that they themselves may not have been at fault or otherwise responsible for the security violation that closed the airport, neither was the United States, and the statute authorizes reimbursement only for losses that were ''*solely* due to the actions of the Federal government following the terrorist attacks on the United States that occurred on September 11, 2001.'' Moreover, the exclusionary language is directed at a situation like the one at Hyde Field, and the legislative intent is clear that reimbursements not be available if the losses were proximately caused by third parties and not the United States. As a consequence, the Department determines that Hyde Field and its general aviation service providers will not be eligible for reimbursement during the period that the airport was closed as a result of violations of the law.

Washington, DC Air Defense Identification Zone (ADIZ)

One comment raised concerns about the economic impact of the Washington, DC Air Defense Zone (ADIZ) on other airports and businesses in the Washington, DC metropolitan area. The comment further proposed that the ADIZ should be rescinded or modified to reduce the economic impact on airports.

DOT Response: Any losses that are not covered by Section 185 of the 2006 Appropriations Act are outside the scope of this rule and compensation for such losses is beyond the authority of the Department. Modifications to the ADIZ, the flight restrictions and maintenance of the ADIZ security zone are also not within the scope of this Rule.

Independent Audit Costs

The NPRM preamble stated that ''larger claims, and any questioned claims, would be subject to audit,'' and that the Department is ''proposing to retain the flexibility to recover the costs of the audit from the amount of reimbursement.'' While the NPRM did not go on to explain the reasoning behind the latter proposal, it was intended to provide an incentive for applicants to resolve their reimbursement claims short of an audit. It would also prevent audit costs from always being spread as overhead across the entire program, which could unfairly reduce reimbursements on a pro rata basis for small entities whose applications did not give rise to any issues on review.

One commenter, a large entity, asserted that the large size of a claim should not dictate that it must be audited, and that audits should only occur where claims are unresolved after DOT consultation. It also argued that Section 185 provides funding for both audits and reimbursement of all eligible losses up to the $17 million ceiling. Thus, in its view, ''Full reimbursement should be made for any accepted claim unless all the funds available have been expended and the Department has no choice but to reimburse an applicant for less than its accepted claim for losses.'' Several other commenters asserted that Section 185 does not provide for any reductions in reimbursement for audit costs, one adding that the costs of an

audit can be substantial, and if this offset principle were effectuated it could swallow up the entire amount of a claim.

DOT Response: While larger claims are more likely to involve significant issues and to require an audit, the decision to audit a claim will be based on the Department's evaluation of the completeness and reasonableness of a claimant's entire application. While DOT has the flexibility to offset the cost of an audit against the reimbursement amount, it will do so only when reimbursements would need to be reduced because ceiling amounts have been reached, and where the reason for the audit involved questioned amounts that could not be resolved informally. Moreover, the maximum offset would be one-third of the total audit cost incurred by the Department. A reduction by one-third is considered sufficient to achieve the aims of dissuading unsupported claims and encouraging cooperation during the resolution process.

It is, of course, entirely possible that an audit would sustain the full amount of an applicant's claim, in which case the claim would be paid in full (subject of course to the overall $17 million ceiling). Only applicants whose claims are not supported by audits would have their verified reimbursement allocations reduced, by a maximum of one-third of their total Departmental audit costs.

Reimbursement for Professional Fees Used in the Application Process

A trade association argued that fees for professional service used in the application process for reimbursement should be eligible for repayment by the Federal government. The association stated that many of the applicants are small businesses that do not have the resources to outsource attorney or accountant services to assist in the application process, and that the application process required activities that would not be necessary absent the events of September 11 and the subsequent airport closures.

DOT Response: Upon review, DOT agrees that the application process would benefit, overall, if claimants were able to utilize the services of professionals familiar with accounting standards and rules in submitting their applications. Particularly where applicants are subject to audit and, potentially, to have to pay the costs of that audit if any part of their claim is rejected, DOT believes they should have professionals available to them to help ensure that their applications comply with generally accepted accounting standards and thereby meet the Department's requirements. Accordingly, we are amending the application form to include a separate line item for professional accounting services required in the submission of the application, which DOT may reimburse at 80%. (A sharing of cost will reduce the prospect for the provision of unnecessary services.) No reimbursements will be made for more general accounting or other legal or professional services, and all claims will be subject to a review for reasonableness. Invoices for services rendered must be attached to the application form to allow for prompt determinations to be made on allowability. The reimbursement would also be capped at a maximum amount of $2,000, which should be more than sufficient in at least the great majority of cases for an accountant to provide the services needed.

Submission Period

Several commenters requested an extension of our proposed submission deadline of 30 calendar days from the effective date of the Final Rule. Two suggested a minimum submission period of 90 days. We recognize that some small claimants may need additional time to compile their supporting data; however, consideration of giving extra time must also factor in other concerns that potential applicants are interested in receiving their reimbursement as soon as possible. On this point, a trade association had complained that DOT had already taken considerable time to publish the NPRM, and called for the remainder of the process to be ''clear, concise, and timely.'' In order to balance these competing concerns, and also to provide sufficient time for accounting professionals to assist applicants, we are establishing a submission period of 60 calendar days from the effective date of the final rule. We believe that this extension will benefit potential applicants that require additional time without burdening all applications with 90-day waits.

Funds Available if Set-Aside Reimbursements Underrun $5 Million

Section 185 requires at least $5 million to be set aside for claims originating from College Park Airport, Potomac Airpark, and Washington Executive/Hyde Field. One commenter requested that DOT clarify what it will do with any funds remaining after all claims are processed from these three airports.

DOT Response: Under the statutory language, after the claims from these designated airports are processed, if there are any funds remaining from the $5 million set-aside, then that money will be available to reimburse valid claims originating from other airports.

To clarify this point in the Rule, DOT will add a Section 331.37, to read as follows:

§ 331.37. What will happen to any remaining funds if operators and providers at the three Maryland airports make reimbursable claims totaling less than $5 million?

If the operators and providers who are eligible for the $5 million set-aside do not exhaust the funds designated under the set-aside, then any remaining money from the set-aside will be made available for other valid claims made under this Part.

Assistance Available During the Application Process

A trade association commented that many of the applicants eligible for reimbursement are small businesses and do not regularly develop full financial statements and forecasts. The association therefore requested that Departmental staff be flexible and provide as much assistance as possible to the applicants that need help.

DOT Response: As discussed above, DOT will provide fee reimbursements, to a limited degree, to enable small businesses to obtain professional assistance in preparing their applications. We have also posted other potentially useful information on DOT's Web site. DOT personnel will, to the extent resources permit, answer general questions and provide information on such matters as reimbursement eligibility and processing status. However, DOT staff will not be able to assist in the actual preparation of the applications, or provide tax or accounting advice or interpretations.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The rule establishes procedures to provide reimbursement to eligible applicants from funds appropriated by Congress. The Department administers a number of programs entailing similar procedures. This rule therefore does not represent a significant departure from existing regulations and policy. Furthermore, once implemented, this rule would have only minimal cost impacts on regulated parties.

Federalism

This rule does not directly affect the States, the relationship between the national government and the States, or the distribution of power among the

national government and the States, such that consultation with the States and local governments is required under Executive Order 13132.

Regulatory Flexibility Act

The Department certifies that this rule would not have significant economic effects on a substantial number of small entities. Many of the applicants for reimbursements are likely to be small entities. However, the overall benefits to be provided to applicants are modest in size and application costs themselves are likely to be low. In the aggregate, the cost among all applicants for gathering information and submitting an application should range from $2,501 to $5,003.

Paperwork Reduction Act

This rule contains information collection requirements subject to the Paperwork Reduction Act of 1995, specifically the application documents that fixed-base general aviation operators and providers of general aviation ground support services must submit to the Department to obtain compensation. The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Procedures (and Form) for Reimbursement of General Aviation Operators and Service Providers in Washington, DC Area.

Need for Information: The information is required to administer the requirements of the Act.

Use of Information: The Department of Transportation will use the data submitted by the fixed-base general aviation operators and providers of general aviation ground support services to determine their reimbursement for direct and incremental financial losses incurred while the airports were closed due to Federal government actions taken after the terrorist attacks on September 11, 2001.

Frequency: For this final rule, the Department will collect the information once from fixed-base general aviation operators and providers of general aviation ground support services.

Respondents: The respondents include an estimated 24 fixed-base general aviation operators and providers of general aviation ground support service. This estimate is based on the number of fixed-base general aviation operators and providers of general aviation ground support services identified in the October 2005 DOT study.

Burden Estimate: Total applicant burden of between $2,501 and $5,003 based on a burden of between three (3) and six (6) hours per applicant and a weighted average cost per hour of $34.74.

Form(s): The data will be collected on the Form entitled, ''Application Form for Reimbursement Under Section 185 of Public Law 109–115,'' and referenced in this part.

Average Burden Hours per Respondent: A weighted average of four (4) hours per application. The Department has requested approval from the Office of Management and Budget for this information collection.

Other Statutes and Executive Orders

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department must consider in all rulemakings, but which the Department has determined are not sufficiently implicated by this rule to require further action. Specifically, this rule does not impact the human environment under the National Environmental Policy Act, does not concern constitutionally protected property rights such that Executive Order 12630 is implicated, does not involve policies with tribal implications such that Executive Order 13175 is invoked, does not concern civil justice reform under Executive Order 12988, does not involve the protection of children from environmental risks under Executive Order 13045, and will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects in 14 CFR Part 331

Air Transportation, Airports, Airspace, Claims, Grant programs, Reporting and recordkeeping requirements.

Issued this 28th day of March, 2007, at Washington DC.

Mary E. Peters,

Secretary of Transportation.

■ For the reasons set forth in the preamble, the Department adds 14 CFR part 331 to read as follows:

PART 331—PROCEDURES FOR REIMBURSEMENT OF GENERAL AVIATION OPERATORS AND SERVICE PROVIDERS IN THE WASHINGTON, DC AREA

Subpart A—General Provisions

Sec.

331.1 What is the purpose of this part?
331.3 What do the terms used in this part mean?
331.5 Who may apply for reimbursement under this part?
331.7 What losses will be reimbursed?
331.9 What funds will the Department distribute under this part?
331.11 What are the limits on reimbursement to operators or providers?
331.13 What is the eligible reimbursement period under this part?
331.15 How will other grants, subsidies, or incentives be treated by the Department?
331.17 How will the Department verify and audit claims under this part?
331.19 Who is the final decision maker on eligibility for, and amounts of reimbursement?

Subpart B—Application Procedures

331.21 What information must operators or providers submit in their applications for reimbursement?
331.23 In what format must applications be submitted?
331.25 To what address must operators or providers send their applications?
331.27 When are applications due under this part?

Subpart C—Set-Aside for Operators and Providers at Certain Airports

331.31 What funds are available to applicants under this subpart?
331.33 Which operators and providers are eligible for the set-aside under this subpart?
331.35 What is the basis upon which operators and providers will be reimbursed through the set-aside under this subpart?
331.37 What will happen to any remaining funds if operators and providers at the three Maryland airports make reimbursable claims totaling less than $5 million?

Appendix to Part 331—Application Form for Reimbursement Under Section 185 of Public Law 109–115

Authority: 49 U.S.C. 322(a).

Subpart A—General Provisions

§ 331.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 185 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006 (''the Act'' or ''the 2006 Appropriation Act''), Public Law 109–115, 119 Stat. 2396. Section 185 is intended to reimburse certain fixed-base general aviation operators or providers of general aviation ground support services at five airports in the Washington, DC metropolitan area for direct and incremental losses due to the actions of the Federal government to close airports to general aviation operations following the terrorist attacks of September 11, 2001.

§ 331.3 What do the terms used in this part mean?

The following terms apply to this part:

Airport means Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; or Washington South Capitol Street Heliport in Washington, DC.

Closed or *closure* means the period of time until the first general aviation operations were generally permitted at Ronald Reagan Washington National Airport; until November 30, 2005 at Washington South Capitol Street Heliport; or the earliest that transient traffic was generally permitted to return to the three Maryland airports.

Department means the U.S. Department of Transportation and all its components, including the Office of the Secretary (OST) and the Federal Aviation Administration (FAA).

Direct and incremental losses means losses incurred by a fixed-base general aviation operator or a provider of general aviation ground support services as a result of the Federal government's closure of an airport following the terrorist attacks against the United States on September 11, 2001. These losses do not include any losses that would have been incurred had the terrorist attacks on the United States of September 11, 2001 not occurred.

Fixed-base general aviation operator means an entity based at a particular airport that provides services to and support for general aviation activities, including the provision of fuel and oil, aircraft storage and tie-down, airframe and engine maintenance, avionics repair, baggage handling, deicing, and the provision of air charter services. The term does not include an entity that exclusively provides products for general aviation activities (e.g. a parts supplier).

Forecast or *forecast data* means a projection of revenue and expenses during the eligible reimbursement period had the attacks of September 11, 2001 not occurred.

Incurred means to become liable or subject to (as in ''to incur a debt'').

Loss means something that is gone and cannot be recovered.

Provider of general aviation ground support services means an entity that does not qualify as a fixed-base general aviation operator but operates at a particular airport and supplies services, either exclusively or predominantly, to support general aviation activities, including flight schools or security services. The term does not include an entity that exclusively provides products for general aviation activities (e.g. a parts or equipment supplier).

You means fixed-base general aviation operators or providers of general aviation ground support services.

§ 331.5 Who may apply for reimbursement under this part?

If you are or were an eligible fixed-base general aviation operator or provider of general aviation ground support services (collectively ''operators or providers'') at an eligible airport or airports in the Washington, DC area, and incurred direct or incremental losses during the applicable reimbursement periods stated at § 331.13 that were solely due to the actions of the Federal government following the terrorist attacks on the United States on September 11, 2001, you may apply for reimbursement under this part. If you are applying for reimbursement based on losses at more than one airport, then you must submit separate applications for each airport. For example, if you are a provider of general aviation ground support services at Ronald Reagan Washington National Airport and Potomac Airfield in Fort Washington, Maryland, you must submit two separate applications.

§ 331.7 What losses will be reimbursed?

(a) You may be reimbursed an amount up to the difference between the adjusted income you actually or reasonably forecasted for the eligible reimbursement period and the actual adjusted income you earned during the eligible reimbursement period. If you did not forecast for the eligible reimbursement period or any part of the eligible reimbursement period, you may be reimbursed for the difference between what you can show you would have reasonably expected to earn as adjusted income during that period had the airport at which you are or were an operator or provider not been closed as the result of Federal government actions, and the actual adjusted income you earned during the eligible reimbursement period. Adjusted income is calculated on a pretax basis. It is the total of Operating Profit or Loss (i.e., Total Operating Revenues minus Total Operating Expenses) and Nonoperating Income (Loss); however, it excludes certain expenses, including lobbying expenses that were incurred to promote reimbursement for losses after the terrorist attacks or enact what became Section 185 of Pub. L. 109–115. Extraordinary, non-recurring, or unusual adjustments, and capital losses are normally ineligible for reimbursement. If you wish to claim for such an adjustment or loss, you must demonstrate that such adjustments were solely attributable to the Federal government's closure of the five Washington-area airports, are in conformity with Generally Accepted Accounting Principles, were fully borne within the statutory reimbursement period, that the loss was not discretionary in nature, and that reimbursement would not be duplicative of other relief.

(b) A temporary loss that you recovered after the attacks of September 11, 2001, or that you expect to recover, is not eligible for reimbursement under this part. You will not be reimbursed for those losses incurred through your own fault, negligence, or violation of law, or because of the actions of a third party (e.g. an airport).

(c) If you engaged in any non-aviation income-producing activities after September 11, 2001, such income must be reported under question number 5 in the appendix to this part.

(d) So called ''cost savings'' claims (i.e. increasing the claimed amount of reimbursement by reducing actual expenses to ''adjust'' for savings in expense categories asserted not to have been affected by the terrorist attacks) are not eligible for reimbursement.

(e) You cannot claim reimbursement for the lost time value of money (i.e. interest on lost profits for the period of time the funds were not available for your use).

(f) Lobbying fees and attorneys' fees incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of Pub. L. 109–115 are not eligible for reimbursement.

(g) Your calculation of revenues, expenses and income must be based on financial documents maintained in the ordinary course of business that were prepared for the eligible reimbursement period, such as income statements, statements of operations, profit-and-loss statements, operating forecasts, budget documents or other similar documents.

§ 331.9 What funds will the Department distribute under this part?

The Department will distribute the full amount of reimbursement it determines is payable to you under section 185 of the Act. Payment may be made in one or more installments.

§ 331.11 What are the limits on reimbursement to operators or providers?

(a) You are eligible to receive reimbursement subject to the set-aside (subpart C of this part) for eligible operators or providers at College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington,

Maryland; and Washington Executive/Hyde Field in Clinton, Maryland. The amount available to you as reimbursement may be reduced to cover the cost of independent verification and auditing, as set forth in § 331.17.

(b) If you receive more reimbursement than the amount to which you are entitled under section 185 of the Act or the subpart C set-aside, the Department will notify you of the basis for the determination and the amount that you must repay to the Department. The Department will follow collection procedures under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) to the extent required by law, in recovering such overpayments.

(c) Payment will not be made to you until you have agreed to release the United States Government for all claims for financial losses resulting from the closure of the five airports in the Washington, DC area. The Department will provide a release form to applicants that must be completed before any payment is made under Section 185 of the Act.

§ 331.13 What is the eligible reimbursement period under this part?

The eligible reimbursement period for direct and incremental losses differs by airport:

(a) For Ronald Reagan Washington National Airport the eligibility period for reimbursement is from September 11, 2001 until October 18, 2005.

(b) For College Park Airport in College Park, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(c) For Potomac Airfield in Fort Washington, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(d) For the Washington South Capitol Street Heliport in Washington, DC, the eligibility period for reimbursement is from September 11, 2001 to November 30, 2005.

(e) For Washington Executive/Hyde Field in Clinton, Maryland, there are two eligibility periods for reimbursement. The first period is from September 11, 2001 until May 16, 2002. The second period is from September 29, 2002 until February 13, 2005.

§ 331.15 How will other grants, subsidies, or incentives be treated by the Department?

Grants, subsidies, or incentives that you have received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security programs, or maintaining or providing general aviation services and facilities, will be considered revenues and should be reported as such on your application.

§ 331.17 How will the Department verify and audit claims under this part?

Departmental staff will initially review each claim in detail, and contact you should questions arise. If they are unable to satisfactorily resolve the matter following consultation with you, your claim will be forwarded to the Office of the Inspector General, or another independent auditor, for verification and, if necessary, an audit. In addition, the Department may consult with, or make referrals to, other government agencies, including the Department of Justice. If an audit is necessary, a ceiling amount reached, and the audit does not support the claimed amount, your reimbursement may be reduced to cover one-third the cost of the audit.

§ 331.19 Who is the final decision maker on eligibility for, and amounts of reimbursement?

The Assistant Secretary of Aviation and International Affairs will make a final determination of your eligibility and the amount of reimbursement you will receive.

Subpart B—Application Procedures

§ 331.21 What information must operators or providers submit in their applications for reimbursement?

(a) You must submit the *Application Form for Reimbursement under Section 185 of Public Law 109–115* (''Application Form''), located in the appendix to this part, along with the profit and loss statements, forecasts, or other financial documents (collectively ''supporting financial documents'') generated as a routine matter for the purposes of managing your business, and relied upon in completing your application.

(b) To the extent that your calculation of revenues, expenses and incomes are based on monthly records, you must adjust your calculation, on a pro-rata basis, to conform to the eligibility period. For example, if you utilize a monthly financial record to prepare a calculation of your September 2001 revenues, you should apportion your results for the period between September 11 and September 30, 2001.

(c) If multiple forecasts were prepared for the same period, you must utilize the one most recently approved, prior to September 11, 2001, so long as it is otherwise objective and reliable.

(d) If you provided information to the Department as part of its study entitled *Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area* (Oct. 2005) (''2005 General Aviation Study''), you should not simply reiterate the same data provided to the Department at that time; you must provide the most current information that is available to you. If you do reiterate that same data provided to the Department for the 2005 General Aviation Study, the basis for your estimates must be verifiable from the supporting financial documents that you submit with your application.

(e) Failure to include all required information will delay consideration of your application by the Department and may result in a rejection. You have the burden to document and substantiate your claim; the Department will provide reimbursement only if it is satisfied that payment is fully supported.

(f) If, prior to September 11, 2001, you did not prepare a forecast covering the entire eligible reimbursement period, or if the forecast you completed is not relevant to the information required by this part, you may submit an ''after-the-fact'' estimate of the amount that you would have reasonably expected to accrue as adjusted income had the airport at which you are or were an operator or provider not closed. ''After-the-fact'' estimates must consider items particular to your business, including labor agreements and the terms of contracts in place at the time of the eligible reimbursement period, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, and other similar documents. You must explain the methodology that you used when preparing your reconstructed forecast.

(g) You must certify that the information on the application in the appendix to this part and all of the supporting financial documents that you are submitting is true and accurate under penalty of law and that you acknowledge that falsification of information may result in prosecution and the imposition of a fine and/or imprisonment.

(h) You must retain all materials you relied upon to establish your claim for losses.

(i) You must provide mitigating expenses, lobbying expenses incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of the Act, and special expenses, as well as extraordinary adjustments, as instructed in the appendix to this part.

(j) If you need professional accounting services to assist in the preparation of your application, you may claim reimbursement for 80% of the actual

amount you paid for such services, up to a maximum reimbursement of $2,000. You may claim reimbursement only for professional services; your own time in applying for reimbursement is not reimbursable. Any claim for professional accounting services must be accompanied with appropriate documentation as to the nature and extent of services performed, the amount billed, and payment. Employment or use of such professional services does not relieve you of the responsibility for the accuracy and completeness of the application.

(k) If you believe that the release of financial information provided to the Department in support of your application would cause you substantial harm if released by the Department to the public upon an appropriately made request, you may request that the Department hold portions of your application as confidential. Your request must specify the portions of your application that should be held by the Department as confidential, and you must provide an explanation as to how the release of such information would cause you substantial harm.

§ 331.23 In what format must applications be submitted?

(a) The Application Form, located in the appendix to this part, must be submitted in hardcopy format and, if possible, in electronic format. The Department has made available an electronic version of this form at the following Web site: *http://ostpxweb.dot.gov/aviation/index.html.* (Click on ''Programs'' and scroll to ''General Aviation Operator and Service Provider Reimbursement.''

(b) All supporting financial documents must be submitted in hard copy. In addition, you may submit financial and accounting tabular data in Excel spreadsheet format, utilizing a 3.5″ floppy disk, compact disk, or flash memory device, and doing so may expedite the processing of your claim.

(c) Faxed and e-mailed applications are not acceptable and will not be considered.

§ 331.25 To what address must operators or providers send their applications?

(a) You must submit your application and all required supporting information, to the following address: U.S. Department of Transportation, Office of Aviation Analysis (X–50)Aviation Relief Desk, Room 6401, 400 7th Street, SW., Washington, DC 20590.

(b) Your application must be submitted via courier or an express package service, such as registered U.S. Postal Service, Federal Express, UPS, or DHL.

(c) If complete applications are not submitted to the address in paragraph (a) of this section, they will not be accepted by the Department.

§ 331.27 When are applications due under this part?

You must submit your application by June 8, 2007.

Subpart C—Set-Aside for Operators or Providers at Certain Airports

§ 331.31 What funds are available to applicants under this subpart?

The Department is setting aside a sum of $5 million to reimburse eligible operators or providers, as set forth in section 185 of the Act.

§ 331.33 Which operators and providers are eligible for the set-aside under this subpart?

Operators or providers at the following three airports during the eligible reimbursement periods are eligible for the set-aside:

(a) College Park Airport in College Park, Maryland;

(b) Potomac Airfield in Fort Washington, Maryland; and

(c) Washington Executive/Hyde Field in Clinton, Maryland.

§ 331.35 What is the basis upon which operators or providers will be reimbursed through the set-aside under this subpart?

Operators or providers eligible under this subpart will be reimbursed pursuant to the same procedures set forth in subpart B of this part. If total losses for all eligible claims at the three airports set forth in § 331.31 of this part are less than $5 million, then such claims will be paid in full. If the total losses for all eligible claims at the three airports set forth in § 331.31 of this part exceed $5 million, then the total losses will be divided on a pro rata basis, and a proportionate amount for each claim will be distributed to applicants.

§ 331.37 What will happen to any remaining funds if operators and providers at the three Maryland airports make reimbursable claims totaling less than $5 million?

If the operators and providers who are eligible for the $5 million set-aside do not exhaust the funds designated under the set-aside, then any remaining money from the set-aside will be made available for other valid claims made under this part.

Appendix to Part 331—Application Form for Reimbursement Under Section 185 of Public Law 109–115

1. Applicant name: _____

2. Applicant address:

_____

_____

_____

3. At which of the following airports did the applicant operate as a fixed-base operator or provider of general aviation ground support services during the eligible period for reimbursement?

- Ronald Reagan Washington National Airport ☐
- College Park Airport in College Park, Maryland ☐
- Potomac Airfield in Fort Washington, Maryland ☐
- Washington Executive/Hyde Field in Clinton, Maryland ☐
- Washington South Capitol St. Heliport, Washington, DC ☐

4. Briefly describe the nature of the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

_____

_____

_____

5. Did the applicant or any part of it conduct non-fixed-base general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

☐ Yes. Briefly describe the non-fixed-base general aviation activities and non-aviation ground support services.

_____

_____

_____

☐ No.

6. Briefly describe how the events of September 11, 2001 affected the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services.

_____

_____

_____

7. In response to the events of September 11, 2001, did the applicant take any action to lessen or offset the impact of those events?

☐ Yes. Briefly describe those actions and the effect they had on the applicant.

_____

_____

_____

☐ No.

8. Has the applicant filed income taxes for any period between 1999 and 2005?

☐ Yes. Specify the filing status under which the applicant filed (corporation, partnership, sole proprietorship, etc.)

_____

_____

☐ No.

9. Baseline Financial Data and Forecasts. Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual

forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

10. The requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses), adjusted as indicated, with a similarly adjusted company forecast/budget of operating results that existed prior to September 11, 2001 if such a forecast/budget was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document can reasonably be expected to earn during the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

_____

_____

_____

11. Reimbursement Claim

Financial Data

	Column A	Column B	Column C
	Pre 9–11–01 Forecast or after-the-fact estimate for the eligible period*.	Actual results for the eligible period*.	Column A minus Column B
Line 1—Total Operating Revenues			
Line 2—Total Operating Expenses			
Line 3—Operating Profit or (Loss)			
Line 4—Nonoperating Revenue			
Line 5—Nonoperating Expenses.			
Line 6—Nonoperating income (loss) before taxes.			
Line 7—Professional Application Fee (@80%, max. $2000).			
Total—Adjusted Income Line 3 plus line 6 and line 7 in the last column.			

The table above applies to the period 9–11–01 through 2–13–05 for the three Maryland airports, including Washington Executive/Hyde Field. However, for Hyde Field please prepare separate claims for the periods before, during and after the ineligible period, 5–17–02 through 9–28–02. For Ronald Reagan Washington National Airport, the eligible period is from 9–11–02 through 10–18–05 and for Washington South Capitol Street Heliport, the period is from 9–11–01 through 11–30–05.

Lobbying expenses incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of Public Law 109–115 are to be excluded from both Columns A and B.

12. Has the applicant or any of its subsidiaries or affiliates received grants, subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation Transportation Security Act (ATSA) Public Law 107–71 November 19, 2001, and the Airport Improvement Program (AIP)).

☐ Yes. Enter amount = $_____.

☐ No.

13. Has the applicant or any of its subsidiaries or affiliates incurred lobbying expenses, mitigating expenses, or special expenses (as described in the section captioned ''What information must operators or providers submit in their applications for reimbursement?''), or extraordinary, non-recurring, or unusual adjustments?

☐ Yes. Briefly describe these expenses and the amount of each, and state if they have been included in or excluded from the totals in the table at item number 11.

_____

_____

_____

☐ No.

14. Certification. I certify the above information and all attached documents as true and accurate under penalty of law, and acknowledge that falsification of information may result in prosecution and imposition of a fine and/or imprisonment.

_____

Signature of Company Official (must be President, CEO, COO, or CFO)

_____

Printed Name of Company Official

_____

Position (President, CEO, COO, or CFO) of Company Official

Phone Number of Company Official:

(voice) _____

(fax) _____

Date _____

_____

Name of Contact Person (if different from above)

_____

Position of Contact Person (if different from above)

Phone Number of Contact Person:

(voice) _____

(fax) _____

E-mail Address of Contact Person:

_____

Instructions for Completing Application Form for Reimbursement Under Section 185 of Public Law 109–115

1. Applicant name.

This is the person or legal entity who undertakes to act as a fixed-base general aviation operator or who provides general aviation ground support services, directly or by a lease or any other arrangement.

2. Applicant address.

The applicant address is that location within the local tax authority jurisdiction that is held out to the public as the business or airport address.

3. Airport of operation on September 11, 2001.

This question asks the applicant to identify those airports in the Washington, DC area where it provided either fixed-base general aviation services or general aviation ground support services on September 11, 2001. Check as many airports as you served on September 11, 2001.

4. Briefly describe the nature of the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

You should describe the specific fixed-base general aviation services or general aviation ground support services that you provided at each of the airports.

5. Did the applicant or any part of it conduct non-fixed-base general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

Check ''Yes'' if you conducted any non-fixed-base general aviation activities or provided non-aviation ground support services during the 2001 through 2005 period. Describe the activities that you undertook during this period that did not directly support general aviation at the airport.

6. Briefly describe how the events of September 11, 2001 affected the applicant's operations as a fixed-base general aviation operator or a provider of general aviation ground support services.

You should describe how the level and conduct of your operations as a fixed-base general aviation operator or your operations as a provider of general aviation ground support services were changed as a result of September 11, 2001 and the ensuing security restrictions that were imposed by the Federal government.

7. Did the applicant undertake any actions to lessen or offset the impact of the Federal government's closure of airports in the Washington, DC area following the attacks of September 11, 2001?

Check ''Yes'' if you attempted to minimize the impact that the terrorist attacks of September 11, 2001 had on your business. Briefly describe your actions and the effect that they had on you. Include any activities or services undertaken after September 11, 2001 that did not provide support for general aviation but that did provide revenues to sustain your business.

8. Has the applicant filed income taxes for any period between 1999 and 2005?

Check ''Yes'' if you filed income taxes during this period, and indicate the filing status under which you filed your income tax returns.

9. Baseline Financial Data and Forecasts. Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

This question directs applicants to provide the Department with certain financial documents in order to verify and substantiate their claims. Documents that you have already prepared should be sufficient. When necessary, you should supplement these documents with footnotes or explanations that are pertinent to your reimbursement claim. The financial data may include such documents as income statements, statements of operations, forecasts of operating results, income projections, pro forma budget projections, budget documents, tax preparation support material, information presented in investment perspectives and registrations, or other similar information that in whole or in part cover the period from 1999 through 2005.

10. The requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses) (adjusted as shown), with a similarly adjusted company forecast of operating results that existed prior to September 11, 2001 if such a forecast was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document that it reasonably expected to earn during the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

Indicate here whether an ''after-the-fact'' forecast was prepared, and briefly describe the methodology used in preparing the forecast. Your methodology must take into account items relevant to your businesses, such as the terms of existing contracts, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, existing labor agreements and leasing agreements, and other similar types of documents.

In preparing your ''after-the-fact'' forecast, you may wish to consult a July 2001 report prepared for the FAA, entitled Forecasting Aviation Activity by Airport. This report was prepared by GRA, Incorporated (GRA), for the FAA's Office of Aviation Policy Plans Statistical and Forecast Branch (APO–110). While the Department recognizes that fixed-base general aviation operators and providers of general aviation ground support services are different entities than larger airports at which scheduled service is provided, the Department believes that this document offers relevant guidance to applicants who do not prepare forecasts as part of regular business operations. This July 2001 report may be accessed at: *http://www.faa.gov/data_statistics/aviation_data_statistics/forecasting/media/AF1.doc.*

The July 2001 report explains the basic steps usually utilized in preparing forecasts, including: Identifying parameters and measures to forecast; collecting forecast information of expected revenues or expenses, including budgets; gathering and evaluating data; selecting a forecast method (such as regression and trend analysis, share analysis, or exponential smoothing); applying methods and evaluating results; and summarizing and documenting the results.

Additionally, data sources to assist you in making adjustments to your forecast are available from the Department's Web site at *http://ostpxweb.dot.gov/aviation/index.html* (Click on ''Programs'' and scroll down to ''General Aviation Operator and Service Provider Reimbursement''). The Department notes that, while it can answer questions for applicants that might arise while applicants develop forecasts, the Department is not in a position to propose or develop projections for applicants.

11. Reimbursement Claim.

For purposes of completing the information in the reimbursement claim table, total operating revenues (line 1) include the inflow of funds to the applicant resulting from the sale of goods and services related to the activities of a fixed-base operator or a provider of general aviation services. Examples include, but are not limited to, monetary amounts or value received for providing: aircraft fuel or oil; delivery of aircraft fuel or oil; transient and long-term storing, tie down parking and sheltering of aircraft; maintenance, inspection, checking, upgrading of aircraft and aircraft related equipment and for polishing and cleaning property and equipment; providing flight instruction services and materials; and miscellaneous items for purchase such as maps, books, flight clothing, sectional charts, devices and parts for aircraft, food services, hospitality services, auto rentals, aircraft custodial and sanitation services, assistance grants from state and Federal government agencies, insurance payments, and revenues derived from the business activities conducted at alternative airports to those that were closed.

Total operating expenses (line 2) include the cost to the applicant of providing the goods and services related to the activities of a fixed-base operator or a provider of general aviation services. Examples include, but are not limited to: Labor costs for all categories of employees (including compensation, vacation and sick leave pay, medical benefits, workmen's compensation contributions, accruals or annuity payments to pension funds, training reimbursements, professional fees, licensing fees, educational or recreational activities for the benefit of the employee, stock incentives, etc.); the cost of fuel and oil including nonrefundable aircraft fuel and oil taxes; insurance; flight and ground equipment parts; general services purchased for flight or ground equipment maintenance; depreciation of flight and ground equipment; amortization of capitalized leases for flight and ground equipment; provisions for obsolescence and deterioration of spare parts; insurance premiums; and rental expenses of flight and ground equipment expenses associated with business activities conducted at alternative airports to those that were closed. Advertising, promotion and publicity expenses, landing fees, clearance, customs and duties, utilities, bookkeeping, accounting, recordkeeping and legal services are also part of the total operating expenses.

Operating profit or loss is calculated by subtracting the total operating expenses from the total operating revenues. If the total operating revenues exceed the total operating expenses, the calculation results in an operating profit. If the total operating expenses exceed the total operating revenues, the calculation results in an operating loss.

Nonoperating income and expenses include: income and loss incident to commercial ventures not inherently related to the direct provision of fixed-base operator services or general aviation ground support services; other revenues and expenses attributable to financing or other activities that are extraneous to and not an integral part of general aviation services; and special recurrent items of a nonperiod nature.

Examples of non-operating income include, but are not limited to: Interest income; foreign exchange gains; equity investment in an investor controlled company; intercompany transactions; dividend income; and net unrealized gains on marketable equity securities.

Examples of non-operating expenses include, but are not limited to: Interest on long-term debt and capital leases; interest on short-term debt; imputed interest capitalized; amortization of discount and expense on debt; foreign exchange losses; fines or penalties imposed by governmental authorities; costs related to property held for future use; donations to charities, social and community welfare purposes; losses on reacquired and retired or resold debt securities; and losses on uncollectible non-operating receivables.

For reasons set forth elsewhere in § 331.7 of this part, you may not include lobbying expenses that were incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of Pub. L. 109–115. Non-operating income is the result of subtracting the non-operating expenses from the non-operating revenues. Professional application fees provide for reimbursement of 80 percent of the cost of professional accounting services required in the preparation and submission of the application. Adjusted Income for each of the Columns A and B is the sum of the Operating profit (or loss) (line 3) plus line 6, Non-operating income (loss). Each line of Column C is the result of subtracting Column B from Column A, except on line 7, Professional Application Fees, where the claimant may enter 80 percent of professional application fees (up to a maximum of $2,000). The Adjusted Income figure on the Total line of Column C represents the amount claimed as total reimbursement; it may of course be adjusted as the result of Department review. All Adjusted Income figures do not reflect taxes due in the current period, as a consequence, reimbursements will be pre-tax and income taxes may be due on reimbursed funds.

The difference between column A and B is the basis for column C. This constitutes the total amount of your claim for reimbursement. As the eligibility periods, for the most part, begin and end on days other than the first or last days of the month, quarter or year, data from already existing financial statements must be adjusted, on a pro rata basis, to reflect the eligibility periods. For example, the period of eligibility for all applicants begins on September 11, 2001 and therefore, the only time period during the month of September that is eligible for reimbursement is September 11 through September 30, a period of 20 days. Applicants should be prepared to show both how they apportioned such financial data into the reimbursement periods, and why they chose the apportionment approach used. Applicants can then use these estimates for the specified periods at the beginning and end of the eligible period to add to the financial amounts for 2002, 2003, and 2004 to calculate the total amounts sought in Appendix A.

12. Has the applicant or any of its subsidiaries or affiliates received grants, subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation and Transportation Security Act of 2001 (Public Law 107–38) and the Airport Improvement Program under the Airport and Airway Improvement Act of 1982 (Public Law 97–248).)

This question requires that you disclose all grants, subsidies, or incentives that you received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security programs, or maintaining or providing general aviation services and facilities.

13. Has the applicant or any of its subsidiaries or affiliates incurred lobbying expenses, mitigating expenses, or special expenses (as described in the section captioned ''What information must operators or providers submit in their applications for reimbursement?''), or extraordinary adjustments?

Check ''Yes'' if you incurred any such expenses or experienced any such adjustments. You must briefly describe the nature of such expenses and adjustments, including the amounts. Additionally, you must indicate whether or not such expenses or adjustments have been included in or excluded from the totals in the table at item number 11.

Lobbying includes any amount paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.

Mitigating expenses include the utilization of property, the provision of services and the sale of goods that were undertaken to mitigate losses arising from the Federal government's closure of airports attendant to the September 11, 2001 attack. These could include expenses incurred for the provision of services and sale of goods moved from restricted airports to unrestricted airports or compensation for non-aviation oriented goods and services provided at restricted airports. Mitigating expenses may also include operating expenses for aviation-related fixed assets or capital utilized outside of the restricted airport.

Special expenses include, but are not limited to, moving expenses, additional security equipment and facilities, and loss on sales of assets that arose from the direct imposition of restrictions during the period September 11, 2001 through the applicable eligible date. Any item reported under Special Expenses shall not also be expensed in other expense categories that are reflected in the calculation of the reimbursement claim. Details regarding special expenses should be noted in footnotes.

Extraordinary adjustments are events or transactions that are material to your business and unusual in nature and infrequent in occurrence.

14. Certification.

You must certify that all information contained on the Background and Eligibility Form *and* the documents submitted in support of your application (e.g., profit and loss statements, actual forecasts, after-the-fact forecasts, etc.) are accurate. This certification is made under penalty of law. Falsification may be grounds for monetary and/or criminal sanctions. This certification must be made by a company President, CEO, COO, or CFO.

[FR Doc. E7–6350 Filed 4–6–07; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM04–12–000]

Accounting and Financial Reporting for Public Utilities Including RTOs; Notice of Extension of Time

April 2, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule: notice of extension of time.

SUMMARY: On December 16, 2005, the Commission issued Order No. 668, a Final Rule amending the Commission's regulations to update the accounting and reporting requirements for public utilities and licensees, including independent system operators and RTOs. Because the Commission has updated the submission software used to file FERC Form Nos. 1 and 1–F, the Commission is issuing a notice extending the filing deadline for the filing of 2006 FERC Form Nos. 1 and 1–F.

DATES: The filing deadline for 2006 FERC Form Nos. 1 and 1–F is extended to May 18, 2007.

FOR FURTHER INFORMATION CONTACT: Brenda D. Devine, Division of Financial Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8522.

SUPPLEMENTARY INFORMATION:

Notice Granting Extension of Time for Filing FERC Form Nos. 1 and 1–F

On December 16, 2005, the Commission issued Order No. 668, a Final Rule amending the Commission's regulations to update the accounting and reporting requirements for public utilities and licensees, including independent system operators and

regional transmission organizations.[1] Order No. 668 amended FERC Form Nos. 1 and 1–F by adding new schedules and revising existing schedules in the forms. The Commission updated the submission software used to file FERC Form Nos. 1 and 1–F to reflect the new financial reporting requirements of Order No. 668.

The annual filing date for FERC Form Nos. 1 and 1–F is April 18. However, in light of the software changes made to implement Order No. 668, the filing deadline for the 2006 FERC Form Nos. 1 and 1–F is extended until May 18, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6511 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *Accounting and Financial Reporting for Public Utilities Including RTOs,* Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005), *reh'g denied,* Order No. 668–A, FERC Stats. & Regs. ¶ 31,215 (2006), *reh'g denied,* 117 FERC ¶ 61,066 (2006).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 2003F–0088 (formerly 03F–0088)]

Irradiation in the Production, Processing and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections and denial of requests for a hearing.

SUMMARY: The Food and Drug Administration (FDA) is responding to objections and is denying requests that it has received for a hearing on the final rule that amended the food additive regulations by establishing a new maximum permitted energy level of x-rays for treating food of 7.5 million electron volts (MeV) provided that the x-rays are generated from machine sources that use tantalum or gold as the target material, with no change in the maximum permitted dose levels or uses currently permitted by FDA's food additive regulations. After reviewing the objections to the final rule and the requests for a hearing, the agency has concluded that the objections do not raise issues of material fact that justify a hearing or otherwise provide a basis for removing the amendment to the regulation.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1267.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA published a notice in the **Federal Register** of March 13, 2003 (68 FR 12087), announcing the filing of food additive petition, FAP 3M4745, by Ion Beam Applications to amend the food additive regulations in § 179.26 *Ionizing radiation for the treatment of food* (21 CFR 179.26) by increasing the maximum permitted energy level of x-rays for treating food from 5 to 7.5 MeV. The rights to this petition were subsequently transferred to Sterigenics International, Inc. In response to this petition, FDA issued a final rule in the **Federal Register** of December 23, 2004 (69 FR 76844) permitting the safe use of 7.5 MeV x-rays for treating food provided that the x-rays are generated from machine sources that use tantalum or gold as the target material, with no change in the maximum permitted dose levels or uses currently permitted by FDA's food additive regulations (the 7.5 MeV x-ray final rule). The preamble to the final rule advised that objections to the final rule and requests for a hearing were due within 30 days of the publication date (i.e., by January 24, 2005).

II. Objections and Requests for a Hearing

Section 409(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(f)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, specifying with particularity the provisions of the order ''deemed objectionable, stating reasonable grounds therefore, and requesting a public hearing upon such objections.'' FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing (*Community Nutrition Institute* v. *Young*, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1123 (1986)).

Under the food additive regulations at 21 CFR 171.110, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state each objection on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the 7.5 MeV x-ray final rule, FDA received about 100 objections within the 30-day objection period. All but one of these submissions expressed general opposition to increasing the maximum permitted energy level of x-rays used to irradiate food and to food irradiation. Most of these objections were form letters, identically worded, urging FDA to conduct additional studies on the effects of 7.5 MeV x-rays on food and objecting ''to the agency's decision knowing that some amount of radioactivity could be created in food treated with 7.5 MeV.'' While most of these objections requested a hearing, no evidence was submitted in support of these objections that could be considered in an evidentiary hearing. These submissions expressing general opposition raise no factual issue for resolution and, therefore, do not justify a hearing.[1] The one submission raising specific objections was a letter from Public Citizen with six objections to the 7.5 MeV x-ray final rule. The letter requested a hearing on issues raised by each objection. These objections are addressed in section IV of this document.

III. Standards for Granting a Hearing

Specific criteria for deciding whether to grant or deny a request for a hearing are set out in § 12.24(b). Under that regulation, a hearing will be granted if the material submitted by the requester shows, among other things, the following: (1) There is a genuine and substantial factual issue for resolution at a hearing; a hearing will not be granted on issues of policy or law; (2) the factual issue can be resolved by available and specifically identified reliable evidence; a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and

[1] A large number of these form letters were submitted after the close of the objection period. Tardy objections fail to satisfy the requirements of 21 U.S.C. 348(f)(1) and need not be considered by the agency (*ICMAD* v. *HEW*, 574 F.2d 553, 558 n.8 (D.C. Cir), *cert. denied*, 439 U.S. 893 (1978)).

contentions; (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requestor; a hearing will be denied if the data and information submitted are insufficient to justify the factual determination urged, even if accurate; (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested; a hearing will not be granted on factual issues that are not determinative with respect to the action requested (e.g., if the action would be the same even if the factual issue were resolved in the way sought); (5) the action requested is not inconsistent with any provision in the act or any FDA regulation; and (6) the requirements in other applicable regulations, e.g., 21 CFR 10.20, §§ 12.21, and 12.22, and in the notice issuing the final regulation or the notice of opportunity for hearing are met.

A party seeking a hearing is required to meet a ''threshold burden of tendering evidence suggesting the need for a hearing'' (*Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980), *reh. denied*, 446 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to ''sharpen the issues'' or to ''fully develop the facts'' does not meet this test (*Georgia Pacific Corp.* v. *EPA*, 671 F.2d 1235, 1241 (9th Cir. 1982)). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute and a party is entitled to judgment as a matter of law (see Rule 56, Federal Rules of Civil Procedure). The same principle applies in administrative proceedings (see § 12.28).

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held (*Pineapple Growers Ass'n* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir.1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing (see *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied*, 362 U.S. 911 (1960)). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information (see *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971)). In other words, a hearing is justified only if the objections are made in good faith and if they ''draw in question in a material way the underpinnings of the regulation at issue'' (*Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy (see *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958)).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality can be validly applied to the administrative process. In explaining why these principles ''self evidently'' ought to apply to an agency proceeding, the U.S. Court of Appeals for the District of Columbia Circuit wrote: ''The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.'' *Retail Clerks Union, Local 1401* v. *NLRB*, 463 F.2d 316, 322 (D.C. Cir. 1972). (See *Costle* v. *Pacific Legal Foundation*, supra at 215–220. See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1093 (1969).))

In summary, a hearing request must present sufficient credible evidence to raise a material issue of fact and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

IV. Analysis of Objections and Response to Hearing Requests

The letter from Public Citizen raises six issues that they believe to be factual and requests a hearing based on these objections. FDA addresses each of the objections in the following paragraphs, as well as the evidence and information filed in support of each, comparing each objection and the information submitted in support of it to the standards for granting a hearing in § 12.24.

(1) Public Citizen contends that FDA did not adequately account for the fact that an electron beam on an x-ray target is not monoenergetic, and that a significant portion of the beam may be higher than the nominal energy, resulting in higher neutron production in the food and more activity. Public Citizen cites a published paper in the petition in which the authors note that measurements and calculations of a 7.5 MeV setting actually correspond to 8.1 MeV 0.8 MeV.

The objection does not raise a genuine and substantial issue of fact for resolution at a hearing. Contrary to the objection, the final rule does not set a ''nominal energy'' limit. The final rule sets out 7.5 MeV as the maximum energy permitted. X-rays from machine sources at energies exceeding 7.5 MeV are not permitted by the final rule.

Further, the objection provides no evidence to support the contention that safety concerns regarding inherent limitations on the precision of setting and measuring voltage were not considered. The paper referred to in the objection, Gregoire, O., Cleland, M.L., Wakeford, Mittendorfer, et al., ''Radiological Safety of Food Irradiation With High Energy X-Rays: Theoretical Expectations and Experimental Evidence,'' 2002, was included as a reference in the final rule and counters the objection. The paper discusses the radiological implications of irradiating meat with 7.5 MeV x-rays to an x-ray dose of 15 kGy, which is more than twice the maximum dose allowed for meat irradiation (4.5 kGy maximum for refrigerated meat and 7.0 kGy maximum for frozen meat) (see § 179.26(b)). Experiments were performed with x-ray machines that use two different types of electron accelerators, one delivering electrons with a narrow electron energy spread, the other delivering a broad energy spread. The Gregoire paper concluded that risk to individuals from intake of food irradiated with x-rays from 7.5 MeV electrons, even with a broad energy spread, would be trivial.

In the experiments discussed in the Gregoire paper, the equipment was set to achieve a voltage of 7.5 MeV. Measurements (including calculations) to verify the precision of the settings estimated that the machine produced electrons at an energy of approximately 8.1 MeV, with an uncertainty margin of 0.8 MeV. In other words, within the limits of precision of the measurements, the energy of the electrons used to produce the x-rays was shown to be greater than 7.3 MeV but less than 8.9 MeV. FDA notes that even though the equipment in this experiment produced a higher energy level than permitted by the regulation, the results show that any radioactivity that might be induced at that higher energy level is trivially small.

Public Citizen has not raised a genuine and substantial issue of fact and

has not provided any information that contradicts the agency's safety determination. Thus, a hearing is not justified based on this objection (§ 12.24(b)(1) and (2)).

(2) Public Citizen claims that FDA has concluded that any induced activity in food from treating it with 7.5 MeV x-rays is safe without a standard for a ''safe'' level of induced activity in food and further objects to any additional radiation level in treated food.

The objection does not cite any support for its contention that FDA must establish a general standard for a safe level of induced activity in food beyond the act's requirements for food additive approvals. The use of x-rays to treat food is a food additive under the act's definition of ''food additive,'' which includes any source of radiation intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food (section 201(s) of the act) (21 U.S.C. 321(s)). Section 409 of the act requires that a regulation approving a food additive must prescribe, with respect to the proposed uses of the additive, the conditions under which the additive may be safely used. Further, section 409 of the act sets out that no such regulation can issue if a fair evaluation of the data fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe. FDA has defined ''safe'' and ''safety'' by regulation to mean that ''there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.'' (21 CFR 170.3(i)).

In accordance with the requirements of section 409 of the act and the food additive regulations, FDA determined that food treated with 7.5 MeV x-rays is safe by comparing the total annual dose from eating irradiated foods with the annual dose from naturally occurring radionuclides in the food. FDA's determination was based on its review of the data in the record, including the reports referenced in the final rule from the International Atomic Energy Agency, Gregoire et al., and the independent evaluation of the data by Oak Ridge National Laboratory. FDA concluded based on these analyses that any radioactivity that may be induced in any food treated with 7.5 MeV x-rays will be trivially low and that any potential human exposure due to consumption of irradiated food will be inconsequential compared to that from radionuclides that are present naturally in food.

Public Citizen's objection presents no factual evidence that FDA has overlooked in reaching the decision that 7.5 MeV x-rays are safe for treating food under the conditions of use specified in the regulation. Thus, Public Citizen has failed to justify a hearing on this issue (§ 12.24(b)(2)).

(3) Public Citizen objects to the agency's approval of 7.5 MeV x-rays for treating food without assessing the risk of getting cancer from eating food with added radioactivity. The objection points to a paper by Ari Brynjolfsson, cited by the petitioner, which estimates the lifetime cancer risk from eating foods irradiated with 7.5 MeV x-rays to be 0.8 per million.[2]

FDA disagrees with Public Citizen's assertion that it did not consider the risk of getting cancer from eating food treated with 7.5 MeV x-rays during its review of FAP 3M4745. As stated in the preamble of the rule, FDA contracted with Oak Ridge National Laboratory (ORNL) to perform an independent evaluation of the data in the administrative record, including an evaluation of cancer risk. The ORNL evaluation was placed in the docket when the rule published. ORNL concluded that because the factors used in the data in the administrative record to estimate cancer risk are based on much higher doses than permitted in the rule, the data in the administrative record, including the data in the Brynjolfsson paper, cannot be applied with any credibility to extrapolate cancer risk to the extremely low potential doses that a person might receive from consuming food treated with 7.5 MeV x-rays. The extrapolations that would be required would yield estimated risks far too small to reliably measure or verify. FDA agrees with this conclusion.

The only evidence referenced by Public Citizen in support of its assertion is the Brynjolfsson paper, which was part of the administrative record and was considered in ORNL's evaluation of the data and FDA's safety determination. Therefore, Public Citizen has not identified any evidence to support its assertion that was not already considered by FDA in its safety determination. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions (21 CFR 12.24(b)(2)).

(4) Public Citizen asserts that FDA did not comply with § 170.22 (21 CFR 170.22), which states that a food additive will not be granted a tolerance that will exceed 1/100th of the maximum amount demonstrated to be without harm to experimental animals unless evidence is submitted which justifies use of a different safety factor. Public Citizen expresses the view that this non-compliance includes not only the failure to conduct any animal experiments using foods irradiated with 7.5 MeV x-rays, but also the failure to calculate a 100-to-1 safety factor or submit evidence that justifies the use of a different safety factor.

The objection does not include any evidence or support for the contention that animal experiments are required to be conducted to determine whether a proposed use of a food additive is safe. The safety criteria that must be considered by the agency before a food additive regulation is issued are listed in 21 U.S.C. 348(c)(5). The act does not prescribe what safety tests should be performed to determine whether an additive is safe. Public Citizen's objection references the regulation in § 170.22 which sets out a safety factor of 100-to-1 in applying animal experimentation data to man (that is, the additive will not be approved for use in an amount greater than 1/100th of the maximum amount demonstrated to be without harm to experimental animals), unless evidence is submitted which justifies use of a difference safety factor. That regulation concerns how to apply animal experimentation data when it exists. It does not, however, require that animal testing be done in all food additive safety determinations.

Because of the extremely low levels of induced radioactivity in food from the use of 7.5 MeV x-rays, it would not be possible to measure any toxicological effects from this induced activity in food fed to animals even with the most sensitive toxicological testing. Consequently, animal testing is neither necessary nor helpful to demonstrate the safety of food treated with 7.5 MeV x-rays. Rather, safety was demonstrated by showing that calculated estimates of radiation exposure from induced activity in food from the use of 7.5 MeV x-rays is far below the exposure from activity resulting from radionuclides that are present naturally in food. FDA concluded that such an analysis provides information that is far more sensitive to potential effects than can be obtained from the use of animal studies. Public Citizen has submitted no information to establish that the animal and other testing it recommended is required to demonstrate safety, or even that such testing would be valid to assess safety. Because Public Citizen provided no evidence to consider in

[2] Public Citizen incorrectly states in their objection that the cancer risk estimated by the author is 0.08 per million.

support of its assertion, FDA is denying the request for a hearing on this point because a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions (21 CFR 12.24(b)(2)).

(5) Public Citizen asserts that by FDA failing to comply with § 170.22, FDA did not comply with § 170.20 (21 CFR 170.20), which states that ''the Commissioner will be guided by the principles and procedures for establishing the safety of food additives stated in current publications of the National Academy of Sciences National Research Council.''

Section 170.22 pertains to safety factors to be applied to animal experimentation data in determining whether a proposed use of a food additive is safe. As discussed previously in item 4, no animal studies were necessary nor were any conducted to demonstrate that the use of 7.5 MeV x-rays is safe for treating food. Because the provisions of § 170.22 do not apply to the agency's review of FAP 3M4745, Public Citizen's assertion that FDA did not comply with § 170.20 because it did not comply with § 170.22 is without merit. Therefore, this objection is not a basis for a hearing because there is no genuine and substantial issue of fact for resolution (§ 12.24(b)(1)).

(6) Public Citizen asserts that FDA did not comply with 21 U.S.C. 348(c)(3)(A), which states that ''No such regulation shall issue if a fair evaluation of the data before the Secretary—(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: *Provided*, That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man.'' Nor has FDA complied with § 170.3(i), which defines ''safe'' as ''there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

Public Citizen has not provided any evidence to support these allegations or that contradicts or challenges the agency's safety determination. The agency finds that this objection is merely a general description of Public Citizen's position, and that it does not raise a factual issue for resolution at a hearing. Therefore, FDA is denying the requests for a hearing on this point because there is no genuine and substantial issue of fact for resolution at a hearing, and a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions (§ 12.24(b)(1) and (b)(2)).

V. Summary and Conclusions

Section 409 of the act requires that a food additive be shown to be safe prior to marketing. Under § 170.3(i), a food additive is ''safe'' if there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. In the final rule approving the use of 7.5 MeV x-rays for treating food, FDA concluded, based on its evaluation of the data submitted in the petition and other relevant material, that the use of 7.5 MeV x-rays proposed in the petition for treating food is safe under the conditions set forth in the regulation codified at § 179.26. The petitioner has the burden to demonstrate the safety of the additive in order to gain FDA approval. Once FDA makes a finding of safety, the burden shifts to an objector, who must come forward with evidence that calls into question FDA's conclusion (*American Cyanamid Co.* v. *FDA*, 606 F.2d 1307, 1314–1315 (D.C. Cir. 1979)).

None of the objections received contained evidence to support a genuine and substantial issue of fact. Nor has any objector established that the agency overlooked significant information in reaching its conclusion. Therefore, the agency has determined that the objections that requested a hearing do not raise any substantial issue of fact that would justify an evidentiary hearing (§ 12.24(b)). Accordingly, FDA is not making any changes in response to the objections and is denying the requests for a hearing.

Dated: March 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–6646 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803, 814, 820, 821, 822, 874, 886, 1002, 1005, and 1020

[Docket No. 2007N–0104]

Medical Devices; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending certain medical device regulations to correct typographical errors and to ensure accuracy and clarity in the agency's regulations.

EFFECTIVE DATE: April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Philip Desjardins, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240–276–2343.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in parts 803, 814, 820, 821, 822, 874, 886, 1002, 1005, and 1020 to correct typographical errors, and update addresses, telephone numbers, and wording to ensure accuracy and clarity in the agencies medical device regulations.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because these errors are nonsubstantive.

I. Highlights of the Final Rule

FDA is making changes to correct typographical and other minor errors in certain device regulations in parts 803, 814, 820, 821, 822, 874, 886, 1002, 1005, and 1020 (21 CFR 803, 814, 820, 821, 822, 874, 886, 1002, 1005, and 1020).

1. FDA is revising § 803.11 and replacing ''301–443–8818'' with ''240–276–3151.''

2. FDA is revising § 803.11 and replacing ''*http://www.fda.gov/cdrh/mdr/mdr-forms.html*'' with ''*http://www.fda.gov/medwatch/getforms.htm*.''

3. FDA is revising § 803.21(a) and replacing ''301–443–8818'' with ''240–276–3151.''

4. FDA is revising § 803.21(a) and replacing ''*http://www.fda.gov/cdrh/mdr/373.html*'' with ''*http://www.fda.gov/cdrh/mdr/mdr-forms.html*.''

5. FDA is revising § 814.20(g) and replacing ''FDA has issued a PMA guidance document to assist the applicant in the arrangement and content of a PMA. This guidance document is available on the Internet at *http://www.fda.gov/cdrh/dsma/pmaman/front.html*. This guidance document is also available upon request from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, FAX 301–443–8818'' with ''Additional information on FDA policies and procedures, as well as links to PMA guidance documents, is available on the Internet at *http://www.fda.gov/cdrh/devadvice/pma/*.''

6. FDA is revising § 820.1(e) and replacing ''Division of Small

Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, U.S.A., telephone 1–800–638–2041 or 1–301–443–6597, FAX 301–443–8818'' with ''Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, U.S.A., telephone 1–800–638–2041 or 240–276–3150, FAX 240–276–3151.''

7. FDA is revising § 821.2(c) and removing the words ''and Surveillance.''

8. FDA is revising § 822.7(b) and replacing ''(*www.fda.gov/cdrh/resolvingdisputes*), and from the CDRH Facts-on-Demand system (800–899–0381 or 301–827–0111)'' with ''(*http://www.fda.gov/cdrh/ombudsman/dispute.html*).''

9. FDA is revising § 822.15 and replacing ''You may obtain guidance regarding dispute resolution procedures from the Center for Devices and Radiological Health's (CDRH) Web site (*www.fda.gov/cdrh/resolvingdisputes/ombudsman.html*) and from the CDRH Facts-on-Demand system (800–899–0381 or 301–827–0111, document number 1121)'' with ''You may obtain guidance regarding dispute resolution procedures from the Center for Devices and Radiological Health's (CDRH's) Web site (*www.fda.gov/cdrh/ombudsman/*).''

10. FDA is revising § 822.22(b) and replacing ''You may obtain guidance documents that discuss these mechanisms from the CDRH Web site and from the CDRH Facts-on-Demand System (800–899–0381 or 301–827–0111)'' with ''You may obtain guidance documents that discuss these mechanisms from the Center for Devices and Radiological Health's (CDRH's) Web site.''

11. FDA is revising § 874.4420 and replacing ''tonsil suction tub'' with ''tonsil suction tube.''

12. FDA is revising § 874.4420 and replacing ''ear suction tub'' with ''ear suction tube.''

13. FDA is revising the section title in § 886.1090 and replacing ''Haidlinger'' with ''Haidinger.''

14. FDA is revising § 886.1090(a) and replacing ''Haidlinger'' with ''Haidinger.''

15. FDA is revising § 1002.7 and replacing ''shall be addressed to the Center for Devices and Radiological Health, Electronic Product Reports, Office of Compliance (HFZ–307), 2098 Gaither Rd., Rockville, MD 20850'' with ''shall be addressed to the Center for Devices and Radiological Health, ATTN: Electronic Product Reports, Radiological Health Document Control (HFZ–309), Office of Communication, Education, and Radiation Programs, 9200 Corporate Blvd, Rockville, MD 20850.

16. FDA is revising § 1002.10 and replacing ''Center for Devices and Radiological Health, Electronic Product Reports, Office of Compliance (HFZ–307), 2098 Gaither Rd., Rockville, MD 20850'' with ''Center for Devices and Radiological Health, ATTN: Electronic Product Reports, Radiological Health Document Control (HFZ–309), Office of Communication, Education, and Radiation Programs, 9200 Corporate Blvd, Rockville, MD 20850.''

17. FDA is revising § 1002.20(b) and replacing ''Director, Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857'' with ''Center for Devices and Radiological Health, ATTN: Accidental Radiation Occurrence Reports (HFZ–240), Office of Communication, Education, and Radiation Programs, 9200 Corporate Boulevard, Rockville, MD 20850.''

18. FDA is revising § 1002.50(c)(3) and replacing ''Office of Compliance (HFZ–307)'' with ''Office of Communication, Education, and Radiation Programs (HFZ–240).''

19. FDA is revising § 1005.11 and replacing ''5600 Fishers Lane, Rockville, MD 20857'' with ''(HFZ–204), 9200 Corporate Blvd., Rockville, MD 20857.''

20. FDA is revising § 1005.25(b) and adding ''(HFZ–240).''

21. FDA is revising § 1020.30(c) and replacing ''Office of Compliance and Surveillance'' with ''Office of Communication, Education, and Radiation Programs.''

II. Environmental Impact

The agency has determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement was required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule corrects only typographical and nonsubstantive errors in existing regulations and does not change in any way how devices are regulated, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Paperwork Reduction Act of 1995

FDA has determined that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. The Technical Amendments

This rule updates and corrects existing regulations to ensure accuracy and clarity. This administrative action is limited to correcting typographical errors; updating changes in addresses, web site locations, and telephone numbers; and clarifying regulation terminology. It makes no changes in substantive requirements.

For the effective date of this final rule see **EFFECTIVE DATE**. Because this final

rule is an administrative action, FDA has determined that it has no substantive impact on the public. It imposes no costs, and merely makes technical administrative changes in the Code of Federal Regulations (CFR) for the convenience of the public. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

List of Subjects

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 821

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 822

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 874

Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 1002

Electronic products, Radiation protection, Reporting and recordkeeping requirements.

21 CFR Part 1005

Administrative practice and procedure, Electronic products, Imports, Radiation protection, Surety bonds.

21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803, 814, 820, 821, 822, 874, 886, 1002, 1005, and 1020 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

■ 1. The authority section for part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

■ 2. Section 803.11 is revised to read as follows:

§ 803.11 What form should I use to submit reports of individual adverse events and where do I obtain these forms?

If you are a user facility, importer, or manufacturer, you must submit all reports of individual adverse events on FDA MEDWATCH Form 3500A or in an electronic equivalent as approved under § 803.14. You may obtain this form and all other forms referenced in this section from any of the following:

(a) The Consolidated Forms and Publications Office, Beltsville Service Center, 6351 Ammendale Rd., Landover, MD 20705;

(b) FDA, MEDWATCH (HF–2), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7240;

(c) Division of Small Manufacturers, International, and Consumer Assistance, Office of Communication, Education, and Radiation Programs, Center for Devices and Radiological Health (CDRH) (HFZ–220), 1350 Piccard Dr. Rockville, MD 20850, by e-mail: *DSMICA@CDRH.FDA.GOV*, or FAX: 240–276–3151;

(d) On the Internet at *http://www.fda.gov/medwatch/getforms.htm*.

■ 3. In § 803.21, paragraph (a) is revised to read as follows:

§ 803.21 Where can I find the reporting codes for adverse events that I use with medical device reports?

(a) The MEDWATCH Medical Device Reporting Code Instruction Manual contains adverse event codes for use with FDA Form 3500A. You may obtain the coding manual from CDRH's Web site at *http://www.fda.gov/cdrh/mdr/mdr-forms.html*; and from the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850, FAX: 240–276–3151, or e-mail to *DSMICA@CDRH.FDA.GOV*.

* * * * *

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 4. The authority section for part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 5. In § 814.20, paragraph (g) is revised to read as follows:

§ 814.20 Application.

* * * * *

(g) Additional information on FDA policies and procedures, as well as links to PMA guidance documents, is available on the Internet at *http://www.fda.gov/cdrh/devadvice/pma/*.

* * * * *

PART 820—QUALITY SYSTEMS REGULATION

■ 6. The authority section for part 820 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383.

■ 7. In § 820.1, paragraph (e)(1) is revised to read as follows:

§ 820.1 Scope.

* * * * *

(e) *Exemptions or variances.* (1) Any person who wishes to petition for an exemption or variance from any device quality system requirement is subject to the requirements of section 520(f)(2) of the act. Petitions for an exemption or variance shall be submitted according to the procedures set forth in § 10.30 of this chapter, the FDA's administrative procedures. Guidance is available from the Center for Devices and Radiological Health, Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, U.S.A., telephone 1–800–638–2041 or 240–276–3150, FAX 240–276–3151.

* * * * *

PART 821—MEDICAL DEVICE TRACKING REQUIREMENTS

■ 8. The authority section for part 821 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360e, 360h, 360i, 371, 374.

■ 9. In § 821.2, paragraph (c) is revised to read as follows:

§ 821.2 Exemptions and variances.

* * * * *

(c) An exemption or variance is not effective until the Director, Office of Compliance, CDRH, approves the request under § 10.30(e)(2)(i) of this chapter.

PART 822—POSTMARKET SURVEILLANCE

■ 10. The authority section for part 822 continues to read as follows:

Authority: 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

■ 11. In § 822.7, paragraph (b) is revised to read as follows:

§ 822.7 What should I do if I do not agree that postmarket surveillance is appropriate?

* * * * *

(b) You may obtain guidance documents that discuss these mechanisms from the Center for Devices and Radiological Health's (CDRH's) Web site (*http://www.fda.gov/cdrh/ombudsman/dispute.html*).

■ 12. Section 822.15 is revised to read as follows:

§ 822.15 How long must I conduct postmarket surveillance of my device?

The length of postmarket surveillance will depend on the postmarket surveillance question identified in our order. We may order prospective surveillance for a period up to 36 months; longer periods require your agreement. If we believe that a prospective period of greater than 36 months is necessary to address the surveillance question, and you do not agree, we will use the Medical Devices Dispute Resolution Panel to resolve the matter. You may obtain guidance regarding dispute resolution procedures from the Center for Devices and Radiological Health's (CDRH') Web site (*www.fda.gov/cdrh/ombudsman/*). The 36-month period refers to the surveillance period, not the length of time from the issuance of the order.

■ 13. In § 822.22, paragraph (b) is revised to read as follows:

§ 822.22 What recourse do I have if I do not agree with your decision?

* * * * *

(b) You may obtain guidance documents that discuss these mechanisms from the Center for Devices and Radiological Health's (CDRH's) Web site.

PART 874—EAR, NOSE, AND THROAT DEVICES

■ 14. The authority section for part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 15. In § 874.4420, paragraph (a) is revised to read as follows:

§ 874.4420 Ear, nose, and throat manual surgical instrument.

(a) *Identification.* An ear, nose, and throat manual surgical instrument is one of a variety of devices intended for use in surgical procedures to examine or treat the bronchus, esophagus, trachea, larynx, pharynx, nasal and paranasal sinus, or ear. This generic type of device includes the esophageal dilator; tracheal bistour (a long, narrow surgical knife); tracheal dilator; tracheal hook; laryngeal injection set; laryngeal knife; laryngeal saw; laryngeal trocar; laryngectomy tube; adenoid curette; adenotome; metal tongue depressor; mouth gag; oral screw; salpingeal curette; tonsillectome; tonsil guillotine; tonsil screw; tonsil snare; tonsil suction tube; tonsil suturing hook; antom reforator; ethmoid curette; frontal sinus-rasp; nasal curette; nasal rasp; nasal rongeur; nasal saw; nasal scissors; nasal snare; sinus irrigator; sinus trephine; ear curette; ear excavator; ear rasp; ear scissor, ear snare; ear spoon; ear suction tube; malleous ripper; mastoid gauge; microsurgical ear chisel; myringotomy tube inserter; ossici holding clamp; sacculotomy tack inserter; vein press; wire ear loop; microrule; mirror; mobilizer; ear, nose, and throat punch; ear, nose and throat knife; and ear, nose, and throat trocar.

* * * * *

PART 886—OPHTHALMIC DEVICES

■ 16. The authority section for part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 17. In § 886.1090, the section title and paragraph (a) are revised to read as follows:

§ 886.1090 Haidinger brush.

(a) *Identification.* A Haidinger brush is an AC-powered device that provides two conical brushlike images with apexes touching which are viewed by the patient through a Nicol prism and intended to evaluate visual function. It may include a component for measuring macular integrity.

* * * * *

PART 1002—RECORDS AND REPORTS

■ 18. The authority section for part 1002 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 360hh–360ss, 371, 374.

■ 19. In § 1002.7, the introductory text is revised to read as follows:

§ 1002.7 Submission of data and reports.

All submissions such as reports, test data, product descriptions, and other information required by this part, or voluntarily submitted to the Director, Center for Devices and Radiological Health, shall be filed with the number of copies as prescribed by the Director, Center for Devices and Radiological Health, and shall be signed by the person making the submission. The submissions required by this part shall be addressed to the Center for Devices and Radiological Health, ATTN: Electronic Product Reports, Radiological Health Document Control (HFZ–309), Office of Communication, Education, and Radiation Programs, 9200 Corporate Blvd., Rockville, MD 20850.

* * * * *

■ 20. In § 1002.10, the introductory text is revised to read as follows:

§ 1002.10 Product reports.

Every manufacturer of a product or component requiring a product report as set forth in table 1 of § 1002.1 shall submit a product report to the Center for Devices and Radiological Health, ATTN: Electronic Product Reports, Radiological Health Document Control (HFZ–309), Office of Communication, Education, and Radiation Programs, 9200 Corporate Blvd., Rockville, MD 20850, prior to the introduction of such product into commerce. The report shall be distinctly marked ''Radiation Safety Product Report of (name of manufacturer)'' and shall:

* * * * *

■ 21. In § 1002.20, paragraph (b) is revised to read as follows:

§ 1002.20 Reporting of accidental radiation occurrences.

* * * * *

(b) Such reports shall be addressed to the Center for Devices and Radiological Health, ATTN: Accidental Radiation Occurrence Reports (HFZ–240), Office of Communication, Education, and Radiation Programs, 9200 Corporate Blvd., Rockville, MD 20850, and the reports and their envelopes shall be distinctly marked ''Report on 1002.20'' and shall contain all of the following information where known to the manufacturer:

(1) The nature of the accidental radiation occurrence;

(2) The location at which the accidental radiation occurrence occurred;

(3) The manufacturer, type, and model number of the electronic product or products involved;

(4) The circumstances surrounding the accidental radiation occurrence, including causes;

(5) The number of persons involved, adversely affected, or exposed during the accidental radiation occurrence, the nature and magnitude of their exposure and/or injuries and, if requested by the Director, Center for Devices and Radiological Health, the names of the persons involved;

(6) The actions, if any, which may have been taken by the manufacturer, to control, correct, or eliminate the causes and to prevent reoccurrence; and

(7) Any other pertinent information with respect to the accidental radiation occurrence.

* * * * *

■ 22. In § 1002.50, paragraph (c)(3) is revised to read as follows:

§ 1002.50 Special exemptions.

* * * * *

(c) * * *

(3) Such conditions as are deemed necessary to protect the public health and safety. Copies of exemptions shall be available upon request from the Center for Devices and Radiological Health, Office of Communication, Education, and Radiation Programs (HFZ–240), 9200 Corporate Blvd., Rockville, MD 20850.

* * * * *

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

■ 23. The authority section for part 1005 continues to read as follows:

Authority: 42 U.S.C. 263d, 263h.

■ 24. Section 1005.11 is revised to read as follows:

§ 1005.11 Payment for samples.

The Department of Health and Human Services will pay for all import samples of electronic products rendered unsalable as a result of testing, or will pay the reasonable costs of repackaging such samples for sale, if the samples are found to be in compliance with the requirements of the Radiation Control for Health and Safety Act of 1968. Billing for reimbursement shall be made by the owner or consignee to the Center for Devices and Radiological Health (HFZ–204), 9200 Corporate Blvd., Rockville, MD 20857. Payment for samples will not be made if the sample is found to be in violation of the Act, even though subsequently brought into compliance pursuant to terms specified in a notice of permission issued under § 1005.22.

■ 25. In § 1005.25, paragraph (b) is revised to read as follows:

§ 1005.25 Service of process on manufacturers.

* * * * *

(b) A manufacturer designating an agent must address the designation to the Center for Devices and Radiological Health (HFZ–240), 9200 Corporate Blvd., Rockville, MD 20850. It must be in writing and dated; all signatures must be in ink. The designation must be made in the legal form required to make it valid and binding on the manufacturer under the laws, corporate bylaws, or other requirements governing the making of the designation by the manufacturer at the place and time where it is made, and the persons or person signing the designation shall certify that it is so made. The designation must disclose the manufacturer's full legal name and the name(s) under which the manufacturer conducts the business, if applicable, the principal place of business, and mailing address. If any of the products of the manufacturer do not bear his legal name, the designation must identify the marks, trade names, or other designations of origin which these products bear. The designation must provide that it will remain in effect until withdrawn or replaced by the manufacturer and shall bear a declaration of acceptance duly signed by the designated agent. The full legal name and mailing address of the agent must be stated. Until rejected by the Secretary, designations are binding on the manufacturer even when not in compliance with all the requirements of this section. The designated agent may not assign performance of his function under the designation to another.

* * * * *

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

■ 26. The authority section for part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

■ 27. In § 1020.30, paragraph (c) is revised to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(c) *Manufacturers' responsibility.* Manufacturers of products subject to §§ 1020.30 through 1020.33 shall certify that each of their products meet all applicable requirements when installed into a diagnostic x-ray system according to instructions. This certification shall be made under the format specified in § 1010.2 of this chapter. Manufacturers may certify a combination of two or more components if they obtain prior authorization in writing from the Director of the Office of Communication, Education, and Radiation Programs of the Center for Devices and Radiological Health. Manufacturers shall not be held responsible for noncompliance of their products if that noncompliance is due solely to the improper installation or assembly of that product by another person; however, manufacturers are responsible for providing assembly instructions adequate to assure compliance of their components with the applicable provisions of §§ 1020.30 through 1020.33.

* * * * *

Dated: March 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–6290 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300 and 1313

[Docket No. DEA–292I]

RIN 1117–AB06

Implementation of the Combat Methamphetamine Epidemic Act of 2005; Notice of Transfers Following Importation or Exportation

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim Final Rule with Request for Comment.

SUMMARY: This regulation implements section 716 of the Combat Methamphetamine Epidemic Act (CMEA) of 2005 (21 U.S.C. 971 as amended), which was enacted on March 9, 2006. DEA is amending its regulations to require additional reporting for import, export, and international transactions involving all List I and List II chemicals. This rule implements section 716 of the CMEA which extends current reporting requirements for importations, exportations, and international transactions involving List I and List II chemicals.

DATES: This rule is effective May 9, 2007. Written comments must be postmarked, and electronic comments must be sent, on or before May 9, 2007.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–292" on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.*

Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT:

Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7297.

SUPPLEMENTARY INFORMATION:

DEA's Legal Authority

DEA implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and Controlled Substances Import and Export Act (21 U.S.C. 801 *et seq.*), as amended. DEA publishes the implementing regulations for this statute in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to end. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA as amended also requires DEA to regulate the manufacture and distribution of chemicals that may be used to manufacture controlled substances. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

On March 9, 2006, the President signed the CMEA of 2005, which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). DEA is promulgating this rule as an interim final rule rather than a proposed rule because the changes being made merely codify statutory provisions. Much of the statute is self-implementing; the changes discussed in this rule became effective on March 9, 2006. An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553), including Notice of Proposed Rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. The requirements of the CMEA of 2005 included in this rulemaking were set out in such detail as to be self-implementing. Therefore the changes in this rulemaking provide conforming amendments to make the language of the regulations consistent with that of the law. DEA has no authority to revise the changes and is simply implementing, and making its regulations conform to, the statute.

Combat Methamphetamine Epidemic Act of 2005

The portion of the CMEA being implemented in this rulemaking addresses the importation, exportation, and international transactions of all List I and List II chemicals. Section 716 of the CMEA (21 U.S.C. 971 as amended) closes a loophole in the current regulatory system for imports, exports, and international transactions of listed chemicals used in the illicit manufacture of controlled substances. Prior to enactment of the CMEA, a company that wanted to import or export any List I or List II chemical was required to either: (1) Notify the Department of Justice 15 days in advance of the import or export; or (2) be a company that previously imported or exported a listed chemical and that was proposing to import from or export the chemicals to a customer with whom the company had previously dealt. (See 21 U.S.C. 971(a), (b))

A problem can arise, however, when the sale that the importer or exporter originally planned falls through. When this happens, the importer or exporter must quickly find a new buyer for the chemicals on what is called the ''spot market''—a wholesale market. Sellers are often under presure to find a buyer in a short amount of time, meaning that they may be tempted to entertain bids from companies without a strong record of preventing diversion. More importantly, DEA is not made aware of, and has no opportunity to review, such transactions in advance in order to suspend them if there is a danger of diversion to the clandestine manufacture of a controlled substance.

Section 716 of the CMEA extends the current reporting requirements—as well as the current exemption for regular importers and regular customers—to post-import and post-export transactions of List I and List II chemicals. Importers, exporters, brokers, and traders are now required to notify DEA, before the transaction is to take place, of certain information regarding their downstream customers. If the person to whom the chemical is being transferred is not a regular customer, the importer, exporter, broker, or trader must notify DEA no later than 15 days before the transaction is to take place; upon receipt, DEA will have 15 days to review the notification. Specifically, the United States importer or exporter must provide the name and address of each person to whom the listed chemicals will be transferred, and the name and quantity of the listed chemicals to be transferred, including package information. This person is referred to as the ''transferee'' of the United States importer or exporter. The spot market reporting requirements also apply, to a limited extent, to United States brokers and traders that arrange international transactions (*i.e.*, transactions between customers in two foreign countries).

For a United States exporter, the transferee is the foreign importer. Thus, this aspect of the new requirement does not represent a change for United States exporters, who have previously notified DEA of information on their purchasers. For a United States broker or trader, the transferee is the foreign customer purchasing the listed chemicals. Again, this requirement is not a change for brokers and traders, who have previously notified DEA of information on their purchasers.

The requirement is, however, a change for United States importers. For a United States importer, the ''transferee'' is the person to whom the importer transfers the listed chemicals—the downstream customer. Until the CMEA, importers were required to provide information regarding their suppliers, but not regarding the parties purchasing the chemicals in the United States. Under the CMEA, importers will have to list both the foreign supplier and each United States customer for the imported chemical.

The provision of customer information by the importer provides DEA with an opportunity to evaluate the transaction. DEA will have 15 days from the time the customer information is submitted to review the transaction and determine whether it may be diverted to the clandestine manufacture of a controlled substance. If DEA determines that the transaction does not pose an unacceptable risk of diversion, DEA will take no action. The importer will thus be granted regular importer status for transactions involving the specific chemical to be imported to the specific

customer. The transferee—the downstream customer—will be granted regular customer status for imports of the specified chemical by the specified importer. DEA must review each import transaction based not only on the chemical to be imported, but also on the transferee to whom the chemical will be transferred.

If, after submission of the initial DEA Form 486, Import/Export Declaration, the importer, exporter, broker, or trader will not be transferring the listed chemical to the person initially named on the DEA Form 486, or if the importer or exporter will be transferring a greater quantity than originally indicated on the DEA Form 486, then the importer, exporter, broker, or trader must file an amended DEA Form 486 reporting the change. This is a new requirement for both United States importers and exporters, as well as brokers and traders. This amendment must provide the name of the new prospective customer and/or the greater quantity of the listed chemical to be transferred. The requirement to notify DEA of a change in the transferee or an increase in the quantity of the chemical to be transferred applies to amended DEA Forms 486 in the same manner that it applies to original submissions.

Thus, if an importer, exporter, broker, or trader is required to file an initial advance notice with DEA 15 days before the transaction is to take place, and the originally planned sale falls through, the importer, exporter, broker, or trader is required to file a second advance notice with DEA, identifying the new proposed purchaser. DEA will again have 15 days to review the new transaction and determine whether it may be diverted to the clandestine manufacture of a controlled substance. In the case of a transaction reported by a broker or trader, DEA cannot suspend the transaction, but could alert authorities in the foreign country involved in the transaction of the risk of diversion. In addition, even if an importer or exporter did not have to file an initial notification—either because he is a regular importer selling to a regular customer, or an exporter selling to a regular customer—if the newly arranged spot market sale is to a new customer (*i.e.*, not a ''regular customer''), the importer or exporter must file an advance notice 15 days prior to transferring the chemical to the new customer. As is the case under existing law, a suspension can be appealed through an administrative hearing. (See 21 U.S.C. 971(c)(2))

If, however, the new proposed purchaser qualifies as a ''regular customer'' under existing law, the importer or exporter is not required to file a second advance notice 15 days prior to the transfer of the listed chemical. Rather, notice must be filed on or before the date of the transfer. Note that the second notice may occur after importation or exportation. (Brokers and traders are required to report all regulated international transactions.)

If DEA determines that a listed chemical shipment handled by a regular importer or a regular customer (including a regular customer who is substituted for the original customer listed on the original advance notification) may be diverted to the clandestine manufacture of a controlled substance, DEA may disqualify the regular importer or regular customer status of such importer or customer and may suspend the shipment. If the importer or customer (including a new proposed customer) is not a regular importer or customer, then DEA may suspend the shipment, since there would be no regular importer or regular customer status to disqualify. The procedures are set forth in the new regulatory text at 21 CFR 1313.16(d). Similarly, in the case of an export of a listed chemical that may be diverted to the clandestine manufacture of a controlled substance, DEA may disqualify the regular customer status of the transferee and suspend the shipment. See 21 CFR 1313.26(d).

Finally, within 30 days after the importation, exportation, or international transaction is completed, the importer, exporter, broker, or trader must send DEA a return declaration containing information regarding the transaction, including the name of the transferee, date the import or export and any subsequent transfer occurred, the name of the chemical transferred, the actual quantity transferred, the container, and any other information that DEA may specify. This is a new requirement for United States importers, exporters, brokers, and traders. For importers, a single return declaration may include the information for both the importation and distribution. If the importer has not distributed all chemicals imported by the end of the initial 30-day period, the importer must file supplemental return declarations no later than 30 days from the date of any further distribution, until the distribution or other disposition of all chemicals imported under the import notification or any update are accounted for. In addition, if an importer, exporter, broker, or trader files a DEA Form 486, but the transfer covered fails to take place (*e.g.*, the import or export is canceled prior to shipment), the person must file an amended DEA Form 486 to notify DEA of the cancellation. These additional filings will ensure that DEA has an accurate record of importations, exportations, and international transactions.

Summary of Changes Made by This Interim Final Rule

The table below provides a comparison of the previous requirements regarding imports, exports, and international transactions with the new requirements of the CMEA:

TABLE 1.—COMPARISON OF PREVIOUS AND NEW REQUIREMENTS

Requirement	Previous rule	New rule
Notify DEA prior to import/export/international transactions	Yes	Yes.
Identify source of imports/international transactions	Yes	Yes.
Identify transferees of exports/international transactions	Yes	Yes.
Identify transferees (downstream customers) of imports	No	Yes.
Notify DEA of change in transferees of exports and international transactions prior to transaction	No	Yes.
Notify DEA of change in transferees (downstream customers) of imports prior to transaction	No	Yes.
Notify DEA of increase in chemical quantity transferred for exports and international transactions prior to transaction.	No	Yes.
Notify DEA of increase in chemical quantity transferred for import transactions prior to transaction	No	Yes.
File return declaration when imports/exports and international transactions are distributed	No	Yes.
File subsequent return declaration if entire quantity of import not distributed within 30 days of importation	No	Yes.

Specific Changes Made by This Interim Final Rule

In this interim final rule, DEA is incorporating the provisions of section 716 of the CMEA into Title 21 of the Code of Federal Regulations. Specific changes are discussed below.

Certain definitions relating to listed chemicals in section 1300.02 are being revised or amended. The definition of ''established business relationship'' is being revised to remove language regarding foreign customers; this definition is now a general definition relating to any business relationship, either import or export. Further, parts of this definition are moved to new Section 1313.05, requirements of an established business relationship. The definition of ''established record as an importer'' is being revised by moving certain information into new Section 1313.08. Finally, the definition of ''regular customer'' is being revised to update the cross reference.

As noted previously, Section 1313.05 is added to specify requirements of an established business relationship. Information in this section was previously found in the definition of ''established business relationship.''

As noted previously, Section 1313.08 is added to specify requirements for establishing a record as an importer. Information in this section was previously found in the definition of ''established record as an importer.'' Section 1313.15(a) is being amended to update the cross reference accordingly.

Section 1313.12, requirement of authorization to import, is amended by revising paragraph (c) to add the requirement that, to qualify for a waiver of the 15 day advance notice, not only does the importer have to be known to DEA as a regular importer, but also that the customer must meet the requirements in Section 1313.05 to be regarded as a regular customer. The effect of this new requirement is that, effective May 9, 2007, all persons previously granted regular importer status will be required to provide advance notification of imports with information regarding transferees, even for customers that they did business with in the past. This advance notification will provide DEA the opportunity to review and approve the customer as a regular customer (see the new definition in Section 1300.02 and the requirements in new Section 1313.05). If the 15-day notification period elapses without DEA taking action, then that importer is granted regular importer status for all imports of that particular chemical intended for the specified customer.

Section 1313.13, contents of import declaration, is amended by requiring the importer to provide information regarding the person or persons to whom the importer intends to transfer the chemical.

Section 1313.16 is added to specify requirements regarding transfers after importation, Section 1313.26 is added to specify requirements regarding transfers after exportation, and Section 1313.32 is amended to specify requirements for brokers and traders regarding international transactions. These requirements specify what the U.S. importer, the U.S. exporter, or the U.S. broker or trader must do if an originally planned sale falls through and the importer or exporter arranges a subsequent spot market sale, as explained earlier in the preamble. For brokers and traders, the situation is somewhat more complicated because the broker or trader does not control the sale. If a transaction is not completed, the broker or trader could be asked to find another buyer for the chemical or the broker or trader may not be involved in arranging the subsequent sale. If the broker or trader arranges a subsequent sale to replace the previously arranged transaction, this transaction is a new transaction and must be reported as such; a return declaration must be filed when the transaction is completed.

Sections 1313.17(a), 1313.27(a), and 1313.35(a) are added to specify the requirement that within 30 days of the completion of a transaction, the importer, exporter, broker, or trader must send DEA a return declaration containing information regarding the transaction, including the name of the transferee, date the import, export, or international transaction and any subsequent transfer occurred, the name of the chemical transferred, the actual quantity transferred, the container, and any other information that DEA may specify.

Sections 1313.17(b), 1313.27(b), and 1313.35(b) are added to specify the requirement that if an importation, exportation, or international transaction reported on a DEA Form 486 fails to be completed, the importer, exporter, broker, or trader must file an amendment to the Form 486 to notify DEA.

Revision of DEA Form 486: Import/Export Declaration for Precursor and Essential Chemicals

To comply with the changes made to the Controlled Substances Act by the Combat Methamphetamine Epidemic Act of 2005, DEA is revising the existing DEA Form 486, Import/Export Declaration. DEA notes that this form has not been revised or amended since its inception in 1989. Thus, this form has not kept pace with subsequent legislation including the Domestic Chemical Diversion Control Act of 1993, the Comprehensive Methamphetamine Control Act of 1996, and the Methamphetamine Anti-Proliferation Act of 2000. Therefore, some of the changes DEA is making to this form are not directly related to the CMEA. However, these changes are necessary for ease of use and clarity of the form.

Changes being made include the following:

- Changing the title of the form to: ''Import/Export Declaration for List I and List II Chemicals'' to more accurately characterize the use of the form.
- Adding a check box for ''international transaction'' in addition to existing fields for ''import'' and ''export.''
- Adding fields for DEA registration number and company identifier, if applicable.
- Adding a field for the foreign permit number, if applicable.
- Adding check boxes for the type of submission of the form: ''original,'' ''amended,'' and ''withdrawn.''
- Adding fields for the actual date and quantity imported.
- Adding fields for reporting by importers of the person to whom the listed chemical will be transferred, the downstream customer, per requirements of the CMEA.
- Adding fields regarding return declaration by importers and exporters.
- Removing the certification by the Customs District Director; this certification is now the responsibility of the importer or exporter as part of the return declaration.
- Eliminating a number of fields, including: gross weight of chemicals imported/exported; intermediate carriers; address of intermediate consignees.
- Reorganizing layout for clarity.

Implementation of This Rule

Effective May 9, 2007, all United States importers and exporters of List I and List II chemicals must use the revised DEA Form 486 to notify DEA of their imports and exports. This revised form will be available on the Diversion Control Program Web site, *http://www.deadiversion.usdoj.gov.*

Effective May 9, 2007, all persons previously granted regular importer status will no longer hold that status. Every import of a List I and List II chemical must be reported to DEA not later than 15 days prior to the proposed importation. This report must include

the name of the person to whom the chemical is proposed to be transferred and the amount of the chemical proposed to be transferred. DEA will evaluate each proposed importation based not only on the chemical to be imported but on the transferee information supplied by the importer as well. This process will allow for the establishment of regular customer status by transferees of United States importers, and for establishment of regular importer status by importers importing a specific listed chemical intended for sale to a specific customer.

Effective May 9, 2007, all persons importing and exporting List I and List II chemicals must provide the above discussed return declarations to DEA.

Note Regarding Importation of the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine

This rulemaking addresses all List I and List II chemicals. While ephedrine, pseudoephedrine, and phenylpropanolamine are List I chemicals and are covered by these regulations, other provisions of section 721 of the CMEA require the reporting of certain information regarding the foreign chain of distribution of these three List I chemicals. Other provisions of the CMEA require that these three List I chemicals be imported only if there is a medical, scientific, or other legitimate purpose for these chemicals. DEA is addressing these provisions in a separate rulemaking. Persons importing ephedrine, pseudoephedrine, and phenylpropanolamine are required to comply with the provisions of this rule until such time as the rulemaking regarding provision of information about the foreign chain of distribution is promulgated. At that time, persons importing these three List I chemicals will then be subject to those additional requirements.

Further, since the CMEA requires that these three List I chemicals be imported only if there is a medical, scientific, or other legitimate purpose for these chemicals, DEA must establish import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. DEA is addressing these provisions in separate rulemakings.

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking and allow for a period of public comment prior to implementing new rules. The APA also provides, however, that agencies can be excepted from these requirements when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' (5 U.S.C. 553(b)(B).

DEA has concluded that ''good cause'' exists to promulgate this rule as an interim final rule rather than a proposed rule because the mandates of the CMEA were set forth in such detail as to be self-implementing. The changes announced in this interim final rule render DEA's regulations consistent with the new provisions of the CMEA. Since DEA is without authority to revise this rule based on public comments, DEA finds that notice and opportunity for comment are unnecessary and impracticable under the APA (5 U.S.C. 553(b)(B)).

DEA is cognizant of the fact that exceptions to the APA's notice and comment procedures are to be ''narrowly construed and only reluctantly countenanced.'' *American Federation of Government Employees* v. *Block*, 655 F2d 1153, 1156 (D.C. Cir. 1981) (quoting *New Jersey Department of Environmental Protection* v. *EPA*, 626 F2d 1038, 1045 (D.C. Cir. 1980)). Based on the detailed requirements set forth in the CMEA which give no discretion in their implementation, however, DEA finds that the invocation of the ''good cause'' exception, and the issuance of this rule as an interim final rule, is justified.

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)). The RFA applies to rules that are subject to notice and comment. Because this rule is simply codifying statutory provisions, DEA has determined, as explained above, that public notice and comment are not necessary. Consequently, the RFA does not apply.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 § 1(b). It has been determined that this is ''a significant regulatory action.'' Therefore, this action has been reviewed by the Office of Management and Budget (OMB). As discussed above, this action is codifying statutory provisions and involves no agency discretion. This statutory change imposes minimal costs on United States importers, exporters, brokers, and traders; they simply have to file a form with DEA in advance of spot market transactions. They must also provide a return declaration after the import or export has occurred.

Paperwork Reduction Act

As discussed previously, the DEA is revising an information collection by revising the information collected on DEA Form 486: Import/Export Declaration for List I and List II Chemicals [OMB information collection 1117–0023]. Those changes have been discussed above, and are necessary for DEA to implement the provisions of the CMEA of 2005.

The Department of Justice, DEA, has submitted the following information collection request to the OMB for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Your comments on the information collection-related aspects of this rule should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* revision of an existing collection.

(2) *Title of the Form/Collection:* Import/Export Declaration for List I and List II Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 486.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: business or other for-profit.

Other: none.

Abstract: Persons importing, exporting, and conducting international transactions with List I and List II chemicals must notify DEA of those transactions in advance of their occurrence, including information regarding the person(s) to whom the chemical will be transferred and the quantity to be transferred. For importations, persons must also provide return declarations, confirming the date of the importation and transfer, and the amounts of the chemical transferred. This information is used to prevent shipments not intended for legitimate purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Number of respondents	Number of responses	Average time per response	Total hours
Form 486 (export)	225	7,917	0.2 hour (12 minutes)	1,583.4 hours.
Form 486 (export return declaration)	225	7,917	0.08 hour (5 minutes)	659.75 hours.
Form 486 (import)	216	2,278	0.25 hour (15 minutes)	569.5 hours.
Form 486 (import return declaration)*	216	2,506	0.08 hour (5 minutes)	208.8 hours.
Form 486 (international transaction)	9	111	0.2 hour (12 minutes)	22.2 hours.
Form 486 (international transaction return declaration)	9	111	0.08 hour (5 minutes)	9.25 hours.
Quarterly reports for imports of acetone, 2-butanone, and toluene	110	440	0.5 hour (30 minutes)	220 hours.
Total	225			3,272.9 hours.

*DEA assumes 10% of all imports will not be transferred in the first thirty days and will necessitate submission of a subsequent return declaration.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection will take 3,272.9 hours annually.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $118,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1313

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR parts 1300 and 1313 are amended as follows:

PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

■ 2. Section 1300.02 is amended by revising paragraphs (b)(12), (b)(13), and (b)(25) to read as follows:

§ 1300.02 Definitions related to listed chemicals.

* * * * *

(b) * * *

(12) The term *established business relationship* means the regulated person has imported or exported a listed chemical at least once within the past six months, or twice within the past twelve months from or to a foreign manufacturer, distributor, or end user of the chemical that has an established business with a fixed street address. A person or business that functions as a broker or intermediary is not a customer for purposes of this definition.

(13) The term *established record as an importer* means that the regulated person has imported a listed chemical at least once within the past six months, or twice within the past twelve months from a foreign supplier.

* * * * *

(25) The term *regular customer* means a person with whom the regulated person has an established business relationship for a specified listed chemical or chemicals that has been reported to the Administration subject to the criteria established in part 1313 of this chapter.

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PART 1313—IMPORTATION AND EXPORTATION OF LIST I AND LIST II CHEMICALS

■ 3. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

■ 4. The heading of part 1313 is revised to read as set forth above.

■ 5. Section 1313.05 is added to read as follows:

§ 1313.05 Requirements for an established business relationship.

To document that an importer or exporter has an established business relationship with a customer, the importer or exporter must provide the Administrator with the following information in accordance with the waiver of 15-day advance notice requirements of § 1313.15 or § 1313.24:

(a) The name and street address of the chemical importer or exporter and of each regular customer;

(b) The telephone number, contact person, and where available, the facsimile number for the chemical importer or exporter and for each regular customer;

(c) The nature of the regular customer's business (*i.e.*, importer, exporter, distributor, manufacturer, etc.), and if known, the use to which the listed chemical or chemicals will be applied;

(d) The duration of the business relationship;

(e) The frequency and number of transactions occurring during the preceding 12-month period;

(f) The amounts and the listed chemical or chemicals involved in regulated transactions between the chemical importer or exporter and regular customer;

(g) The method of delivery (direct shipment or through a broker or forwarding agent); and

(h) Other information that the chemical importer or exporter considers relevant for determining whether a customer is a regular customer.

■ 6. Section 1313.08 is added to read as follows:

§ 1313.08 Requirements for establishing a record as an importer.

To establish a record as an importer, the regulated person must provide the Administrator with the following information in accordance with the waiver of the 15-day advance notice requirements of § 1313.15:

(a) The name, DEA registration number (where applicable), street address, telephone number, and, where available, the facsimile number of the regulated person and of each foreign supplier; and

(b) The frequency and number of transactions occurring during the preceding 12 month period.

■ 7. Section 1313.12 is amended by revising paragraph (c) to read as follows:

§ 1313.12 Requirement of authorization to import.

* * * * *

(c) The 15-day advance notification requirement for listed chemical imports may be waived for the following:

(1) Any importation that meets both of the following requirements:

(i) The regulated person has satisfied the requirements for reporting to the Administration as a regular importer of the listed chemicals.

(ii) The importer intends to transfer the listed chemicals to a person who is a regular customer for the chemical, as defined in § 1300.02 of this chapter.

(2) A specific listed chemical, as set forth in paragraph (f) of this section, for which the Administrator determines that advance notification is not necessary for effective chemical diversion control.

* * * * *

■ 8. Section 1313.13 is amended by revising paragraph (c)(4) and adding paragraph (c)(5) to read as follows:

§ 1313.13 Contents of import declaration.

* * * * *

(c) * * *

(4) The name, address, telephone number, telex number, and, where available, the facsimile number of the consigner in the foreign country of exportation; and

(5) The name, address, telephone number, and where available, the facsimile number of the person or persons to whom the importer intends to transfer the listed chemical and the quantity to be transferred to each transferee.

■ 9. Section 1313.15 is amended by revising paragraph (a) to read as follows:

§ 1313.15 Waiver of 15-day advance notice for regular importers.

(a) Each regulated person seeking designation as a ''regular importer'' shall provide, by certified mail return receipt requested, to the Administration such information as is required under § 1313.08 documenting their status as a regular importer.

* * * * *

■ 10. Section 1313.16 is added to read as follows:

§ 1313.16 Transfers following importation.

(a) In the case of a notice under § 1313.12(a) submitted by a regulated person, if the transferee identified in the notice is not a regular customer, the importer may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the notice is submitted to the Administration.

(b) After a notice under § 1313.12(a) or (d) is submitted to the Administration, if circumstances change and the importer will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the importer must update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be) and may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the update is submitted to the Administration, except that the 15-day restriction does not apply if the prospective transferee identified in the update is a regular customer. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as the sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under § 1313.12(a) or (d).

(c) In the case of a transfer of a listed chemical that is subject to a 15-day restriction, the transferee involved shall, upon the expiration of the 15-day period, be considered to qualify as a regular customer, unless the Administration otherwise notifies the importer involved in writing.

(d) With respect to a transfer of a listed chemical with which a notice or update referred to in § 1313.12(a) or (d) is concerned:

(1) The Administration—

(i) May, in accordance with the same procedures as apply under §§ 1313.51 through 1313.57, order the suspension

of the transfer of the listed chemical by the importer involved, except for a transfer to a regular customer, on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance (without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred), subject to the Administration ordering the suspension before the expiration of the 15-day period with respect to the importation (in any case in which such a period applies); and

(ii) May, for purposes of this paragraph (d), disqualify a regular customer on that ground.

(2) From and after the time when the Administration provides written notice of the order under paragraph (d)(1)(i) of this section (including a statement of the legal and factual basis for the order) to the importer, the importer may not carry out the transfer.

(e) For purposes of this section:

(1) The term *transfer,* with respect to a listed chemical, includes the sale of the chemical.

(2) The term *transferee* means a person to whom an importer transfers a listed chemical.

■ 11. Section 1313.17 is added to read as follows:

§ 1313.17 Return declaration or amendment to Form 486 for imports.

(a) Within 30 days after a transaction is completed, the importer must send to the Administration a return declaration containing particulars of the transaction, including the date, quantity, chemical, container, name of transferees, and any other information as the Administration may specify. A single return declaration may include the particulars of both the importation and distribution. If the importer has not distributed all chemicals imported by the end of the initial 30-day period, the importer must file supplemental return declarations no later than 30 days from the date of any further distribution, until the distribution or other disposition of all chemicals imported under the import notification or any update are accounted for.

(b) If an importation for which a Form 486 has been filed fails to take place, the importer must file an amended Form 486 notifying the Administration that the importation did not occur.

■ 12. Section 1313.26 is added to read as follows:

§ 1313.26 Transfers following exportation.

(a) In the case of a notice under § 1313.21(a) submitted by a regulated person, if the transferee identified in the notice, *i.e.*, the foreign importer, is not a regular customer, the regulated person may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the notice is submitted to the Administration.

(b) After a notice under § 1313.21(a) is submitted to the Administration, if circumstances change and the exporter will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the exporter must update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be) and may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the update is submitted to the Administration, except that the 15-day restriction does not apply if the prospective transferee identified in the update is a regular customer. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as the sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under paragraph (a) of this section.

(c) In the case of a transfer of a listed chemical that is subject to a 15-day restriction, the transferee involved shall, upon the expiration of the 15-day period, be considered to qualify as a regular customer, unless the Administration otherwise notifies the exporter involved in writing.

(d) With respect to a transfer of a listed chemical with which a notice or update referred to in § 1313.21(a) is concerned:

(1) The Administration—

(i) May, in accordance with the same procedures as apply under §§ 1313.51 through 1313.57, order the suspension of the transfer of the listed chemical by the exporter involved, except for a transfer to a regular customer, on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance (without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred), subject to the Administration ordering the suspension before the expiration of the 15-day period with respect to the exportation (in any case in which such a period applies); and

(ii) May, for purposes of this paragraph (d), disqualify a regular customer on that ground.

(2) From and after the time when the Administration provides written notice of the order under paragraph (d)(1)(i) of this section (including a statement of the legal and factual basis for the order) to the exporter, the exporter may not carry out the transfer.

(e) For purposes of this section:

(1) The term *transfer,* with respect to a listed chemical, includes the sale of the chemical.

(2) The term *transferee* means a person to whom an exporter transfers a listed chemical.

■ 13. Section 1313.27 is added to read as follows:

§ 1313.27 Return declaration or amendment to Form 486 for exports.

(a) Within 30 days after a transaction is completed, the exporter must send to the Administration a return declaration containing particulars of the transaction, including the date, quantity, chemical, container, name of transferees, and any other information as the Administration may specify.

(b) If an exportation for which a Form 486 has been filed fails to take place, the exporter must file an amended Form 486 notifying the Administration that the exportation did not occur.

■ 14. Section 1313.32 is amended by adding paragraphs (d) and (e) to read as follows:

§ 1313.32 Requirement of authorization for international transactions.

* * * * *

(d) After a notice under paragraph (a) of this section is submitted to the Administration, if circumstances change and the broker or trader will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the broker or trader must update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be). The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as the sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under paragraph (a) of this section.

(e) For purposes of this section:

(1) The term *transfer*, with respect to a listed chemical, includes the sale of the chemical.

(2) The term *transferee* means a person to whom an exporter transfers a listed chemical.

■ 15. Section 1313.35 is added to read as follows:

§ 1313.35 Return declaration or amendment to Form 486 for international transactions.

(a) Within 30 days after a transaction is completed, the broker or trader must send to the Administration a return declaration containing particulars of the transaction, including the date, quantity, chemical, container, name of transferees, and any other information as the Administration may specify.

(b) If a transaction for which a Form 486 has been filed fails to take place, the broker or trader must file an amended Form 486 notifying the Administration that the transaction did not occur.

Dated: March 30, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 07–1718 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 160

[USCG–2006–25150; Correction]

RIN 1625–ZA08

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains a correction to the section addressing appeals for orders issued pursuant to the Coast Guard's regulations implementing the Ports and Waterways Safety Act (USCG–2006–25150) published on July 12, 2006, in the **Federal Register** (71 FR 39206).

DATES: This correction is effective April 9, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–25150 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Commander Michael Cunningham, Coast Guard, telephone 202–372–1129. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: Each year Title 33 of the Code of Federal Regulations is updated on July 1. On July 12, 2006, the Coast Guard published a final rule (USCG–2006–25150) to make technical, organizational, conforming amendments and other editorial corrections throughout Title 33. (71 FR 39206) Due to a drafting error in the July 12th final rule the appeals process in § 160.7 is now deficient. The July 12th final rule ascribes authorities not within the realm of the Area Commander and does not clearly allow for an appeal of Area Commander decisions to Coast Guard Headquarters. This correction document makes corrections to the revisions in § 160.7 found in the July 12th final rule.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

■ Accordingly, 33 CFR part 160 is corrected by making the following correcting amendments:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

■ 2. Amend § 160.7 to revise paragraphs (c) and (d) to read as follows:

§ 160.7 Appeals.

* * * * *

(c) Any person directly affected by the establishment of a safety zone or by an order or direction issued by, or on behalf of, a District Commander, or who receives an unfavorable ruling on an appeal taken under paragraph (b) of this section may appeal to the Area Commander through the District Commander. The appeal must be in writing, except as allowed under paragraph (e) of this section, and shall contain complete supporting documentation and evidence which the appellant wishes to have considered. Upon receipt of the appeal, the Area Commander may direct a representative to gather and submit documentation or other evidence which would be necessary or helpful to a resolution of the appeal. A copy of this documentation and evidence is made available to the appellant. The appellant is afforded five working days from the date of receipt to submit rebuttal materials. Following submission of all materials, the Area Commander issues a ruling, in writing, on the appeal. Prior to issuing the ruling, the Area Commander may, as a matter of discretion, allow oral presentation on the issues.

(d) Any person who receives an unfavorable ruling on an appeal taken under paragraph (c) of this section, may appeal through the Area Commander to the Assistant Commandant for Prevention (formerly known as the Assistant Commandant for Marine Safety, Security and Environmental Protection), U.S. Coast Guard, Washington, DC 20593. The appeal must be in writing, except as allowed under paragraph (e) of this section. The Area Commander forwards the appeal, all the documents and evidence which formed the record upon which the order or direction was issued or the ruling under paragraph (c) of this section was made, and any comments which might be relevant, to the Assistant Commandant for Prevention. A copy of this documentation and evidence is made available to the appellant. The appellant is afforded five working days from the date of receipt to submit rebuttal materials to the Assistant Commandant for Prevention. The decision of the Assistant Commandant for Prevention is based upon the materials submitted, without oral argument or presentation. The decision of the Assistant Commandant for Prevention is issued in writing and constitutes final agency action.

* * * * *

Dated: March 27, 2007.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E7–6099 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–17

[FTR Amendment 2007–02; FTR Case 2007–302; Docket 2007–0002, Sequence 2]

RIN 3090–AI35

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables—2007 Update

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This rule updates the Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance, to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for use in calculating the 2007 RIT allowance to be paid to relocating Federal employees.

DATES: *Effective Date:* This final rule is effective April 9, 2007.

Applicability date: This final rule provides tax information for filing 2006 Federal and State income taxes.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VIR), Room 4035, GSA Building, Washington, DC 20405, telephone (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ed Davis, Office of Governmentwide Policy, Travel Management Policy (MTT), Washington, DC 20405, telephone (202) 208–7638. Please cite FTR Amendment 2007–02, FTR case 2007–302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5724b of Title 5, United States Code, provides for reimbursement of substantially all Federal, State, and local income taxes incurred by a transferred Federal employee on taxable moving expense reimbursements. Policies and procedures for the calculation and payment of the RIT allowance are contained in the Federal Travel Regulation (41 CFR part 302–17). GSA updates Federal, State, and Puerto Rico tax tables for calculating RIT allowance payments yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates.

This amendment also provides a tax table necessary to compute the RIT allowance for employees who received reimbursement for relocation expenses in 2006.

B. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553(a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–17

Government employees, Income taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

Dated: March 23, 2007.

Lurita Doan,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5738, GSA amends 41 CFR part 302–17 as set forth below:

PART 302–17—RELOCATION INCOME TAX (RIT) ALLOWANCE

■ 1. The authority citation for 41 CFR part 302–17 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

■ 2. Revise Appendices A, B, C, and D to part 302–17 to read as follows:

Appendix A to Part 302–17—Federal Tax Tables for RIT Allowance

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 2006

[Use the following table to compute the RIT allowance for Federal taxes, as prescribed in § 302–17.8(e)(1), on Year 1 marginal taxable reimbursements received during calendar year 2006]

Marginal tax rate	Single taxpayer		Head of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$8,739	$16,560	$16,538	$27,374	$24,163	$38,534	$12,036	$19,194
15	16,560	41,041	27,374	59,526	38,534	86,182	19,194	43,330
25	41,041	88,541	59,526	128,605	86,182	154,786	43,330	79,441
28	88,541	175,222	128,605	203,511	154,786	224,818	79,441	114,716
33	175,222	360,212	203,511	375,305	224,818	374,173	114,716	188,184
35	360,212	.....	375,305	.....	374,173	.....	188,184	.....

Appendix B to Part 302–17—State Tax Tables for RIT Allowance

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 2006

[Use the following table to compute the RIT allowance for State taxes, as prescribed in § 302–17.8(e)(2), on taxable reimbursements received during calendar year 2006. The rates on the first line for each State are for employees who are married and file jointly; if there is a second line for a State, it displays the rates for employees who file as single. For more additional information, such as State rates for other filing statuses, please see the 2007 State Tax Handbook, pp. 255–270, available from CCH Inc., *http://tax.cchgroup.com/Books/default*.]

State (or District)	Marginal tax rates (*stated in percents*) for the earned income amounts specified in each column.[1 2 3]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over[4]
Alabama	5.00	5.00	5.00	5.00
Alaska	0.00	0.00	0.00	0.00
Arizona	3.04	3.04	3.55	3.55
If single status, married filing separately[5]	3.04	3.55	4.48	4.48
Arkansas	6.00	7.00	7.00	7.00
California	2.00	6.00	9.30	9.30
If single status, married filing separately[5]	6.00	8.00	9.30	9.30
Colorado	4.63	4.63	4.63	4.63
Connecticut	5.00	5.00	5.00	5.00
Delaware	5.20	5.55	5.95	5.95
District of Columbia	7.00	7.00	8.70	8.70
Florida	0.00	0.00	0.00	0.00
Georgia	6.00	6.00	6.00	6.00
Hawaii	6.40	7.60	7.90	8.25
If single status, married filing separately[5]	7.60	7.90	8.25	8.25
Idaho	7.40	7.80	7.80	7.80
If single status, married filing separately[5]	7.80	7.80	7.80	7.80
Illinois	3.00	3.00	3.00	3.00
Indiana	3.40	3.40	3.40	3.40
Iowa	6.48	7.92	8.98	8.98
Kansas	6.25	6.45	6.45	6.45
Kentucky	5.80	5.80	5.80	6.00
Louisiana	2.00	4.00	6.00	6.00
If single status, married filing separately[5]	4.00	6.00	6.00	6.00
Maine	7.00	8.50	8.50	8.50
If single status, married filing separately[5]	8.50	8.50	8.50	8.50
Maryland	4.75	4.75	4.75	4.75
Massachusetts	5.30	5.30	5.30	5.30
Michigan	3.90	3.90	3.90	3.90
Minnesota	5.35	7.05	7.05	7.05
If single status, married filing separately[5]	7.05	7.05	7.85	7.85
Mississippi	5.00	5.00	5.00	5.00
Missouri	6.00	6.00	6.00	6.00
Montana	6.90	6.90	6.90	6.90
Nebraska	3.57	6.84	6.84	6.84
If single status, married filing separately[5]	5.12	6.84	6.84	6.84
Nevada	0.00	0.00	0.00	0.00
New Hampshire	0.00	0.00	0.00	0.00
New Jersey	1.75	1.75	3.50	5.525
If single status, married filing separately[5]	1.75	5.525	5.525	6.370
New Mexico	5.30	5.30	5.30	5.30
New York	5.25	6.85	6.85	6.85
If single status, married filing separately[5]	6.85	6.85	6.85	6.85
North Carolina	7.00	7.00	7.00	7.00
If single status, married filing separately[5]	7.00	7.00	7.75	7.75
North Dakota	2.10	2.10	3.92	3.92
If single status, married filing separately[5]	2.10	3.92	4.34	4.34
Ohio	4.083	4.083	4.764	5.444
Oklahoma	6.25	6.25	6.25	6.25
Oregon	9.00	9.00	9.00	9.00
Pennsylvania	3.07	3.07	3.07	3.07
Rhode Island[6]	3.75	7.00	7.00	7.00
If single status, married filing separately[5]	3.75	7.00	7.00	7.75
South Carolina	7.00	7.00	7.00	7.00
South Dakota	0.00	0.00	0.00	0.00
Tennessee	0.00	0.00	0.00	0.00
Texas	0.00	0.00	0.00	0.00
Utah	6.98	6.98	6.98	6.98
Vermont	3.60	3.60	7.20	7.20
If single status, married filing separately[5]	3.60	7.20	8.50	8.50
Virginia	5.75	5.75	5.75	5.75
Washington	0.00	0.00	0.00	0.00
West Virginia	4.00	6.00	6.50	6.50
Wisconsin	6.50	6.50	6.50	6.50

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 2006—Continued

[Use the following table to compute the RIT allowance for State taxes, as prescribed in § 302–17.8(e)(2), on taxable reimbursements received during calendar year 2006. The rates on the first line for each State are for employees who are married and file jointly; if there is a second line for a State, it displays the rates for employees who file as single. For more additional information, such as State rates for other filing statuses, please see the 2007 State Tax Handbook, pp. 255–270, available from CCH Inc., *http://tax.cchgroup.com/Books/default.*]

Marginal tax rates (*stated in percents*) for the earned income amounts specified in each column.[1 2 3]				
State (or District)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & over[4]
Wyoming	0.00	0.00	0.00	0.00

[The above table/column headings established by IRS.]

[1] Earned income amounts that fall between the income brackets shown in this table (*e.g.*, $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–17.8(e)(2)(ii).

[3] If two or more marginal tax rates of a State overlap an income bracket shown in this table, then the highest of the two or more State marginal tax rates is shown for that entire income bracket. For more specific information, see the 2007 State Tax Handbook, pp. 255–270, CCH, Inc., *http://tax.cchgroup.com/Books/default.*

[4] This is an estimate. For earnings over $100,000, and for filing statuses other than those above, please consult actual tax tables. See 2007 State Tax Handbook, pp. 255–270, CCH, Inc., *http://tax.cchgroup.com/Books/default.*

[5] This rate applies only to those individuals certifying that they will file under a single or married filing separately status within the states where they will pay income taxes.

[6] The income tax rate for Rhode Island is 25 percent of Federal income tax rates, including capital gains rates and any another other special rates for other types of income. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–17.8(e)(2)(iii). Effective for the 2006 tax year, tax payers may elect to compute income tax liability based on a graduated rate schedule or an alternative flat tax equal to 8%.

Appendix C to Part 302–17—Federal Tax Tables for RIT Allowance—Year 2

ESTIMATED RANGES OF WAGE AND SALARY INCOME CORRESPONDING TO FEDERAL STATUTORY MARGINAL INCOME TAX RATES BY FILING STATUS IN 2007

[The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–17.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, or 2006]

Marginal tax rate	Single taxpayer		Head of household		Married filing jointly/ qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
10	$9,287	$17,545	$18,060	$29,399	$26,173	$41,393	$14,049	$21,441
15	17,545	43,394	29,399	62,576	41,393	91,201	21,441	45,388
25	43,394	93,101	62,576	138,856	91,201	162,117	45,388	81,616
28	93,101	183,867	138,856	216,022	162,117	233,656	81,616	119,660
33	183,867	376,616	216,022	389,045	233,656	387,765	119,660	197,483
35	376,616	.....	389,045	.....	387,765	.....	197,483	.....

Appendix D to Part 302–17—Puerto Rico Tax Tables for RIT Allowance

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 2006

[Use the following table to compute the RIT allowance for Puerto Rico taxes, as prescribed in § 302–17.8(e)(4)(i), on taxable reimbursements received during calendar year 2006.]

Marginal tax rate	For married person living with spouse and filing jointly, married person not living with spouse, single person, or head of household		For married person living with spouse and filing separately	
	Over	But not over	Over	But not over
10	$2,000	$17,000	$1,000	$8,500
15	17,000	30,000	8,500	15,000
28	30,000	50,000	15,000	25,000
33	50,000	.....	25,000	.....

Source: *Individual Income Tax Return 2006—Long Form;* Commonwealth of Puerto Rico, Department of the Treasury, P.O. Box 9022501, San Juan, PR 00902–2501; *http://www.hacienda.gobierno.pr/planillas_y_formularios/formularios.html.*

[FR Doc. E7–6729 Filed 4–6–07; 8:45 am]
BILLING CODE 6820–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
City of New York, New York Docket No.: FEMA–D–7678				
New York	New York (City)	Amboy Road Wetland (Staten Island).	Entire shoreline within the community	*50
		Arbutus Creek (Staten Island).	Approximately 530 feet upstream of Hylan Boulevard.	*16
			Approximately 980 feet upstream of Amboy Road.	*57
		Blue Heron Main Branch (Staten Island).	Approximately 100 feet upstream of Hylan Boulevard.	*17
			Approximately 1,700 feet upstream of Tallman Street.	*70
		Blue Heron Tributary (Staten Island).	At the confluence with Blue Heron Main Branch.	*36
			Approximately 35 feet upstream of Holbridge Avenue.	*70
		Bronx River (Bronx)	Approximately 600 feet upstream of Tremont Street.	*15
			Approximately 1,650 feet upstream of East 24th Street.	*74

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
		Butler Manor (Staten Island).	Approximately 75 feet upstream of the confluence with Raritan Bay.	*10
			Approximately 0.6 mile upstream of the confluence with Raritan Bay.	*33
		Cleveland Avenue Wetland (Staten Island).	Entire shoreline within the community	*58
		Colon Tributary (Staten Island).	At the confluence with Sweet Brook	*15
			Approximately 145 feet upstream of Pemberton Avenue.	*41
		D Street Brook (Staten Island).	At D Street	*97
			Approximately 1,530 feet upstream of D Street.	*155
		Denise Tributary (Staten Island).	Approximately 260 feet upstream of the confluence of Arbutus Creek.	*18
			Approximately 1,205 feet upstream of Jansen Street.	*49
		Eibs Pond (Staten Island)	Entire shoreline within the community	*87
		Eltingville Tributary (Staten Island).	At the confluence with Sweet Brook	*38
			Approximately 406 feet upstream of Katan Avenue.	*45
		Foresthill Road Brook (Staten Island).	Approximately 1,450 feet downstream of Foresthill Road.	*5
			Approximately 3,070 feet upstream of Alaska Place.	*74
		Hillside Avenue Wetland (Staten Island).	Entire shoreline within the community	*56
		Jacks Pond (Staten Island).	Entire shoreline within the community	*52
		Jansen Tributary (Staten Island).	Approximately 330 feet upstream of confluence with Arbutus Creek.	*25
			Approximately 1,340 feet upstream of confluence with Arbutus Creek.	*41
		Lemon Creek (Staten Island).	Approximately 40 feet upstream of Staten Island Rapid Transit Bridge.	*17
			Approximately 350 feet upstream of Rossville Avenue.	*101
		Mill Creek (Staten Island)	Approximately 80 feet downstream of Richmond Valley Road.	*11
			Approximately 1,320 feet upstream of West Veterans Road.	*77
		Mill Creek Tributary 1 (Staten Island).	At the confluence with Mill Creek	*41
			Approximately 230 feet from the downstream side of the West Shore Expressway.	*60
		Mill Creek Tributary 2 (Staten Island).	At the confluence with Mill Creek	*10
			At the confluence of Mill Creek Tributary 3.	*13
		Mill Creek Tributary 3 (Staten Island).	At the confluence with Mill Creek Tributary 2.	*13
			Approximately 860 feet upstream of confluence with Mill Creek Tributary 2.	*22
		Richmond Creek (Staten Island).	Approximately 510 feet downstream of Richmond Hill Road.	*6
			Approximately 0.86 mile upstream of Rockland Avenue.	*254
		Sandy Brook (Staten Island).	Approximately 190 feet upstream of Richmond Parkway (Drumgoole Avenue).	*39
			Approximately 1,100 feet upstream of Bloomingdale Road.	*84
		Stump Pond (Staten Island).	Entire shoreline within the community	*271
		Sweet Brook (Staten Island).	Approximately 3,200 feet downstream of Genesee Avenue.	*12

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
			Approximately 1,050 feet upstream of Richmond Avenue/Drumgoogle Avenue.	*99
		Wolfes Pond (Staten Island).	Approximately 1,175 feet upstream of Seguine Avenue.	*10
			Approximately 175 feet upstream of Hylan Boulevard.	*21
		Wood Duck Pond (Staten Island).	Entire shoreline within the community	*54

Depth in feet above ground.
* National Geodetic Vertical Datum.
+North American Vertical Datum.

ADDRESSES

Maps are available for inspection at the New York City Planning Department, Waterfront and Open Space Division, 22 Reade Street, Room 6E, New York, New York.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Burke County, North Carolina and Incorporated Areas Docket Nos.: FEMA–D–7676 and FEMA–D–7680			
Back Creek	At the confluence with Irish Creek	+1,116	Burke County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Irish Creek.	+1,135	
Bailey Fork	Approximately 0.8 mile upstream of I–40	+1,036	Burke County (Unincorporated Areas), City of Morganton.
	Approximately 100 feet downstream of U.S. 64	+1,047	
Bristol Creek	At the confluence with Lower Creek	+1,019	Burke County (Unincorporated Areas).
	Approximately 200 feet downstream of Burke/Caldwell County boundary.	+1,144	
Tributary 1	At the confluence with Bristol Creek	+1,019	Burke County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Bristol Creek.	+1,019	
Camp Creek	At Burke/Catawba County boundary	+1,020	Burke County (Unincorporated Areas).
	Approximately 800 feet upstream of Burke/Catawba County boundary.	+1,023	
Canoe Creek	At the confluence with Catawba River	+1,024	Burke County (Unincorporated Areas), City of Morganton.
	Approximately 0.4 mile upstream of SR 1254	+1,289	
Carroll Creek	At the confluence with Parks Creek	+1,047	Burke County (Unincorporated Areas).
	Approximately 1,700 feet upstream of the confluence with Parks Creek.	+1,055	
Catawba River	At the Burke/Catawba County boundary	+936	Burke County (Unincorporated Areas), City of Hickory, City of Morganton, Town of Glen Alpine, Town of Rhodhiss, Town of Rutherford College, Town of Valdese.
	Approximately 2.7 miles upstream of Burke/McDowell County boundary.	+1,206	
Tributary 1	At the confluence with Catawba River	+1,069	Burke County (Unincorporated Areas).
	Approximately 0.5 mile upstream of SR 1223	+1,094	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary 2	At the confluence with Catawba River	+1,206	Burke County (Unincorporated Areas).
	Approximately 2.8 miles upstream of the confluence with Catawba River.	+1,236	
Clear Creek	Approximately 100 feet upstream of the confluence with Silver Creek.	+1,046	Burke County (Unincorporated Areas).
	Approximately 400 feet upstream of U.S. 64	+1,111	
Cub Creek	At the confluence with Henry Fork	+996	Burke County (Unincorporated Areas).
	Approximately 1.0 mile upstream of SR 1001	+1,230	
Double Branch	At the confluence with McGalliard Creek	+1,097	Burke County (Unincorporated Areas), Town of Valdese.
	Approximately 1,100 feet upstream of SR 1737	+1,231	
Tributary 1	At the confluence with Double Branch	+1,110	Burke County (Unincorporated Areas).
	Approximately 2,000 feet upstream of SR 1722	+1,197	
Douglas Creek	Approximately 100 feet downstream of Burke/Catawba County boundary.	+1,046	Burke County (Unincorporated Areas).
	Approximately 1,400 feet upstream of Burke/Catawba County boundary.	+1,064	
Drowning Creek	At the confluence with Catawba River	+938	Burke County (Unincorporated Areas).
	Approximately 1.7 miles upstream of SR 1758	+1,527	
Tributary 1	Approximately 800 feet upstream of Wilson Road	+1,025	Town of Hildebran.
	Approximately 1,750 feet upstream of Cline Park Drive	+1,103	
Tributary 2	Approximately 0.4 mile downstream of SR 1680	+1,045	Burke County (Unincorporated Areas).
	Approximately 200 feet downstream of Railroad	+1,079	
Tributary 2B	At the confluence with Drowning Creek Tributary 2	+1,046	Burke County (Unincorporated Areas).
	Approximately 150 feet downstream of Railroad	+1,077	
Dye Branch	At the confluence with McGalliard Creek	+1,078	Burke County (Unincorporated Areas), Town of Valdese.
	Approximately 655 feet upstream of Praley Street	+1,193	
Hall Creek	At the confluence with Silver Creek	+1,119	Burke County (Unincorporated Areas).
	Approximately 2,000 feet upstream of U.S. 64	+1,203	
Henry Fork	Approximately 200 feet downstream of the Burke/Catawba County boundary.	+930	Burke County (Unincorporated Areas).
	Approximately 0.9 mile upstream of SR 1918	+1,422	
Howard Creek	At the confluence with Catawba River	+1,005	Burke County (Unincorporated Areas), Town of Drexel.
	Approximately 750 feet downstream of SR 1536	+1,009	
Tributary 1	Approximately 200 feet upstream of the confluence with Howard Creek.	+1,085	Burke County (Unincorporated Areas), Town of Drexel.
	Approximately 700 feet upstream of Railroad	+1,192	
Hoyle Creek	At the confluence with Catawba River	+1,005	Burke County (Unincorporated Areas), Town of Rutherford College, Town of Valdese.
	Approximately 1,600 feet upstream of the confluence of Micol Creek.	+1,081	
Tributary 1	At the confluence with Hoyle Creek	+1,005	Burke County (Unincorporated Areas), Town of Rutherford College, Town of Valdese.
	Approximately 0.9 mile upstream of the confluence with Hoyle Creek.	+1,164	
Tributary 2	At the confluence with Hoyle Creek	+1,005	Burke County (Unincorporated Areas), Town of Rutherford College, Town of Valdese.
	Approximately 0.7 mile upstream of the confluence with Hoyle Creek.	+1,106	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Hunting Creek	At the confluence with Catawba River	+1,014	Burke County (Unincorporated Areas), City of Morganton.
	Approximately 1,050 feet upstream of SR 2002	+1,149	
Tributary 2	Approximately 650 feet upstream of the confluence with Hunting Creek.	+1,080	Burke County (Unincorporated Areas), City of Morganton.
	Approximately 0.7 mile upstream of Walker Road	+1,151	
Tributary 3	At the confluence with Hunting Creek	+1,105	Burke County (Unincorporated Areas), City of Morganton.
	Approximately 0.4 mile upstream of the confluence with Hunting Creek.	+1,115	
Irish Creek	At the confluence with Warrior Fork and Upper Creek	+1,030	Burke County (Unincorporated Areas).
	Approximately 900 feet upstream of the confluence of Reedys Fork Creek.	+1,146	
Tributary 1	At the confluence with Irish Creek	+1,108	Burke County (Unincorporated Areas).
	Approximately 50 feet downstream of SR 1240	+1,127	
Island Creek	Approximately 1.0 mile upstream of the confluence with Catawba River.	+1,005	Burke County (Unincorporated Areas), Town of Connelly Springs, Town of Rutherford College.
	Approximately 0.9 mile upstream of I–40	+1,331	
Jacob Fork	At Burke/Catawba County boundary	+1,047	Burke County (Unincorporated Areas).
	Approximately 400 feet upstream of SR 1904	+1,194	
Johns River	At the confluence with Catawba River	+1,013	Burke County (Unincorporated Areas), City of Morganton.
	At Burke/Caldwell County boundary	+1,053	
Laurel Creek	At the confluence with Henry Fork	+1,015	Burke County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Shouppe Way	+1,302	
Linville River	At the confluence with Catawba River	+1,206	Burke County (Unincorporated Areas).
	At Avery/Burke County boundary	+3,215	
Little Silver Creek	Approximately 0.6 mile upstream of Causby Road (SR 1147).	+1,115	Burke County (Unincorporated Areas), City of Morganton, Town of Glen Alpine.
	Approximately 1.1 miles upstream of Ceramic Tile Drive	+1,226	
Lower Creek	At the confluence with Catawba River	+1,011	Burke County (Unincorporated Areas).
	At Burke/Caldwell County boundary	+1,028	
McGalliard Creek	At the confluence with Catawba River	+1,005	Burke County (Unincorporated Areas), Town of Valdese.
	Approximately 450 feet upstream of SR 1722	+1,212	
Tributary 1	Approximately 300 feet upstream of the confluence with McGalliard Creek.	+1,062	Burke County (Unincorporated Areas), Town of Valdese.
	Approximately 1,900 feet upstream of Louise Avenue Northeast.	+1,232	
Tributary 2	Approximately 100 feet upstream of the confluence with McGalliard Creek.	+1,089	Burke County (Unincorporated Areas), Town of Drexel.
	Approximately 650 feet downstream of I–40	+1,250	
Tributary 2A	At the confluence with McGalliard Creek Tributary 2	+1,110	Burke County (Unincorporated Areas), Town of Drexel.
	Approximately 800 feet upstream of Drexel. Road	+1,164	
Tributary 2B	At the confluence with McGalliard Creek Tributary 2	+1,149	Burke County (Unincorporated Areas), Town of Drexel.
	Approximately 200 feet downstream of SR 1721	+1,205	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Micol Creek	At the confluence with Hoyle Creek	+1,068	Burke County (Unincorporated Areas), Town of Valdese.
	Approximately 300 feet downstream of I–40	+1,252	
Tributary 1	At the confluence with Micol Creek	+1,117	Burke County (Unincorporated Areas), Town of Rutherford College, Town of Valdese.
	Approximately 0.5 mile upstream of Montanya View Drive	+1,526	
Tributary 1A	At the confluence with Micol Creek Tributary 1A	+1,165	Burke County (Unincorporated Areas), Town of Rutherford College, Town of Valdese.
	Approximately 100 feet downstream of SR 1001	+1,229	
Tributary 1A1	At the confluence with Micol Creek Tributary 1A	+1,169	Burke County (Unincorporated Areas), Town of Rutherford College.
	Approximately 1,800 feet upstream of Rutherford College Road.	+1,229	
Muddy Creek	At the confluence with Old Catawba River	+1,083	Burke County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Burke/McDowell County boundary.	+1,089	
Nolden Creek	Approximately 1.0 mile upstream of the confluence with Catawba River.	+1,004	Burke County (Unincorporated Areas), Town of Connelly Springs.
	Approximately 0.9 mile upstream of SR 1614	+1,201	
Old Catawba River	At the confluence with Catawba River	+1,066	Burke County (Unincorporated Areas).
	At Catawba Dam	+1,098	
Paddy Creek	At the confluence with Catawba River	+1,206	Burke County (Unincorporated Areas).
	Approximately 2.9 miles upstream of SR 1237	+1,815	
Parks Creek	At the confluence with Johns River	+1,044	Burke County (Unincorporated Areas).
	Approximately 100 feet downstream of SR 1405	+1,050	
Pearcy Creek	At the confluence with Parks Creek	+1,046	Burke County (Unincorporated Areas).
	Approximately 1.1 miles upstream of SR 1405	+1,154	
Tributary 1	At the confluence with Pearcy Creek	+1,077	Burke County (Unincorporated Areas).
	Approximately 50 feet downstream of SR 1405	+1,116	
Reedys Fork Creek	At the confluence with Irish Creek	+1,141	Burke County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Irish Creek.	+1,159	
Roses Creek	At the confluence with Irish Creek	+1,057	Burke County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Roses Creek Tributary 1.	+1,345	
Tributary 1	At the confluence with Roses Creek	+1,297	Burke County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Roses Creek.	+1,382	
Russell Creek	At the confluence with Irish Creek	+1,115	Burke County (Unincorporated Areas).
	Approximately 1,550 feet upstream of SR 1241	+1,209	
Sandy Run	Approximately 1.7 miles upstream of the confluence with Hunting Creek.	+1,113	Burke County (Unincorporated Areas).
	Approximately 2.4 miles upstream of the confluence with Hunting Creek.	+1,156	
Secrets Creek	Approximately 150 feet upstream of the confluence with Howard Creek.	+1,011	Burke County (Unincorporated Areas), Town of Drexel.
	Approximately 0.7 mile upstream of South Main Street	+1,213	
Silver Creek	At the confluence with Catawba River	+1,023	Burke County (Unincorporated Areas), City of Morganton.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,900 feet upstream of U.S. 64	+1,226	
Tributary 1	At the confluence with Silver Creek	+1,023	City of Morganton.
	Approximately 1,050 feet upstream of Golf Course Road	+1,025	
Simpson Creek	At the confluence with Roses Creek	+1,089	Burke County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Roses Creek.	+1,185	
Smokey Creek	At the confluence with Catawba River	+1,006	Burke County (Unincorporated Areas).
	At Burke/Caldwell County boundary	+1,100	
Tributary 1	At the confluence with Smokey Creek	+1,043	Burke County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Smokey Creek.	+1,079	
South Muddy Creek	Approximately 1,200 feet downstream of Burke/McDowell County boundary.	+1,092	Burke County (Unincorporated Areas).
	At Burke/McDowell County boundary	+1,098	
Tributary 1	At Burke/McDowell County boundary	+1,121	Burke County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Burke/McDowell County boundary.	+1,144	
Tims Creek	At the confluence with Henry Fork	+977	Burke County (Unincorporated Areas).
	Approximately 1.6 miles upstream of SR 1786	+1,234	
Upper Creek	At the confluence with Warrior Fork and Irish Creek	+1,030	Burke County (Unincorporated Areas).
	Approximately 0.5 mile upstream of SR 1405	+1,093	
Warrior Fork	At the confluence with Catawba River	+1,018	Burke County (Unincorporated Areas), City of Morganton.
	At the confluence of Upper Creek and Irish Creek	+1,030	
Wilson Creek	At the confluence with Warrior Fork	+1,018	Burke County (Unincorporated Areas), City of Morganton.
	Approximately 0.7 mile upstream of the confluence with Warrior Fork.	+1,018	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Hickory

Maps are available for inspection at the Hickory City Hall, 76 North Center Street, Hickory, North Carolina.

City of Morganton

Maps are available for inspection at the Morganton. Town Hall, Community Development Department, 305 East Union Street, Morganton, North Carolina.

Town of Connelly Springs

Maps are available for inspection at the Connelly Springs Town Hall, 1030 U.S. Highway 70, Connelly Springs, North Carolina.

Town of Drexel

Maps are available for inspection at the Drexel Town Hall, 202 Church Street, Drexel, North Carolina.

Town of Glen Alpine

Maps are available for inspection at the Glen Alpine Town Hall, 103 Pitts Street, Glen Alpine, North Carolina.

Town of Hildebran

Maps are available for inspection at the Hildebran Town Hall, 202 South Center Street, Hildebran, North Carolina.

Town of Rhodhiss

Maps are available for inspection at the Rhodhiss Town Hall, 200 Burke Street, Rhodhiss, North Carolina.

Town of Rutherford College

Maps are available for inspection at the Rutherford College Town Hall, 950 Malcolm Boulevard, Rutherford College, North Carolina.

Town of Valdese

Maps are available for inspection at the Valdese Town Hall, 121 Faet Street, Valdese, North Carolina.

Unincorporated Areas of Burke County

Maps are available for inspection at the Burke County Planning and Development Department, 110 North Green Street, Morganton, North Carolina.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Catawba County, North Carolina and Incorporated Areas Docket Nos.: FEMA–D–7668 and FEMA–D–7680			
Bakers Creek Tributary	Approximately 400 feet upstream of the confluence with Bakers Creek.	+891	Catawba County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Swinging Bridge Road.	+980	
Tributary 1	Approximately 300 feet upstream of the confluence with Bakers Creek.	+891	Catawba County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Stratford Drive	+1,040	
Balls Creek	Approximately 600 feet downstream of Kale Road (State Route 1832).	+762	Catawba County (Unincorporated Areas).
	Approximately 970 feet upstream of Little Mountain Road	+1,034	
Barger Branch	At the confluence with Henry Fork	+861	Catawba County (Unincorporated Areas), City of Hickory, Town of Brookford.
	Approximately 200 feet upstream of 8th Avenue Southeast.	+1,064	
Tributary 1	At the confluence with Barger Branch	+987	City of Hickory.
	Approximately 800 feet upstream of 8th Avenue Southeast.	+1,083	
Tributary 2	At the confluence with Barger Branch Tributary 1	+991	City of Hickory.
	Approximately 1,040 feet upstream of the confluence with Barger Branch Tributary 1.	+1,033	
Tributary 3	At the confluence with Barger Branch	+1,005	City of Hickory.
	Approximately 130 feet upstream of 8th Avenue Southeast.	+1,082	
Betts Branch	At the confluence with Clarks Creek	+812	Catawba County (Unincorporated Areas).
	Approximately 1,900 feet upstream of the confluence with Clarks Creek.	+812	
Bills Branch	At the confluence with Clarks Creek	+813	Catawba County (Unincorporated Areas), City of Newton.
	Approximately 0.5 mile upstream of U.S. 321 South	+844	
Camp Creek	Approximately 0.5 mile upstream of the confluence with Jacob Fork.	+915	Catawba County (Unincorporated Areas).
	At the Burke/Catawba County boundary	+1,020	
Catawba River	Approximately 0.4 mile above the confluence of Balls Creek.	+762	Catawba County (Unincorporated Areas), City of Hickory.
	At the Burke/Caldwell/Catawba County boundary	+936	
Tributary 1	At the confluence with the Catawba River	+936	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 1,100 feet upstream of 31st Avenue Northwest.	+1,026	
Clarks Creek	Approximately 850 feet downstream of U.S. 321	+790	Catawba County (Unincorporated Areas), City of Hickory, City of Newton, Town of Maiden.
	Approximately 2.5 miles upstream of I–40	+1,049	
Cline Creek	At the confluence with Clarks Creek	+864	Catawba County (Unincorporated Areas), City of Conover, City of Newton.
	Approximately 150 feet downstream of I–40	+908	
Cline Creek North	At the confluence with Lyle Creek	+869	Catawba County (Unincorporated Areas).
	Approximately 2.0 miles upstream of the confluence with Cline Creek North Tributary 1.	+1,047	
Tributary 1	At the confluence with Cline Creek North	+896	Catawba County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Rifle Range Road	+1,105	
Cline Creek Tributary 1	At the confluence with Cline Creek	+886	City of Conover.
	Approximately 450 feet upstream of I–40	+903	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary 2	At the confluence with Cline Creek	+898	City of Conover, Catawba County (Unincorporated Areas).
	Approximately 1,300 feet upstream of I–40	+911	
Conover Creek	At the confluence with Lyle Creek	+868	Catawba County (Unincorporated Areas), City of Conover.
	Approximately 30 feet upstream of 5th Street Place Northeast.	+953	
Cow Branch	At the confluence with Pott Creek	+861	Catawba County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Grace Church Road (State Route 2030).	+910	
Cripple Creek	At the confluence with Frye Creek and Horseford Creek	+995	City of Hickory.
	Approximately 1,070 feet upstream of 4th Street Drive Northwest.	+1,067	
Tributary 1	At the confluence with Cripple Creek	+1,029	City of Hickory.
	Approximately 1,900 feet upstream of the confluence with Cripple Creek.	+1,055	
Douglas Creek	At the confluence with Jacob Fork	+1,011	Catawba County (Unincorporated Areas).
	Approximately 200 feet upstream of the Burke/Catawba County boundary.	+1,048	
Falling Creek	At the confluence with Lake Hickory	+936	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 50 feet downstream of 14th Avenue Northeast.	+1,093	
Dellinger Creek	At the confluence with Elk Shoal Creek	+851	Catawba County (Unincorporated Areas).
	Approximately 725 feet upstream of Rest Home Road	+960	
East Tributary McLin Creek	At the confluence with McLin Creek	+943	Catawba County (Unincorporated Areas), City of Conover.
	Approximately 1,000 feet upstream of Keisler Road Southeast.	+982	
Falling Creek Tributary 1	Approximately 400 feet upstream of the confluence with Falling Creek.	+1,015	City of Hickory.
	Approximately 275 feet upstream of 12th Avenue Northeast.	+1,088	
Tributary 2	At the confluence with Falling Creek	+1,052	City of Hickory.
	Approximately 380 feet upstream of 12th Avenue Northeast.	+1,095	
Fitz Creek	At the confluence with Cripple Creek	+1,013	City of Hickory.
	Approximately 30 feet upstream of the confluence with Cripple Creek.	+1,013	
Frye Creek	At the confluence with Horseford Creek and Cripple Creek	+995	City of Hickory, Town of Long View.
	Approximately 50 feet downstream of 34th Street Northwest.	+1,119	
Geitner Branch	At the confluence with Henry Fork	+890	City of Hickory, Catawba County (Unincorporated Areas).
	Approximately 1,900 feet upstream of 7th Avenue Southwest.	+1,080	
Tributary 1	At the confluence with Geitner Branch	+1,019	City of Hickory.
	Approximately 1,250 feet upstream of the confluence with Geitner Branch.	+1,043	
Elk Shoal Creek	Approximately 2,750 feet upstream of the confluence with Catawba River.	+849	Catawba County (Unincorporated Areas).
	Approximately 2,000 feet upstream of Rest Home Road	+943	
Geitner Branch Tributary 2	At the confluence with Geitner Branch	+983	City of Hickory.
	Approximately 1,700 feet upstream of 7th Avenue Southwest.	+1,074	
Haas Creek	At the confluence with Pott Creek	+814	Catawba County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Bill and Beulah Lane	+910	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Henry Fork	Approximately 1,250 feet upstream of the confluence with Jacob Fork and South Fork Catawba River.	+821	Catawba County (Unincorporated Areas), City of Hickory, City of Newton, Town of Brookford.
	At the Catawba/Burke County boundary	+930	
Tributary 1	At the confluence with Henry Fork	+846	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 0.5 mile upstream of Catawba Valley Boulevard SE.	+974	
Tributary 2	At the confluence with Henry Fork	+889	Town of Brookford, City of Hickory.
	Approximately 1,830 feet upstream of Brookford Boulevard.	+921	
Tributary 3	At the confluence with Henry Fork	+821	Catawba County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Robinson Road	+855	
Herman Branch Creek	At the confluence with Lyle Creek	+913	Catawba County (Unincorporated Areas), City of Conover.
	Approximately 175 feet upstream of the confluence with Lyle Creek.	+914	
Hildenbran Creek	At the confluence with Clarks Creek	+838	City of Newton.
	Approximately 150 feet upstream of A.C. Little Drive	+953	
Holdsclaw Creek	At the upstream side of Railroad	+798	Catawba County (Unincorporated Areas).
	Approximately 1,500 feet upstream of the confluence of Holdsclaw Creek Tributary 1.	+798	
Tributary 1	At the confluence with Holdsclaw Creek	+798	Catawba County (Unincorporated Areas).
	Approximately 1,450 feet upstream of the confluence with Holdsclaw Creek.	+803	
Holly Branch	Approximately 220 feet downstream of the confluence of Holly Branch Tributary 1 and Shady Branch.	+821	Catawba County (Unincorporated Areas), Town of Maiden.
	At the confluence of Holly Branch Tributary 1 and Shady Branch.	+824	
Tributary 1	At the confluence with Holly Branch	+824	Catawba County (Unincorporated Areas), Town of Maiden.
	Approximately 200 feet upstream of South Main Avenue	+870	
Hop Creek	At the confluence with Jacob Fork	+835	Catawba County (Unincorporated Areas).
	Approximately 2.7 miles upstream of the confluence with Jacob Fork.	+917	
Horseford Creek	At the confluence with the Catawba River	+936	City of Hickory.
	At the confluence with Frye Creek and Cripple Creek	+995	
Howards Creek	At the Catawba/Lincoln County boundary	+972	Catawba County (Unincorporated Areas).
	Approximately 500 feet upstream of the Catawba/Lincoln County boundary.	+977	
Indian Creek	At the Catawba/Lincoln County boundary	+1,011	Catawba County (Unincorporated Areas).
	Approximately 550 feet upstream of the Catawba/Lincoln County boundary.	+1,014	
Jacob Fork	Approximately 175 feet upstream of Providence Church Road (State Route 1116).	+915	Catawba County (Unincorporated Areas).
	At the Catawba/Burke County boundary	+1,057	
Tributary 1	At the confluence with Jacob Fork	+1,022	Catawba County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Cooksville Road	+1,078	
Lippard Creek	At the Lincoln/Catawba County boundary	+869	Catawba County (Unincorporated Areas).
	Approximately 1,870 feet upstream of the Lincoln/Catawba County boundary.	+876	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Long Creek	At the confluence with McLin Creek	+860	City of Conover, City of Claremont, Catawba County (Unincorporated Areas).
	Approximately 1,400 feet upstream of Railroad	+988	
Long Shoal Creek	Approximately 0.5 mile downstream of Sulphur Springs Road (State Route 1529).	+935	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 0.4 mile upstream of Pinecrest Drive Northeast.	+1,037	
Long View Creek	At the confluence with Henry Fork	+891	Catawba County (Unincorporated Areas), City of Hickory, Town of Long View.
	Approximately 1,500 feet upstream of U.S. 70 Southwest	+1,081	
Tributary 1	At the confluence with Long View Creek	+990	City of Hickory.
	Approximately 80 feet downstream of U.S. 70	+1,061	
Tributary 2	Approximately 140 feet upstream of the confluence with Long View Creek.	+1,038	Town of Long View.
	Approximately 1,460 feet upstream of the confluence with Long View Creek.	+1,053	
Lyle Creek	At the confluence with the Catawba River	+773	Catawba County (Unincorporated Areas), City of Hickory, Town of Catawba.
	Approximately 550 feet upstream of 18th Avenue Northeast.	+1,116	
Lyle Creek Tributary	At the downstream side of Shock Road (State Route 1711).	+831	Catawba County (Unincorporated Areas).
	Approximately 2,000 feet upstream of Community Road	+892	
Tributary 1	Approximately 1,600 feet upstream of the confluence with Lyle Creek.	+820	Catawba County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Crossing Creek Drive	+931	
Maiden Creek	Approximately 1.3 miles upstream of Providence Mill Road.	+864	Catawba County (Unincorporated Areas).
	Approximately 80 feet downstream of North Olivers Cross Road.	+905	
McLin Creek	Approximately 500 feet upstream of East 20th Street	+940	City of Conover.
	Approximately 0.6 mile upstream of the confluence of East Tributary McLin Creek.	+970	
Tributary 1	Approximately 750 feet upstream of the confluence with McLin Creek.	+857	Catawba County (Unincorporated Areas), City of Claremont.
	Approximately 1,250 feet upstream of Frazier Drive	+936	
Miller Branch	At the downstream side of 12th Avenue Southeast	+894	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 1.9 miles upstream of the confluence with Clarks Creek.	+982	
Mountain Creek	At the upstream side of Slanting Bridge Road	+760	Catawba County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence of Mountain Creek Tributary 3.	+776	
Tributary 2	At the confluence with Mountain Creek	+760	Catawba County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with Mountain Creek.	+803	
Tributary 2A	At the confluence with Mountain Creek Tributary 2	+760	Catawba County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Mountain Creek Tributary 2.	+763	
Tributary 3	At the confluence with Mountain Creek	+760	Catawba County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Mountain Creek.	+778	
Tributary 3A	At the confluence with Mountain Creek Tributary 3	+767	Catawba County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Mountain Creek Tributary 3.	+804	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Muddy Creek	Approximately 1,900 feet upstream of the confluence with Henry Fork.	+835	Catawba County (Unincorporated Areas).
	At the confluence of Muddy Creek Tributaries 2 and 3	+838	
Tributary 1	At the confluence with Muddy Creek	+837	Catawba County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Robinwood Road	+873	
Tributary 2	At the confluence with Muddy Creek	+838	Catawba County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Robinwood Road	+863	
Tributary 3	At the confluence with Muddy Creek	+838	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 1.3 miles upstream of the confluence with Muddy Creek.	+872	
Mull Creek	Approximately 1,000 feet upstream of the confluence with Lyle Creek.	+819	Catawba County (Unincorporated Areas), City of Conover, City of Claremont.
	Approximately 500 feet upstream of 9th Avenue Northeast	+1,002	
Mundy Creek	At the confluence with Reed Creek	+760	Catawba County (Unincorporated Areas).
	Approximately 500 feet upstream of Lineberger Road	+776	
Tributary 1	At the confluence with Mundy Creek	+760	Catawba County (Unincorporated Areas).
	Approximately 1,400 feet upstream of Grassy Creek Road	+781	
Naked Creek	Approximately 2,000 feet downstream of the St. Peters Church Road (State Route 1453).	+936	Catawba County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Timber Ridge Road	+1,015	
Pinch Gut Creek	Approximately 120 feet upstream of St. James Church Road.	+851	Catawba County (Unincorporated Areas), Town of Maiden.
	Approximately 0.9 mile upstream of St. James Church Road.	+883	
Tributary 1	At the confluence with Pinch Gut Creek	+852	Catawba County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Pinch Gut Creek.	+886	
Pott Creek	Approximately 1,200 feet downstream of the confluence of Rhodes Mill Creek.	+801	Catawba County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Plateau Road (State Route 2036).	+928	
Propst Creek	Approximately 0.4 mile downstream of Sipe Road (State Route 1492).	+988	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 75 feet downstream of Sipe Road (State Route 1492).	+1,005	
Reed Creek	At the confluence with Mountain Creek	+760	Catawba County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Mount Pleasant Road.	+790	
Rhodes Mill Creek	At the confluence with Pott Creek	+802	Catawba County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Leatherman Road (State Route 2025).	+855	
Tributary 1	At the confluence with Rhodes Mill Creek	+815	Catawba County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Rhodes Mill Creek.	+825	
Shady Branch	At the confluence with Holly Branch and Holly Branch Tributary 1.	+824	Catawba County (Unincorporated Areas), Town of Maiden.
	Approximately 500 feet upstream of South 11th Avenue	+959	
Tributary 1	At the confluence with Sandy Branch	+872	Catawba County (Unincorporated Areas), Town of Maiden.
	Approximately 1,800 feet upstream of South 8th Avenue	+927	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Smyre Creek	At the confluence with Clarks Creek	+831	Catawba County (Unincorporated Areas), City of Newton.
	Approximately 50 feet downstream of NC–16	+875	
Tributary 1	At the confluence with Smyre Creek	+868	Catawba County (Unincorporated Areas), City of Newton.
	Approximately 1,500 feet upstream of the confluence with Smyre Creek.	+877	
Snow Creek	At the confluence with the Catawba River	+935	Catawba County (Unincorporated Areas), City of Hickory.
	Approximately 1,040 feet upstream of 15th Avenue Northeast.	+1,097	
Snow Hill Branch	At the downstream side of State Route 16/East D Street	+868	City of Newton.
	Approximately 1,100 feet upstream of East 11th Street	+944	
South Fork Catawba River	At the Catawba/Lincoln County boundary	+793	Catawba County (Unincorporated Areas), City of Newton.
	Approximately 125 feet downstream of NC–10	+816	
Tributary 6	At the confluence with South Fork Catawba River	+794	Catawba County (Unincorporated Areas).
	Approximately 530 feet upstream of Herter Road (State Route 2022).	+800	
Tributary 7	At the confluence with South Fork Catawba River	+800	Catawba County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with South Fork Catawba River.	+811	
Tributary 8	At the confluence with South Fork Catawba River	+802	Catawba County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Wilfong Road	+829	
Tributary 9	At the confluence with South Fork Catawba River	+806	Catawba County (Unincorporated Areas).
	Approximately 1.1 miles upstream of US–321	+822	
Tributary 9A	At the confluence with South Fork Catawba River Tributary 9.	+806	Catawba County (Unincorporated Areas).
	Approximately 1,500 feet upstream of the confluence with South Fork Catawba River Tributary 9.	+806	
Terrapin Creek	Approximately 500 feet upstream of Mollys Backbone Road.	+762	Catawba County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence of Terrapin Creek Tributary 1.	+792	
Tributary 1	At the confluence with Terrapin Creek	+766	Catawba County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Terrapin Creek.	+790	
Town Branch	At the confluence with the Catawba River	+773	Catawba County (Unincorporated Areas), Town of Catawba.
	Approximately 0.5 mile upstream of 2nd Street Southwest	+894	
Town Creek	Approximately 1,400 feet upstream of St. James Church Road.	+871	Catawba County (Unincorporated Areas), City of Newton.
	Approximately 0.8 mile upstream of State Route 10	+943	
Tributary to Lyle Creek Tributary.	At the confluence with Lyle Creek Tributary	+875	Catawba County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Lyle Creek Tributary.	+921	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Claremont

Maps available for inspection at the City of Claremont Planning Department, 3288 East Main Street, Claremont, North Carolina.

City of Conover

Maps available for inspection at the Conover City Hall, 101 First Street East, Conover, North Carolina.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
City of Hickory			
Maps available for inspection at the Hickory City Hall, 76 North Center Street, Hickory, North Carolina.			
City of Newton			
Maps available for inspection at the City of Newton Planning Department, 401 North Main Avenue, Newton, North Carolina.			
Town of Brookford			
Maps available for inspection at the Brookford Town Hall, 1700 South Center Street, Brookford, North Carolina.			
Town of Catawba			
Maps available for inspection at the Catawba Town Hall, 102 1st Street Northwest, Catawba, North Carolina.			
Town of Long View			
Maps available for inspection at the Long View Town Hall, 2404 1st Avenue Southwest, Hickory, North Carolina.			
Town of Maiden			
Maps are available for inspection at the Maiden Town Hall, 113 West Main Street, Maiden, North Carolina.			
Catawba County (Unincorporated Areas)			
Maps available for inspection at the Catawba County Planning and Zoning Department, 100 A Southwest Boulevard, Newton, North Carolina.			

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 20, 2007.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–6557 Filed 4–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
Town of Whitehall, Montana Docket No.: FEMA–B–7472				
Montana	Town of Whitehall	Whitetail Creek	Approximately 1.98 miles downstream of Highway 55.	+4,333
			Approximately 1.1 miles upstream of Interstate 90 West Bound.	+4,386

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Maps are available for inspection at: Town Hall, 2 North Whitehall, Whitehall, MT.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Marengo County, Alabama, and Incorporated Areas Docket No.: FEMA–B–7472			
Falling Creek	Approximately 3250 feet downstream of Whitfield Canal	+150	City of Demopolis.
	Approximately 500 feet downstream of Whitfield Canal	+154	
Tombigbee River	Demopolis Lock and Dam	+94	City of Demopolis.
	Confluence with Short Creek	+94	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Demopolis

Maps are available for inspection at 211 N. Walnut Avenue, Demopolis, AL 36732.

Fremont County, Colorado and Incorporated Areas Docket No.: FEMA–B–7464			
Arkansas River	Approximately 0.19 miles downstream of State Rt. 115	+5,096	City of Florence, Fremont County (Unincorporated Areas), City of Canon City.
	Approximately 0.53 miles upstream of confluence of Sand Creek.	+5,364	
Chandler Creek	Confluence with Arkansas River	+5,174	Fremont County (Unincorporated Areas), Town of Williamsburg.
	Approximately 0.30 miles upstream of County Rd. 11A	+5,387	
Coal Creek	Approximately 0.22 miles upstream of confluence with Arkansas River.	+5,153	City of Florence, Fremont County (Unincorporated Areas).
	Approximately 1.19 miles upstream of Railroad Street	+5,231	
Coal Creek East Overflow	Approximately 0.44 miles above confluence with Arkansas River.	+5,134	City of Florence, Fremont County (Unincorporated Areas).
	Approximately 600 feet upstream of Robinson Avenue at divergence from Coal Creek Main Channel.	+5,180	
Coal Creek West Overflow	Approximately 0.34 miles above confluence with Arkansas River.	+5,153	City of Florence, (Fremont County Unincorporated Areas).
	Divergence from Coal Creek Main Channel	+5,188	
Forked Gulch	At confluence with Arkansas River	+5,336	City of Canon City.
	Confluence with West Forked Gulch	+5,451	
Minnequa Canal	Approximately 760 feet above Lock Avenue	+5,199	City of Florence, Fremont County (Unincorporated Areas).
	Confluence of Oak Creek	+5,209	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Northeast Canon Drainage East Branch.	At Confluence with Arkansas River	+5,301	City of Canon City, Fremont County (Unincorporated Areas).
	Approximately 0.85 miles upstream of Tennessee Avenue	+5,548	
Northeast Canon Drainage West Branch.	Confluence with East Branch	+5,320	City of Canon City, Fremont County (Unincorporated Areas).
	Approximately 0.62 miles upstream of Washington Street	+5,501	
Oak Creek	Approximately 325 feet above confluence with Arkansas River.	+5,156	City of Florence, Fremont County (Unincorporated Areas), Town of Williamsburg, City of Canon City.
	Approximately 550 feet upstream of Quincy Street	+5,341	
Oak Creek Right Over Bank	Approximately 600 feet downstream of West Seventh Street.	+5,154	City of Florence.
	Approximately 150 feet upstream of Second Street	+5,190	
Sand Creek	At confluence with Arkansas River	+5,356	City of Canon City.
	Approximately 0.92 miles upstream of confluence with Arkansas River.	+5,431	
Southeast Canon Drainage	At confluence with Arkansas River	+5,312	City of Canon City.
	Approximately 0.60 miles upstream of confluence with Arkansas River.	+5,368	
West Forked Gulch	Confluence with Forked Gulch	+5,452	City of Canon City.
	Approximately 500 Feet upstream of confluence with Forked Gulch.	+5,474	
West Forked Gulch	Approximately 0.59 miles upstream of the confluence with Forked Gulch.	+5,529	City of Canon City.
	Approximately 0.973 miles upstream of confluence with Forked Gulch.	+5,573	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Fremont County (Unincorporated Areas)

Maps are available for inspection at: The Administration Building, 615 Macon Avenue, Room 105, Canon City, Colorado.

City of Canon City

Maps are available for inspection at: City Hall, 128 Main Street, Canon City, Colorado.

City of Florence

Maps are available for inspection at: The Municipal Building, 300 West Main St, Florence, Colorado.

City of Williamsburg

Maps are available for inspection at: City Hall, 1 John Street, Williamsburg, Colorado.

Carroll County, Georgia and Incorporated Areas
Docket No.: FEMA–B–7701

Beulah Creek	At the confluence with Little Tallapoosa River	+988	City of Carrollton.
	At Columbia Drive	+988	
Buffalo Creek Tributary 1	At Strickland Road	+1043	City of Carrollton.
	Approximately 900 feet upstream of Strickland Road	+1043	
Chandler's Spring Creek	At the confluence with Little Tallapoosa River	+992	City of Carrollton.
	Just upstream of William Street	+992	
Curtis Creek	At the confluence with Little Tallapoosa River	+994	City of Carrollton.
	At Lake Carroll Dam	+994	
Little Tallapoosa River	Approximately 2,275 feet upstream of confluence of Buck Creek.	+978	City of Carrollton.
	Approximately 2,800 feet upstream of Northside Drive	+995	
Little Tallapoosa River Tributary	At the confluence with Little Tallapoosa River	+993	City of Carrollton.
	Approximately 2,870 feet upstream of confluence with Little Tallapoosa River.	+993	
Sweetwater Creek	At Carroll/Douglas County boundary	+979	Carroll County (Unincorporated Areas).
	Approximately 1,510 feet upstream of the Carroll/Douglas county boundary.	+982	
Tanyard Branch	At confluence with Little Tallapoosa River	+992	City of Carrollton.
	Approximately 135 feet upstream of River Drive	+992	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Carroll County (Unincorporated Areas)

Maps are available for inspection at the Community Map Repository, Carroll County Engineering Department, 315 Bradley Street, Carrollton, Georgia 30117.

City of Carrollton

Maps are available for inspection at the Community Map Repository, Carroll County Engineering Department, 315 Bradley Street, Carrollton, Georgia 30117.

Columbia County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–7472

Bonaire Heights Tributary	At the confluence with Wynngate Tributary	+272	Columbia County (Unincorporated Areas).
	Approximately 375 feet upstream of the confluence with Wynngate Tributary.	+272	
Furys Ferry Road Tributary East.	At the confluence with Reed Creek	+210	Columbia County (Unincorporated Areas).
	Approximately 100 feet upstream of the confluence with Reed Creek.	+210	
Gibbs Road Tributary	At the confluence with Bettys Branch	+291	Columbia County (Unincorporated Areas).
	Approximately 130 feet upstream of the confluence with Bettys Branch.	+291	
Holiday Park Tributary	At the confluence with Reed Creek	+301	Columbia County (Unincorporated Areas).
	Approximately 1,450 feet upstream of the confluence with Reed Creek.	+301	
Jones Creek	At the confluence with Savannah River	+193	Columbia County (Unincorporated Areas).
	Approximately 3,290 feet upstream of the confluence with Savannah River.	+193	
Tributary No. 2	At the confluence with Jones Creek	+259	Columbia County (Unincorporated Areas).
	Approximately 70 feet upstream of the confluence with Jones Creek.	+259	
Tributary No. 3	At the confluence with Jones Creek	+269	Columbia County (Unincorporated Areas).
	Approximately 20 feet upstream of the confluence with Jones Creek.	+269	
Owens Road Tributary	At the confluence with Holiday Park Tributary	+322	Columbia County (Unincorporated Areas).
	Approximately 210 feet upstream of the confluence with Holiday Park Tributary.	+322	
Seaboard Railroad Tributary	At the confluence with Jones Creek	+225	Columbia County (Unincorporated Areas).
	Approximately 300 feet upstream of the confluence with Jones Creek.	+227	
Watery Branch Tributary	At the confluence with Watery Branch	+197	Columbia County (Unincorporated Areas).
	Approximately 10 feet upstream of the confluence with Watery Branch.	+197	
Westhampton Tributary No. 1	At the confluence with Bowen Pond Tributary	+249	Columbia County (Unincorporated Areas).
	Approximately 75 feet upstream of the confluence with Bowen Pond Tributary.	+249	
Westhampton Tributary No. 2	At the confluence with Bowen Pond Tributary	+258	Columbia County (Unincorporated Areas).
	Approximately 20 feet upstream of the confluence with Bowen Pond Tributary.	+258	
Westhampton Tributary No. 3	At the confluence with Bowen Pond Tributary	+269	Columbia County (Unincorporated Areas).
	Approximately 70 feet upstream of the confluence with Bowen Pond Tributary.	+269	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES
Columbia County (Unincorporated Areas)

Maps are available for inspection at the Community Map Repository, Engineering & Environmental Services Division, P.O. Box 498, 630 Ronald Reagan Drive, Building A, Evans, GA 30809.

Forsyth County, Georgia and Incorporated Areas
Docket No.: FEMA–B–7701

Hurricane Creek	At the confluence with Settingdown Creek	+970	Forsyth County (Unincorporated Areas).
	Approximately 1,010 feet upstream of the confluence with Settingdown Creek.	+970	
James Creek	At the confluence with Chattahoochee River	+918	Forsyth County (Unincorporated Areas).
	Approximately 2,400 feet upstream of the confluence with Chattahoochee River.	+918	
Tributary G	At the confluence with Settingdown Creek	+1,140	Forsyth County (Unincorporated Areas).
	Approximately 100 feet upstream of the confluence with Settingdown Creek.	+1,140	
Tributary J	At the confluence with Settingdown Creek	+1,156	Forsyth County (Unincorporated Areas).
	Approximately 60 feet upstream of the confluence with Settingdown Creek.	+1,156	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES
Forsyth County (Unincorporated Areas)

Maps are available for inspection at 110 East Main Street, Suite 100, Cumming, Georgia 30040.

Whitfield County, Georgia and Incorporated Areas
Docket No.: FEMA–B–7701

Poplar Springs Creek	Approximately 660 feet downstream of Poplar Springs Road.	+747	Whitfield County (Unincorporated Areas).
	Approximately 1,270 feet upstream of Reed Pond Road Northwest.	+771	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES
Whitfield County (Unincorporated Areas)

Maps are available for inspection at 1407 Burleyson Drive, Dalton, Georgia 30720.

Frederick County, Maryland and Incorporated Areas
Docket No.: FEMA–B–7456

Ballenger Creek	Confluence with Monocacy River	+249	Frederick County (Unincorporated Areas).
	Approximately 0.2 mile downstream of Mt. Phillip Road	+422	
Bush Creek	Confluence with Monocacy River	+255	Frederick County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Green Valley Road	+413	
Butterfly Branch (Tributary No. 116).	Confluence with Ballenger Creek	+307	Frederick County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Jefferson Pike	+388	
Carroll Creek	Confluence with Monocacy River	+266	Frederick County (Unincorporated Areas).
	Approximately 2.0 miles upstream of the confluence of Silver Spring Branch (Tributary No. 95).	+702	
Claggett Run (Tributary No. 129).	Confluence with Rocky Fountain Run	+243	Frederick County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Fingerboard Road	+297	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Clifford Branch (Tributary No. 87).	Confluence with Tuscarora Creek	+367	Frederick County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Hamburg Road	+644	
Clifford Branch (Tributary No. 98).	Confluence with Rock Creek	+354	Frederick County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Mt. Phillip Road	+433	
Detrick Branch (Tributary No. 9)	Confluence with Monocacy River	+268	Frederick County (Unincorporated Areas).
	Approximately 0.1 mile upstream of N. Market Street	+286	
Dublin Branch	Confluence with Glade Creek	+279	Frederick County (Unincorporated Areas).
	Approximately 1.4 miles upstream of confluence with Glade Creek.	+331	
Edison Branch	Confluence with Carroll Creek	+328	Frederick County (Unincorporated Areas).
	Downstream side of Christophers Crossing	+375	
Glade Creek	Approximately 0.2 mile downstream of Devilbliss Bridge Road.	+279	Frederick County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Glade Road	+359	
Horsehead Run	Confluence with Rocky Fountain Run	+247	Frederick County (Unincorporated Areas).
	Approximately 1.2 miles upstream of confluence with Rocky Fountain Run.	+265	
Israel Creek	Confluence with Monocacy River	+273	Frederick County (Unincorporated Areas).
	Just downstream of Water Street	+298	
King Branch (Tributary No. 118)	Confluence with Ballenger Creek	+271	Frederick County (Unincorporated Areas).
	Just downstream of Arbor Road	+291	
Linganore Creek	Confluence with Monocacy River	+264	Frederick County (Unincorporated Areas).
	Just downstream of Gashouse Pike	+327	
Little Tuscarora Creek	Confluence with Tuscarora Creek	+296	Frederick County (Unincorporated Areas).
	0.1 mile upstream of Yellow Springs Road	+509	
Monocacy River	Confluence with Potomac River	+210	Frederick County (Unincorporated Areas).
	0.6 mile upstream of Devilbliss Bridge Road	+288	
Park Branch (Tributary No. 8/99).	Confluence with Monocacy River	+267	Frederick County (Unincorporated Areas).
	Downstream side of East Street	+286	
Pike Branch (Tributary No. 117)	Confluence with Ballenger Creek	+277	Frederick County (Unincorporated Areas).
	Just upstream of Ballenger Creek Road	+314	
Rock Creek	Confluence with Carroll Creek	+310	Frederick County (Unincorporated Areas).
	Just Downstream of Baltimore National Parkway (US 40)	+432	
Rocky Fountain Run	Confluence with Monocacy River	+243	Frederick County (Unincorporated Areas).
	0.2 mile downstream of New Design Road	+310	
Shookstown Creek (Tributary No. 96).	Confluence of Carroll Creek	+316	Frederick County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Oakmont Drive	+774	
Silver Spring Branch (Tributary No. 95).	Confluence with Carroll Creek	+347	Frederick County (Unincorporated Areas).
	Approximately 400 feet downstream of Edgewood Church Road.	+716	
Tributary No. 122 to Horsehead Run.	Confluence with Horsehead Run	+265	Frederick County (Unincorporated Areas).
	Approximately 1.1 miles upstream of confluence with Horsehead Run.	+298	
Tributary No. 123 to Horsehead Run.	Confluence with Horsehead Run	+265	Frederick County (Unincorporated Areas).
	Approximately 1.0 mile upstream of confluence with Horsehead Run.	+310	
Tributary No. 124 to Horsehead Run.	Confluence with Horsehead Run	+264	Frederick County (Unincorporated Areas).
	Approximately 0.1 mile upstream of Manor Woods Road	+284	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary No. 125 to Horsehead Run.	Confluence with Horsehead Run	+253	Frederick County (Unincorporated Areas).
	Approximately 0.4 mile upstream of confluence with Horsehead Run.	+274	
Tributary No. 126 to Tributary No. 125 to Horsehead Run.	0.4 mile upstream of outlet to Horsehead Run	+274	Frederick County (Unincorporated Areas).
	Just downstream of New Design Road	+287	
Tributary No. 127 to Rocky Fountain Run.	Confluence with Rocky Fountain Run	+246	Frederick County (Unincorporated Areas).
	Approximately 1.1 miles upstream of confluence with Rocky Fountain Run.	+291	
Tributary No. 128 to Rocky Fountain Run.	Confluence with Rocky Fountain Run	+243	Frederick County (Unincorporated Areas).
	Just downstream of Baltimore and Ohio Railroad	+279	
Tributary No. 5 to Rock Creek	Confluence with Rock Creek	+328	Frederick County (Unincorporated Areas).
	Approximately 0.1 mile upstream of West Patrick Street	+395	
Tributary No. 6 to Carroll Creek	Confluence with Carroll Creek	+293	Frederick County (Unincorporated Areas).
	Just downstream of Butterfly Lane	+410	
Tributary No. 89 to Little Tuscarora Creek.	Confluence with Little Tuscarora Creek	+314	Frederick County (Unincorporated Areas).
	Just downstream of Springhill Drive	+359	
Tributary to Glade Creek	Confluence with Glade Creek	+292	Frederick County (Unincorporated Areas).
	Just downstream of Devilbliss Bridge Road	+334	
Tributary to Tributary No. 89 to Little Tuscarora Creek.	Confluence with Tributary No. 89 to Little Tuscarora Creek.	+355	Frederick County (Unincorporated Areas).
	Just upstream of Christophers Crossing	+402	
Tuscarora Creek	Confluence with Monocacy River	+274	Frederick County (Unincorporated Areas).
	Confluence of Clifford Branch	+367	
Two Mile Run (Tributary No. 10/93).	Just downstream of Worman's Mill Court	+269	Frederick County (Unincorporated Areas).
	Confluence with Monocacy River	+269	
Worman's Run (Tributary No. 11).	Confluence with Monocacy River	+269	Frederick County (Unincorporated Areas).
	Just Upstream of North Market Street	+269	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Frederick County (Unincorporated Areas)

Maps are available for inspection at the Planning and Zoning Department, Winchester Hall, 12 East Church Street, Frederick, Maryland 21701.

City of Frederick

Maps are available for inspection at the Engineering Department, City Hall, 101 North Court Street, Frederick, Maryland 21701.

Town of Walkersville

Maps are available for inspection at the Town Hall, 21 West Frederick Street, Walkersville, Maryland 21793.

Blount County, Tennessee and Incorporated Areas
Docket No.: FEMA–B–7700

Brown Creek	At confluence with Pistol Creek	+880	City of Maryville.
	At Grandview Dr	+961	
Cross Creek	At confluence with Pistol Creek	+956	City of Maryville.
	At Oxford Hills Dr	+1002	
Culton Creek	At confluence with Pistol Creek	+848	City of Alcoa, Blount County (Unincorporated Areas), City of Maryville.
	At Middlesettlements Rd	+858	
Duncan Branch	At U.S. 129 bypass	+906	City of Maryville.
	At confluence with Brown Creek	+929	
Laurel Bank Branch	At Middlesettlements Rd	+856	Blount County (Unincorporated Areas), City of Maryville.
	At Big Springs Rd	+871	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Little River	At Wildwood Bridge	+859	Blount County (Unincorporated Areas), City of Townsend.
	At Webb Road	+1045	
Pistol Creek	At Carpenter's Grade Rd	+957	City of Alcoa.
	At Campground Bridge/Davey Crockett Drive	+1112	
Russell Branch	At Confluence with Little River	+826	City of Rockford.
	At Wright Rd	+911	
Springfield Branch	At Eagleton Rd	+846	City of Maryville.
	At Old Knoxville Pike	+869	
Unnamed Tributary to Brown Creek.	At confluence with Brown Creek	+919	City of Maryville.
	At Amerine Rd	+1002	
Unnamed Tributary to Laurel Bank Branch.	At confluence with Laurel Bank Branch	+871	Blount County (Unincorporated Areas), City of Maryville.
	At U.S. Hwy 129	+1008	
Unnamed Tributary to Springfield Branch.	At confluence with Springfield Branch	+842	City of Maryville.
	At Harding St	+859	

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.

ADDRESSES

Blount County (Unincorporated Areas)

Maps are available for inspection at: Blount County Zoning Department, 1006 East Lamar Alexander Parkway, Maryville, Tennessee 37804.

City of Alcoa

Maps are available for inspection at: City of Alcoa Planning And Codes Department, 223 Associate Blvd., Alcoa, Tennessee 37701.

City of Maryville

Maps are available for inspection at: City of Maryville Engineering Department, 416 West Broadway Avenue, Maryville, Tennessee 37801.

City of Rockford

Maps are available for inspection at: Rockford Town Hall, 3719 Little River Road, Rockford, Tennessee 37853.

City of Townsend

Maps are available for inspection at: Townsend City Hall, 133 Tiger Drive, Townsend, Tennessee 37882.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 26, 2007.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–6556 Filed 4–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 211

[Docket No. FRA–2006–24838]

RIN 2130–AB79

Establishment of Emergency Relief Dockets and Procedures for Handling Petitions for Emergency Waiver of Safety Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing procedures governing the creation of Emergency Relief Dockets (ERD) as well as procedures for obtaining waivers from a safety rule, regulation, or standard during an emergency situation or event. FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events.

DATES: This final rule is effective April 9, 2007; petitions for reconsideration must be received on or before June 8, 2007. Petitions received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Petitions for reconsideration:* Any petitions for reconsideration related to Docket No. FRA–2006–24838, may be submitted by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building,

Room PL–401, Washington, DC 20590–001.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All petitions for reconsideration must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the General Information heading in the ''Supplementary Information'' section of this document for Privacy Act information related to any submitted petitions.

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

FOR FURTHER INFORMATION CONTACT:

Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., RRS–2, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6302), or Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2006, FRA published an interim final rule (IFR) establishing emergency waiver procedures that further the agency's ability to quickly address waiver requests in emergency situations while providing an opportunity for public input in the process. *See* 71 FR 51517. Based on comments received in response to the IFR and lessons learned from Hurricane Katrina, FRA is establishing procedures that allow the agency to expeditiously handle waiver requests that are directly related to an emergency situation or event. This will permit FRA to provide railroads necessary operational relief in a more timely manner during emergencies while at the same time maintaining public safety.

Due to the catastrophic and devastating damage inflicted on the southern portion of the United States in the aftermath of Hurricane Katrina, FRA published a notice in the **Federal Register** establishing a temporary means for handling petitions for waiver from the Federal rail safety regulations that were directly related to the effects of the hurricane or were necessary to effectively address the relief efforts being undertaken in the area. *See* 70 FR 53413 (September 8, 2005). FRA recognized that these types of petitions had to be afforded special consideration and had to be handled expeditiously in order to ensure that the emergency operational needs of the railroads were addressed while at the same time ensuring the safety of the public, including railroad employees. Such emergency waivers would help ensure that routine safety regulations would not stand in the way of railroad efforts to cope with the emergency and to provide timely relief and recovery efforts. FRA's procedures prior to the August 30, 2006 IFR related to the handling of petitions for waiver from the Federal rail safety regulations contained in 49 CFR part 211, did not lend themselves to quick and immediate decisions by the agency, nor were they intended to. The previous procedures contained in 49 CFR part 211, established a process whereby FRA publishes a notice of any petition for waiver in the **Federal Register**. This notice then allows interested parties a period of time in which to comment on any such petition, generally thirty (30) days, and provides for a public hearing should one be requested. This process generally takes several months to accomplish. Accordingly, FRA instituted a temporary set of expedited procedures for handling petitions for waivers that were directly related to the effects and aftermath of Hurricane Katrina. The subsequent IFR was based on those procedures.

To prepare for future emergencies, FRA is issuing procedures for handling petitions for waivers in emergency situations. These procedures are based on the temporary procedures that were instituted in response to Hurricane Katrina. FRA believes that the emergency procedures contained in this final rule provide the agency with the ability to promptly and effectively address waiver requests directly related to an emergency while ensuring that the public and all interested parties are afforded proper notice of any such request, and are provided a sufficient opportunity to comment on any such request.

When faced with a sudden emergency event or situation the Administrator may activate the emergency waiver procedures contained in this final rule. FRA will consider local, state and federal declarations of emergency when determining whether circumstances qualify as an emergency event. To declare that the emergency waiver procedures are in effect, the Administrator will issue a statement in the Document Management System (DMS) at *http://dms.dot.gov*. The DMS will automatically notify parties that have signed up for the Emergency Waiver Listserv. (Instructions on how to sign up for automatic notification of additions to a docket are found at *http://dms.dot.gov*.) In addition, FRA will make every effort to post the statement on its Web site (*http://www.fra.dot.gov/*). FRA will also publish a notice in the **Federal Register** alerting interested parties that the emergency waiver procedures will be utilized. FRA anticipates that the circumstances that constitute the occurrence of, or imminent threat of an emergency event will occur infrequently.

The types of emergency events intended to be covered by this final rule could be local, regional, national or international in scope and could include natural and manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, increased threat levels, chemical or biological attacks, pandemic outbreaks, releases of dangerous radiological, chemical, or biological material, or war-related activities. Not only will our Nation's railroads be directly affected by many emergency events, they will also play a key role in the aftermath of those events, by providing necessary supplies and by moving displaced families and relief personnel and supplies to and from an affected areas. Although the type of relief that might be granted under these provisions would vary greatly based on the type of emergency event involved, it is expected that the relief would generally involve such things as: Temporary postponement of required maintenance, repair, or inspection related to railroad equipment, track, and signals; temporary relief from certain record keeping or reporting requirements; or short-term relief from various operational requirements. Relief granted will not extend for more than nine months. For matters that may significantly impact the missions of the Department of Homeland Security (DHS), FRA will consult and coordinate with DHS as soon as practicable.

FRA will establish a new ERD each calendar year. FRA will publish a notice in the **Federal Register** identifying the new docket number by January 31st of each year. When the Administrator determines the occurrence of, or imminent threat of, an emergency event, FRA will accept emergency waiver petitions for review. If FRA determines that a petition is directly related to an emergency situation, the petition will be placed in the ERD for that year. FRA will receive comments on a petition for 72 hours from the close of business on the day that the petition is posted on the ERD. During that time, FRA will arrange a telephone conference for any party that requests a public hearing. If, after the telephone conference, a public hearing is still desired, then FRA will arrange for such a hearing pursuant to 49 CFR part 211 as soon as practicable. FRA may grant a petition for waiver prior to conducting a public hearing if such petition is in the public interest and consistent with safety. These procedures are intended to balance the need for expedited waiver procedures during an emergency event to ensure public safety, and the need for adequate time to allow full public participation. The ERD and emergency waiver procedures contained in this final rule do not waive any regulatory requirements. They only reduce the length of the notice and comment period to permit FRA to act on the request as quickly as possible.

FRA solicited written comments from the public based on the IFR in accordance with the Administrative Procedures Act (APA) 5 U.S.C. 553. Consideration of public comment allows FRA to access additional viewpoints from interested parties and include them when appropriate. By the close of the comment period on October 30, 2006, one set of comments was received. The comments were received on September 6, 2006 from the Brotherhood of Locomotive Engineers and Trainmen (BLET). The comments raise questions regarding two IFR sections: 49 CFR 211.45(i) providing a 72-hour period from when the petition is filed for interested parties to request a hearing; and, 49 CFR 211.45(g) describing the treatment of petitions for emergency waiver that do not meet the threshold requirements for consideration under 49 CFR 211.45. The BLET's comments are addressed in the relevant regulatory paragraphs of the section-by-section analysis below.

Section-by-Section Analysis

Processing of Emergency Waivers § 211.45

Section 211.45(a). This paragraph makes clear that the emergency waiver procedures are intended to go into effect when there is an occurrence of, or imminent threat of, an emergency event and public safety would benefit from providing the railroad industry with operational relief. The types of emergency events intended to be covered by this final rule could be local, regional, national or international in scope and could include natural and manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, increased threat levels, chemical or biological attacks, pandemic releases of dangerous radiological, chemical, or biological material, or war-related activities.

Section 211.45(b). This paragraph contains information regarding FRA's creation of ERDs. Establishing a new ERD each year allows FRA to receive petitions for emergency waivers as soon as the occurrence of, or imminent threat of an emergency event is determined to have occurred. A yearly ERD is also a convenient way to organize the emergency waiver petitions and related documents. For reference purposes any petition can be located by the year in which the emergency event or situation occurred. The docket system will also provide notice to interested parties. The DMS Internet site that is identified in this final rule allows any interested party to subscribe, without fee, to the Emergency Waiver Listserv which will automatically notify the party via e-mail when documents are added to the designated ERD. This paragraph also makes clear that FRA will publish by January 31st of each year, a **Federal Register** notice identifying the ERD for that year. This will inform interested parties where to find petitions for emergency waiver during an emergency and will allow such parties to subscribe to the DMS Emergency Waiver Listserv. Publishing a notice in the previous year's ERD will allow the parties interested in the prior year to automatically receive the new docket number.

Section 211.45(c). This paragraph identifies the Administrator as the individual responsible for determining when the emergency waiver procedures will be utilized. The Administrator is the appropriate person to determine whether a situation or set of circumstances constitutes an emergency for purposes of FRA's use of the emergency waiver procedures. The Administrator has a unique familiarity with the rail-industry through oversight of the following: Managing comprehensive safety programs and regulatory initiatives; enforcement of FRA safety regulations; development and implementation of national freight and passenger rail policy; and oversight of diverse research and development activities in support of improved railroad safety. During significant emergencies the Administrator has extensive interaction with the DHS, Director of National Intelligence, the Federal Bureau of Investigation, the Surface Transportation Board and other Federal agencies responsible for addressing public safety, health, security and welfare. In addition, the Administrator maintains contemporaneous communication with relevant rail transportation entities, including passenger and freight railroads. This experience and interaction provides a basis from which the Administrator can assess whether a situation or set of circumstances rises to the level of an emergency event that would necessitate activation of the emergency waiver procedures. FRA's statement declaring that emergency procedures are in effect will be issued in the appropriate ERD. The DMS Internet site that is identified in the rule text allows any subscribing interested party to subscribe, without fee, to the Emergency Waiver Listserv application which automatically notifies the party via e-mail when documents are added to the appropriate ERD. The Administrator's determination that emergency waiver procedures are in effect, would be one of those documents automatically transmitted to interested parties via e-mail. In determining whether an emergency exists the Administrator may consider states of emergency issued by a local, State, or Federal official, and determinations by the Federal government that a credible threat of a terrorist attack exists. A determination made by one of these officials that a state of emergency exists, indicates that special attention is needed to address the situation, and railroad operations may be implicated. The Administrator will consider whether such emergencies significantly affect railroad operations, and whether it would be beneficial to activate the emergency waiver procedures.

Section 211.45(d). This paragraph identifies other methods by which interested parties may be notified of FRA's determination to utilize the emergency waiver procedures. If conditions permit, FRA will issue the Administrator's determination on FRA's

Web site to quickly notify the public. FRA will also publish a notice in the **Federal Register** as soon as possible after the Administrator's determination to ensure full notification to all interested parties.

Section 211.45(e). This paragraph identifies the required content of a petition for emergency waiver. To be considered under the emergency waiver procedures, FRA must first determine that the petition is directly related to the occurrence of, or imminent threat of an emergency event. FRA will base its determination on the information provided in the petition. Thus, the petition should contain information that sufficiently demonstrates the relationship between the emergency event and the waiver relief being sought.

Section 211.45(f). This paragraph instructs the public how to submit a petition under the emergency waiver procedures. FRA is permitting submission by e-mail, fax, or mail. Permitting a variety of methods for submitting petitions for emergency waiver is intended to enhance the convenience and effectiveness of the process during the occurrence of, or imminent threat of an emergency event.

Section 211.45(g). This paragraph contains information regarding FRA's handling of waiver petitions under the emergency waiver procedures. After the FRA declares that the emergency procedures are in effect, it will accept petitions for emergency waivers. Petitions that are determined to be directly related to an emergency will be placed in the ERD for that year. The DMS numbers each document that is added to a docket. Thus, each petition submitted to the ERD will have a unique document number. For reference purposes, this document number should be identified on all communications related to that particular waiver petition.

One comment asserts that FRA's handling of petitions that do not qualify for emergency procedures under this paragraph will be different than the current requirements for non-emergency petitions under 49 CFR 211.9. Specifically, the commenter is concerned that 49 CFR 211.9(c) will not apply to the these petitions, because compliance with that provision is not required as part of a petition for emergency waiver under 49 CFR 211.45(e). FRA believes that the IFR rule text explaining that non-emergency petitions will be processed ''under normal waiver procedures of this subpart'' addresses the commenter's concern. The IFR did not intend to change the content required for petitions under 49 CFR 211.9. The information requirements under 49 CFR 211.9(c) remain unchanged. The requirements will apply equally to petitions that are submitted initially under 49 CFR 211.45, as it will for petitions submitted directly under 49 CFR 211.9.

Section 211.45(h). This paragraph explains the comment process. FRA believes that 72 hours is a reasonable length of time to consider comments in an emergency situation. During Hurricane Katrina, public safety was well served by FRA's expedited emergency waiver procedures. Similarly, during future emergency situations the public interest will require an expedited review process to ensure public safety. FRA believes that the emergency waiver procedures and the need to quickly address these types of waiver petitions fall within the good cause exemption under section 553 of the APA relating to providing prior notice and comment. Nonetheless, FRA is providing notice to interested parties and is permitting a short comment period prior to taking any agency action. Moreover, FRA is providing an opportunity for a public hearing as soon as practicable after initial consideration of an emergency waiver petition.

Section 211.45(i). FRA is clarifying the calculation of the 72-hour period as intended in this paragraph. A comment to the IFR noted that it would be difficult to ascertain the proper deadline for comments, because the DMS Web site indicates the date a filing is published, and not the time. Recognizing this limitation, FRA intends to receive comments on a petition for 72 hours from the close of business (5 p.m. eastern time) on the day that the petition is posted on the ERD. Consequently, the comment period will end at 5 p.m. on the third day of the comment period. Weekends and holidays will be included in the calculation.

FRA continues to believe that a 72-hour period is a sufficient amount of time to allow for public comment on petitions for emergency waiver. Allowing additional time would jeopardize the safety of the general public affected by the emergency. Some potential commenters may be unable to comment because of exposure to the emergency. FRA understands that this is a concern, but anticipates that other safeguards and options, as well as other parties with similar interests would likely be available during an emergency. These various available resources would be utilized to help determine appropriate relief from Federal regulations. The interim rule also provided multiple methods for submitting comments to accommodate interested parties with limited capability to comment.

This paragraph describes how FRA will handle requests for hearing. FRA believes that a telephone conference will provide interested parties with an opportunity to present evidence regarding a particular petition to a neutral decision maker. If a party requests a public hearing after the telephone conference, FRA will provide one as soon as practicable. During an emergency the public interest requires that an expedited waiver process be utilized.

Section 211.45(j). This paragraph identifies the process by which FRA will make decisions on emergency waivers including: FRA's consideration of the petition; notification to the public of FRA's decision; and the limits of any relief granted under the procedures. The ability to grant or deny a petition without delay is essential to ensuring public safety during an emergency. The opportunity to reconsider a petition after the initial decision is made will ensure a robust deliberation. Under circumstances where reconsideration is appropriate, FRA will utilize additional time to consider the parties' input.

FRA's understanding of an emergency may change as the emergency event develops. Accordingly, the public will benefit from FRA's ability to reconsider decisions, and make appropriate adjustments based on further information. This will also ensure that FRA has the opportunity to address all relevant arguments made by interested parties anytime after its initial consideration of a petition. During an emergency it is a priority to address petitions for emergency waiver and make a decision without delay. Relevant comments may be submitted after the 72-hour comment period, and the public will benefit from ensuring that FRA has the opportunity to address those comments as soon as practicable.

Posting the decision letters in the appropriate ERD will provide notice to interested parties. The DMS Internet site that is identified in the rule text allows any interested party to subscribe, without fee, to its list serve application which will automatically notify the party via e-mail when documents are added, including the Administrator's determination that emergency waiver procedures are in effect, to the designated ERD.

This paragraph also makes clear that any relief granted under these procedures will be limited to no more than 9 months. If relief is needed for a period of time beyond 9 months, a petition can be submitted through the

traditional waiver process. Where issues of safety and security overlap it may be necessary for FRA to coordinate with DHS.

General Information

This rule finalizes the interim rule that expedited the already-existing waiver process during an emergency with one minor clarification to the rule text in 49 CFR 211.45(i). Considering that the ERD and procedures for emergency waiver petitions were procedural modifications that did not change any regulatory requirements, together with the need to issue the procedural changes as soon as possible since we had entered the official hurricane season, FRA issued the IFR with a request for comments on August 30, 2006. Congress authored a good cause exemption to the informal rulemaking procedures to address emergencies (such as a response to a natural disaster) that might arise justifying issuance of a rule without prior public participation. As hurricane season began again, unfortunately, another emergency event could have occurred immediately. The public benefits from having the emergency waiver procedures in place before another emergency exists. Delay in the adoption of these procedures for expediting waivers could have caused serious harm to the public and the rail industry. In contrast to the potential harm that could be caused by delay, the impact of the procedural modifications on the public were minimal. Consequently, pursuant to 5 U.S.C. 553(b)(3)(B), FRA asserted its belief that good cause existed for finding that prior public notice of this action is both impracticable and unnecessary. However, FRA did request written comments on the content of the IFR and addressed the comment in the section-by-section portion of this document.

Privacy

All potential petitioners for reconsideration should be aware that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this final rule are not considered significant because they are intended to merely institute an emergency relief docket, and establish internal FRA procedures for handling waivers directly related to an emergency. This final rule will not change any regulatory requirements. The economic impact of the procedures and establishment of the docket contained in this final rule will not affect the cost of compliance with the existing regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this final rule does not have a significant impact on a substantial number of small entities. Because the procedures and the establishment of an emergency docket contained in this rule does not change regulatory requirements, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This final rule does not change any of the information collection requirements.

Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the emergency docket and procedures for emergency waiver petitions will not change any regulatory requirements, this document will not have a substantial 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. This final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128,100,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. Because the ERD and procedures for emergency waiver petitions will not change any regulatory requirements, this document will not result in the expenditure, in the aggregate, of $128,100,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated the final rule in accordance with Executive Order 13211. Because the emergency docket and procedures

for emergency waiver petitions will not change any regulatory requirements, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 211

Administrative practice and procedure, Railroad safety.

Adoption of the Amendment

■ In consideration of the foregoing, the interim rule amending part 211 of Chapter II of Title 49 of the Code of Federal Regulations published at 71 FR 51521 on August 30, 2006 is adopted as a final rule with the following change:

PART 211—RULES OF PRACTICE

■ 1. The authority citation for part 211 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

■ 2. Section 211.45 is revised to read as follows:

§ 211.45 Petitions for emergency waiver of safety rules.

(a) *General.* This section applies only to petitions for waiver of a safety rule, regulation, or standard that FRA determines are directly related to the occurrence of, or imminent threat of, an emergency event. For purposes of this section an emergency event could be local, regional, or national in scope and includes a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, significant snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, or biological material, war-related activity, or other similar event.

(b) *Emergency Relief Docket.* Each calendar year FRA creates an Emergency Relief Docket (ERD) in the publicly accessible DOT Document Management System (DMS). The DMS can be accessed 24 hours a day, seven days a week, via the Internet at the docket facility's Web site at *http://dms.dot.gov*. All documents in the DMS are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590 during regular business hours (9 a.m.–5 p.m.). By January 31st of each year, FRA publishes a notice in the **Federal Register** identifying by docket number the ERD for that year. A notice will also be published in the previous year's ERD identifying the new docket number.

(c) *Determining the existence of an emergency event.* If the Administrator determines that an emergency event identified in paragraph (a) of this section has occurred, or that an imminent threat of it occurring exists, and determines that public safety or recovery efforts require that the provisions of this section be implemented, the Administrator will activate the Emergency Relief Docket identified in paragraph (d) of this section. In determining whether an emergency exists, the Administrator may consider declarations of emergency made by local, State, or Federal officials, and determinations by the Federal government that a credible threat of a terrorist attack exists.

(d) *Additional notification.* When possible, FRA will post the FRA Administrator's determination described in paragraph (b)(1) of this section on its website at *http://www.fra.dot.gov*. FRA will also publish a notice in the **Federal Register** alerting interested parties of the FRA Administrator's determination as soon as practicable.

(e) *Content of petitions for emergency waivers.* Petitions submitted to FRA pursuant to this section should specifically address how the petition is related to the emergency, and to the extent practicable, contain the information required under § 211.9(a) and (b). The petition should at a minimum describe the following: how the petitioner or public is affected by the emergency (including the impact on railroad operations); what FRA regulations are implicated by the emergency (*e.g.* movement of defective equipment); how waiver of the implicated regulations would benefit petitioner during the emergency; and how long the petitioner expects to be affected by the emergency.

(f) *Filing requirements.* Petitions filed under this section, shall be submitted using any of the following methods:

(1) Direct e-mail to FRA at: *RRS.Correspondence@fra.dot.gov;*

(2) Direct fax to FRA at: 202–493–6309; or

(3) To FRA Docket Clerk, Office of Chief Counsel, RCC–10, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590, fax no. (202) 493–6068.

(g) *FRA Handling and Initial Review.* Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the ERD. The DMS numbers each document that is added to a docket. (For example, the first document submitted to the docket in 2006 will be identified as FRA–2006–XXX–1.) Thus, each petition submitted to the ERD will have a unique document number which should be identified on all communications related to petitions contained in this docket. If FRA determines that the petition does not meet the criteria for use of these emergency procedures, FRA will notify the petitioner and will process the petition under normal waiver procedures of this subpart.

(h) *Comments.* Comments should be submitted within 72 hours from the close of business on the day that the petition is entered into and available on the DMS. Any comment received after that period will be considered to the extent practicable. All comments should identify the appropriate ERD and should identify the specific document number of the petition designated by the DMS in the ERD. Interested parties commenting on a petition under this section should also include in their comments to the ERD telephone numbers at which their representatives may be reached. Interested parties may submit their comments using any of the following methods:

(1) Direct e-mail to FRA at: *RRS.Correspondence@fra.dot.gov.*

(2) Direct fax to FRA at: 202–493–6309.

(3) Submission of comments to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590 or electronically via the internet at *http://dms.dot.gov*. Any comments or information sent directly to FRA will be immediately provided to the DOT DMS for inclusion in the ERD.

(i) *Request for hearing.* Parties desiring a public hearing on any petition being processed under this section must notify FRA through the comment process identified in paragraph (h) of this section within 72 hours from the close of business on the day that the petition is entered into and available on the DMS. In response to a request for a public hearing, FRA will arrange a telephone conference between all interested parties to provide an opportunity for oral comment. The conference will be arranged as soon as practicable. After such conference, if a party stills desires a public hearing on the petition, then a public hearing will be arranged as soon as practicable pursuant to the provisions contained in 49 CFR part 211.

(j) *Decisions.* FRA may grant a petition for waiver prior to conducting a public hearing if such action is in the public interest and consistent with

safety or in situations where a hearing request is received subsequent to the 72-hour comment period. In such an instance, FRA will notify the party requesting the public hearing of its decision and will arrange to conduct such hearing as soon as practicable.

(1) FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments received subsequent to the 72-hour comment period or at a later scheduled public hearing.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) Relief granted shall not extend for more than nine months.

(4) For matters that may significantly impact the missions of the Department of Homeland Security, FRA consults with the Department of Homeland Security as soon as practicable.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 07–1667 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 72, No. 67
Monday, April 9, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–13]

Union of Concerned Scientists; Receipt of Petition for Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated February 21, 2007, which was filed with the Commission by David Lochbaum, Director, Nuclear Safety Project, on behalf of the Union of Concerned Scientists. The petition was docketed by the NRC on February 23, 2007, and has been assigned Docket No. PRM–73–13. The petitioner requests that the NRC amend its regulations to close a loophole in current regulations that would enable persons who do not meet trustworthiness and reliability standards for unescorted access to protected areas of nuclear power plants the permission to enter protected areas with an unarmed escort. The petitioner believes that current regulations create a security vulnerability that could potentially compromise public health and safety.

DATES: Submit comments by June 25, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include PRM–73–13 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is the Union of Concerned Scientists. The petitioner states that it is a nonprofit partnership of scientists and citizens that combines scientific analysis, policy development, and citizen advocacy to achieve practical environmental solutions. In 2002, the Union of Concerned Scientists had 61,300 members.

The petitioner states that the Union of Concerned Scientists has been an active participant in the past in public meetings conducted by NRC regarding security regulations, and that the petitioner continues to articulate potential problems and recommended solutions in various public arenas.

Background

Current regulations at 10 CFR part 73 contain requirements for the physical protection of nuclear power plants and materials. Specifically, §§ 73.55(d), 73.56(b), and 73.57(b) outline procedures for granting access to protected areas of nuclear power plants. Section 73.55 (d)(6) states that a person who has not been granted unescorted access to protected areas may be granted access with an escort. Section 73.56(b) requires that licensees establish and maintain an access authorization program granting individuals unescorted access to protected and vital areas with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable. Section 73.57 requires the fingerprinting of persons who have been granted unescorted access.

The petitioner states that while current regulations require access control to protected areas, including fingerprinting and background clearances, § 73.55(d)(6) would allow access to protected areas by persons who do not meet trustworthiness and reliability standards for unescorted access to the protected area. The petitioner further states that current regulations enable persons who do not meet trustworthiness and reliability standards for unescorted access to the protected area to be escorted through protected areas by unarmed persons that may not be members of the security force. The petitioner believes that this is

a loophole that creates a security vulnerability that could potentially compromise public health and safety.

The Proposed Amendments

The petitioner requests that 10 CFR part 73 be amended to require that licensees implement procedures to ensure that: (1) When information becomes known to a licensee about an individual that would prevent that individual from gaining unescorted access to the protected area of a nuclear power plant, the licensee will implement measures to ensure the individual does not enter the protected area, whether escorted or not; and (2) when sufficient information is not available to a licensee about an individual to determine whether the criteria for unescorted access are satisfied, the licensee will implement measures to allow that individual to enter the protected area only when escorted at all times by an armed member of the security force who remains in periodic communication with security supervision. In the case of the first proposal, the petitioner believes that when it is known that a person's trustworthiness and reliability do not meet the prescribed standards identified in § 73.56(b), access to protected areas, either escorted or unescorted, should be denied. In the case of the second proposal, the petitioner recognizes that it is impractical and burdensome to conduct background investigations of every person requiring access to a protected area, noting persons may need one-time access. With that in mind, the petitioner proposes granting these persons access to protected areas, but only when escorted by an armed member of the security force and only when this armed member is in periodic communication with security supervision.

Conclusion

The petitioner believes that current regulations create a security vulnerability that could potentially compromise public health and safety. The petitioner believes that its proposed amendments to 10 CFR part 73 will address this vulnerability in current regulations that enables persons who do not meet trustworthiness and reliability standards for unescorted access to protected areas of nuclear power plants permission to enter protected areas with an unarmed escort. Accordingly, the petitioner requests that the NRC amend its regulations related to the physical protection of nuclear power plants and materials as described previously in the section titled, ''The Proposed Amendments.''

Dated at Rockville, Maryland, this 3rd day of April 2007.

Kenneth R. Hart,

Acting Secretary of the Commission.

[FR Doc. E7–6644 Filed 4–6–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM366 Special Conditions No. 25–07–03–SC]

Special Conditions: Boeing Model 787–8 Airplane; Composite Wing and Fuel Tank Structure—Fire Protection Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 787–8 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These novel or unusual design features are associated with composite materials chosen for the construction of the fuel tank skin and structure. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for wing and fuel tank structure with respect to post-crash fire safety. These proposed 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. Additional special conditions will be issued for other novel or unusual design features of the Boeing Model 787–8 airplanes.

DATES: Comments must be received on or before May 24, 2007.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM366, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM366. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, FAA, Propulsion/Mechanical Systems, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2132; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions based on comments we receive.

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

Background

On March 28, 2003, Boeing applied for an FAA type certificate for its new Boeing Model 787–8 passenger airplane. The Boeing Model 787–8 airplane will be an all-new, two-engine jet transport airplane with a two-aisle cabin. The maximum takeoff weight will be 476,000 pounds, with a maximum passenger count of 381 passengers.

Type Certification Basis

Under provisions of 14 CFR 21.17, Boeing must show that Boeing Model 787–8 airplanes (hereafter referred to as ''the 787'') meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–117, except §§ 25.809(a) and 25.812, which will remain at Amendment 25–

115. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the 787 because of a novel or unusual design feature, special conditions are prescribed under provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the 787 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Pub. L. 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 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 or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The 787 will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions for the 787 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.

The 787 will be the first large transport category airplane that will not be fabricated primarily with aluminum materials for the fuel tank structure. Instead it will use predominantly composite materials for the structural elements and skin of the wings and fuel tanks. Conventional airplanes with aluminum skin and structure provide a well understood level of safety during post-crash fire scenarios with respect to fuel tanks. This is based on service history and extensive full-scale fire testing. Composites may or may not have capabilities equivalent to aluminum, and current regulations do not provide objective performance requirements for wing and fuel tank structure with respect to post-crash fire safety. Because the use of composite structure is new and novel compared to the designs envisioned when the applicable regulations were written, additional substantiation by test and analysis will be required to show that the 787 provides an acceptable level of safety with respect to the performance of the wings and fuel tanks during an external fuel-fed fire.

Although the FAA has previously approved fuel tanks made of composite materials that are located in the horizontal stabilizer of some airplanes, the composite wing structure of the 787 will introduce a new fuel tank construction into service. Advisory Circular (AC) 20–107A, Composite Aircraft Structure, under the topic of flammability, states: ''The existing requirements for flammability and fire protection of aircraft structure attempt to minimize the hazard to the occupants in the event ignition of flammable fluids or vapors occurs. The use of composite structure should not decrease this existing level of safety.'' The relevance to the wing structure is that post-crash fire passenger survivability is dependent on the time available for passenger evacuation prior to fuel tank breach or structural failure. Structural failure can be a result of degradation in load-carrying capability in the upper or lower wing surface caused by a fuel-fed ground fire. Structural failure can also be a result of over-pressurization caused by ignition of fuel vapors in the fuel tank.

The FAA has historically developed rules with the assumption that the material of construction for wing and fuselage would be aluminum. As a representative case, § 25.963 was developed as a result of a large fuel-fed fire following the failures of fuel tank access doors caused by uncontained engine failures. During the subsequent Aviation Rulemaking Advisory Committee (ARAC) harmonization process with the JAA,[1] the structures group attempted to harmonize the requirements of § 25.963 regarding the impact and fire resistance of fuel tank access panels. Both authorities recognized that existing aluminum wing structure provided an acceptable level of safety. Further rulemaking has not yet been pursued.

As with previous Boeing airplane designs with under-wing mounted engines, the wing tanks and center tanks are located in proximity to the passengers and near the engines. Past experience indicates post crash survivability is greatly influenced by the size and intensity of any fire that occurs. The ability of aluminum wing surfaces wetted by fuel on their interior surface to withstand post-crash fire conditions has been demonstrated by tests conducted at the FAA Technical Center. These tests have verified adequate dissipation of heat across wetted aluminum fuel tank surfaces so that localized hot spots do not occur, thus minimizing the threat of explosion. This inherent capability of aluminum to dissipate heat also allows the wing lower surface to retain its load carrying characteristics during a fuel-fed ground fire. It significantly delays wing collapse or burn-through for a time interval that usually exceeds evacuation times. In addition, as an aluminum fuel tank is heated with significant quantities of fuel inside, fuel vapor accumulates in the ullage space, exceeding the upper flammability limit relatively quickly and thus reducing the threat of a fuel tank explosion prior to fuel tank burn-through. Service history of conventional aluminum airplanes has shown that fuel tank explosions caused by ground fires have been rare on airplanes configured with flame arrestors in the fuel tank vent lines. Fuel tanks constructed with composite materials may or may not have equivalent capability.

Current regulations were developed and have evolved under the assumption that wing construction would be of aluminum materials, which provide inherent properties. Current regulations may not be adequate when applied to airplanes constructed of different materials. Aluminum has the following properties with respect to fuel tanks and fuel-fed external fires.

- Aluminum is highly thermally conductive. It readily transmits the heat of a fuel-fed external fire to fuel in the tank. This has the benefit of rapidly driving the fuel tank ullage to exceed the upper flammability limit prior to burn-through of the fuel tank skin or heating of the wing upper surface above the auto-ignition temperature. This greatly reduces the threat of fuel tank explosion.
- Aluminum panels at thicknesses previously used in wing lower surfaces of large transport category airplanes have been fire resistant as defined in CFR 14 part 1 and AC 20–135.
- The heat capacity of aluminum and fuel will prevent burn-through or wing collapse for a time interval that will generally exceed the passenger evacuation time.

[1] The JAA is the Joint Aviation Authority of Europe and the JAR is its Joint Aviation Requirements, the equivalent of our Federal Aviation Regulations. In 2003, the European Aviation Safety Agency (EASA) was formed, and EASA is now the principal aviation regulatory agency in Europe. We intend to work with EASA to ensure that our rules are also harmonized with its Certification Specifications (CS). But since these efforts in developing harmonization of § 25.963 occurred before EASA was formed, it was the JAA that was involved with them.

The extensive use of composite materials in the design of the 787 wing and fuel tank structure is considered a major change from conventional and traditional methods of construction. This will be the first large transport category airplane to be certificated with this level of composite material for these purposes. The applicable airworthiness regulations do not contain specific standards for post-crash fire safety performance of wing and fuel tank skin or structure.

Discussion of Proposed Special Conditions

In order to provide the same level of safety as exists with conventional airplane construction, Boeing must demonstrate that the 787 has sufficient post-crash survivability, in the event that the wings are exposed to a large fuel-fed fire, to enable occupants to safely evacuate. Factors in fuel tank survivability are the structural integrity of the wing and tank, flammability of the tank, burnthrough resistance of the wing skin, and the presence of auto-ignition threats during exposure to a fire. The FAA assessed post crash survival time during the adoption of amendment 25–111 for fuselage burnthrough protection. Studies conducted by and on behalf of the FAA indicated that, following a survivable accident, prevention of fuselage burn-through for approximately 5 minutes can significantly enhance survivability. (See report numbers DOT/FAA/AR–99/57 and DOT/FAA/AR–02/49.) Beyond five minutes, there is little benefit, due to the effects of the fuel fire itself. That assessment was carried out based on accidents involving airplanes with conventional fuel tanks, and considering the ability of ground personnel to rescue occupants. In addition, AC20–135 indicates that, when aluminum is used for fuel tanks, the tank should withstand the effects of fire for 5 minutes without failure. Therefore, to be consistent with existing capability and related requirements, the 787 fuel tanks must be capable of resisting a post crash fire for at least 5 minutes. In demonstrating compliance, Boeing must address a range of fuel loads from minimum to maximum, as well as any other critical fuel load.

Applicability

As discussed above, these proposed special conditions are applicable to the 787. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these proposed special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the 787. It is not a rule of general applicability, and it affects only the applicant that applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these Special Conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Administrator of the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 787–8 airplane.

In addition to complying with part 25 regulations governing the fire-safety performance of the fuel tanks, wings, and nacelle, the Boeing Model 787–8 must demonstrate acceptable post-crash survivability in the event the wings are exposed to a large fuel-fed ground fire. Boeing must demonstrate that the wing and fuel tank design can endure an external fuel-fed pool fire for at least 5 minutes. This shall be demonstrated for minimum fuel loads (not less than reserve fuel levels) and maximum fuel loads (maximum range fuel quantities), and other identified critical fuel loads. Considerations shall include fuel tank flammability, burn-through resistance, wing structural strength retention properties, and auto-ignition threats during a ground fire event for the required time duration.

Issued in Renton, Washington, on March 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6542 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27806; Directorate Identifier 2006–NM–287–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

* * * discovery of interferences between the power wire supplying the galley's coffee-maker and the surrounding structure. These interferences might, by chafing and degrading the wire insulation, generate short circuits between the wire and the aircraft ground through the composite cabinet structure, without activation of the Circuit Breaker (C/B). Several hot spots may then be created and generate a large amount of thick smokes just behind the cockpit.

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

DATES: We must receive comments on this proposed AD by May 9, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

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–2007–27806; Directorate Identifier 2006–NM–287–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2006–0329–E, dated October 25, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is issued following discovery of interferences between the power wire supplying the galley's coffee-maker and the surrounding structure. These interferences might, by chafing and degrading the wire insulation, generate short circuits between the wire and the aircraft ground through the composite cabinet structure, without activation of the Circuit Breaker (C/B). Several hot spots may then be created and generate a large amount of thick smokes just behind the cockpit.
>
> This AD aims to prevent this kind of incident, mandating a wire inspection [for damaged wire sleeves], a check for a proper clearance and if necessary a wire re-routing.

The MCAI also requires disabling the galley's coffee-maker, and, in addition to wire re-routing, any required corrective actions. (Corrective actions include replacing worn or defective wire sleeves and shortening wires.) You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletins F50–471 and F50–456, both dated October 25, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 44 products of U.S. registry. We also estimate that it would take about 46 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 $161,920, or $3,680 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2007–27806; Directorate Identifier 2006–NM–287–AD.

Comments Due Date

(a) We must receive comments by May 9, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Mystere-Falcon 50 airplanes; certificated in any category; with serial number 275 through 293 and 295 through 303 and 305 through 330 inclusive, with the exception of airplanes which have already embodied the Dassault Service Bulletin F50–456.

Subject

(d) Electrical Power; Equipment/Furnishings.

Reason

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

This Airworthiness Directive (AD) is issued following discovery of interferences between the power wire supplying the galley's coffee-maker and the surrounding structure. These interferences might, by chafing and degrading the wire insulation, generate short circuits between the wire and the aircraft ground through the composite cabinet structure, without activation of the Circuit Breaker (C/B). Several hot spots may then be created and generate a large amount of thick smoke just behind the cockpit.

This AD aims to prevent this kind of incident, mandating a wire inspection [for damaged wire sleeves], a check for a proper clearance and if necessary a wire re-routing.

The MCAI also requires disabling the galley's coffee-maker, and, in addition to wire re-routing, any required corrective actions. (Corrective actions include replacing worn or defective wire sleeves and shortening wires.)

Actions and Compliance

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

(1) Within 50 flight hours or 1 month after the effective date of this AD, whichever occurs first, disable the galley's coffee-maker by pulling and locking out the circuit breaker 710HG, as instructed in Dassault Service Bulletin F50–471, dated October 25, 2006.

(2) Within 1,530 flight hours or 24 months after the effective date of this AD, whichever occurs first, inspect for damaged wire sleeves, check their proper clearance, and if a discrepancy is found, prior to next flight, proceed to all applicable corrective actions as indicated in the Accomplishment Instructions of Dassault Service Bulletin F50–456, dated October 25, 2006. Doing the actions specified in this paragraph terminates the requirements of paragraph (f)(1) of this AD, and after the actions have been done, the circuit breaker collar required by paragraph (f)(1) of this AD may be removed.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI does not indicate that doing the actions specified in Dassault Service Bulletin F50–456, dated October 25, 2006, terminates the requirement to disable the coffee-maker. This AD indicates that doing the actions specified in Dassault Service Bulletin F50–456, terminates the requirements to disable the coffee-maker, and after the actions have been done, the circuit breaker collar may be removed.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, telephone (425) 227–1137; fax (425) 227–1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Emergency Airworthiness Directive 2006–0329–E, dated October 25, 2006; Dassault Service Bulletin F50–471, dated October 25, 2006; and Dassault Service Bulletin F50–456, dated October 25, 2006; for related information.

Issued in Renton, Washington, on March 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–6590 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27439; Airspace Docket No. 07–AAL–04]

Proposed Revision of Class E Airspace; Red Dog, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Red Dog, AK. A review of controlled airspace for two new Area Navigation (RNAV) Required Navigation Performance (RNP) Special Instrument Approach Procedures (SIAPs) and an RNAV RNP Special Departure Procedure (DP), after a recent action (06–AAL–40) revealed that a small area of controlled airspace is required for the Red Dog Airport. Adoption of this proposal would result in revision of existing Class E airspace upward from 1,200 feet (ft.) above the surface at Red Dog Airport, AK.

DATES: Comments must be received on or before May 24, 2007.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27439/Airspace Docket No. 07–AAL–04, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation Nassif Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27439/Airspace Docket No. 07–AAL–04.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at Red Dog Airport, AK. The intended effect of this proposal is to revise Class E airspace upward from 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Red Dog Airport, AK.

A recent controlled airspace review revealed an additional small area of controlled airspace is necessary for two new Special RNAV RNP instrument approaches and one Special RNAV RNP departure procedure for the Red Dog Airport. The discovery was made too late to correct the recent rulemaking action associated with Red Dog Airport (06–AAL–40). The new approaches are (1) the Area Navigation (RNAV) Required Navigation Performance (RNP) Runway (RWY) 05 and (2) the RNAV RNP RWY 20. The departure procedure is the IHOPO ONE RNAV RNP Departure. Class E controlled airspace extending upward from 1,200 ft. above the surface within the Red Dog Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the Special SIAPs at the Red Dog Airport. The current rulemaking action slated for charting (06–AAL–40) will still take place on May 10, 2007.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Red Dog Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Red Dog, AK [Revised]

Red Dog Airport, AK

(Lat. 68°01′53″ N., long. 162°54′11″ W.)
Noatak NDB/DME, AK
(Lat. 67°34′19″ N., long. 162°58′26″ W.)
Selawik VOR/DME, AK
(Lat. 66°36′00″ N., long. 159°59′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Red Dog Airport, AK; and that airspace extending upward from 1,200 ft. above the surface within a 14-mile radius of the Red Dog Airport, AK, and within 5 miles either side of a line from the Selawik VOR/DME, AK, to lat. 67°38′06″ N., long. 162°21′42″ W., to lat. 67°54′30″ N., long. 163°00′00″ W., and within 5 miles either side of a line from the Noatak NDB/DME, AK, to lat. 67°50′20″ N., long. 163°19′16″ W., and within 8 miles either side of the 219° bearing of the Red Dog NDB, AK, extending from the 14-mile radius from the Red Dog NDB, AK, to 30 miles southwest of the Red Dog Airport, AK.

* * * * *

Issued in Anchorage, AK, on March 30, 2007.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–6539 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 637

[FHWA Docket No. FHWA–2006–26501]

RIN 2125-AF21

Crash Test Laboratory Requirements for FHWA Roadside Safety Hardware Acceptance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to revise its regulation that establishes the general requirements for quality assurance procedures for construction on all Federal-aid highway projects on the National Highway System (NHS).[1] Specifically, the FHWA proposes to require accreditation of laboratories that conduct crash tests on roadside hardware by an accrediting body that is recognized by the National Cooperation for Laboratory Accreditation (NCLA) or is a signatory to an International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), an Asia Pacific Laboratory Accreditation Cooperation (APLAC) MRA, or another comparable accreditation body approved by FHWA. The objective of this proposed rule is to improve the agency's ability to determine that crash test laboratories are qualified to conduct and evaluate tests intended to determine the crashworthiness of roadside safety features. Laboratory accreditation is widely recognized as a reliable indicator of technical competence.

DATES: Comments must be received on or before June 8, 2007.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Matt Lupes, Office of Safety Design, HSSD, 202–366–6994, Nicholas Artimovich, Office of Safety Design, HSSD, 202–366–1331, or Raymond Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit*. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may be downloaded from the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments and we will consider all late comments to the extent practicable. Accordingly, we recommend that you periodically check the Docket for new material.

Background

Section 109(c) of title 23, United States Code, as amended by section 304 of the National Highway System Designation Act of 1995 (Pub. L. 104–59; 109 Stat. 188; Nov. 28, 1995), requires the Secretary, in cooperation with the State transportation departments, to approve design and construction standards on the NHS, regardless of funding source. These design standards include not only elements pertaining to the roadway itself, but also to any appurtenances installed along the roadway, such as traffic barriers (roadside and median barriers, and bridge railings), sign and luminaire supports and crash cushions.

Statement of the Problem. The roadside safety hardware sector has evolved since the 1960's and now includes additional crash test laboratories that are not sponsored by an academic institution. During the same period, the FHWA funding of roadside safety hardware testing at crash test laboratories and direct observation of crash test laboratories have decreased. There are about 10 laboratories within the United States that conduct, or have conducted, the types of vehicle/hardware tests needed to establish crashworthiness. Additionally, there are more manufacturers and increasing types of roadside safety hardware devices available. The FHWA recognized that most State DOT personnel were not experienced in assessing test laboratory reports to determine if the hardware was subjected to all required tests and if all tests met the appropriate evaluation criteria. Therefore, as a service to the State transportation departments, and to the highway safety industry in general, the FHWA began reviewing test reports, upon request, and providing written acknowledgements that specific

[1] The National Highway System (NHS) includes the Interstate Highway System as well as other roads important to the nation's economy, defense, and mobility. See 23 U.S.C. 103(b). The NHS was developed by the Department of Transportation (DOT) in cooperation with the States, local officials, and metropolitan planning organizations (MPOs).

appurtenances were crashworthy and thus eligible for use on the NHS. These ''FHWA Acceptance Letters'' quickly became essential to the manufacturers and widely recognized by the States.

The FHWA Office of Safety Design reviews such requests for acceptance and currently maintains listings of crashworthy barriers, bridge railings, transitions to bridge railings, barrier terminals, crash cushions, truck mounted attenuators, breakaway luminaire support hardware, breakaway sign supports, work zone devices, and other hardware. Hardware approved through acceptance letters are posted on the FHWA Safety Web site at *http://safety.fhwa.dot.gov/report350hardware*.

Similar to the individual State DOTs, the FHWA does not have adequate personnel or resources to continuously verify, on-site, the capabilities of the established test laboratories to conduct required tests, to calibrate recording devices used to collect and analyze data, and to determine compliance with evaluation criteria. Should new laboratories be established in the future, the FHWA would be similarly limited in its ability to assess their competence to set up, run, and evaluate full-scale vehicular tests. The objective of this rule would be to provide increased confidence in roadside hardware safety by ensuring that all crash test laboratories are capable of conducting crash tests and analyzing and reporting test results. The FHWA believes that appropriate stewardship requires that we establish minimum accreditation requirements for these laboratories.

General Discussion of the Proposal

The FHWA is proposing to amend 23 CFR 637.209 by adding 637.209(a)(5) that would require all laboratories that perform crash testing for acceptance of roadside safety hardware to be accredited by an accreditation body that is recognized by NACLA or is a signatory to the APLAC MRA, ILAC MRA, or another comparable accreditation body approved by FHWA. To FHWA's knowledge, NACLA and laboratory accreditation bodies that are members of ILAC and APLAC are the only laboratory accreditation bodies that exist. Information on accrediting bodies that are signatories to APLAC's MRA and ILAC's MRA, including estimated costs and application procedures for laboratory accreditation, can be found at their respective Web sites *http:llwww.aplac.org* and *http://www.ilac.org*; similar information on NACLA's accrediting bodies can be found at *http://nacla.net*. Formal accreditation assesses factors such as the technical competency of laboratory personnel, the validity of test methods, the calibration and maintenance of test equipment, and the quality assurance of calibration and test data.

Laboratory accreditation will be assessed according to the current International Standard ISO/IEC 17025:2005, General Requirements for the Competence of Testing and Calibration of Laboratories. The ISO/IEC 17025:2005 standard is divided into management and technical requirements that ensure the competence of the laboratory to produce valid data and results. Many other countries require organizations and testing laboratories to be accredited to the ISO/IEC 17025 standard for any test results used for establishing compliance. The FHWA acknowledges the ISO/IEC 17025: 2005 standard as the benchmark for assessing the competence of the testing and calibration laboratories

This rulemaking proposes to provide a 2-year phase-in period from the date of final rule to allow adequate time to prepare documentation and budgeting for formal accreditation. Based on the experience of the two accredited labs operating in the U.S., we estimate that adequate preparation for accreditation could vary depending on the size of the lab and could take 2 to 6 months. We welcome your comments on what burdens this proposed accreditation would impose on a laboratory and if the proposed 2-year phase-in period is sufficient.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or would not be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. Currently, two of the test laboratories in the U.S. are already accredited and this proposed regulation would have no effect on those entities. The two currently accredited laboratories, E-Tech Testing Services Incorporated in Rocklin, California and Safe Technologies Incorporated in Rio Vista, California provided an estimate of direct time and costs incurred to receive initial accreditation as 480 to 960 person-work hours to prepare documentation and $9,000 in direct costs. The initial fee of $9,000 included a one-time registration fee of $5,000, a 3-day on-site assessment visit costing $3,000, and materials and equipment costs of $1,000. It is expected that the amount of person work hours and costs associated with document preparation will vary depending on the size of the laboratory and the extent to which its operating procedures are already formalized. We believe the time and cost to gain accreditation is not a burden. Laboratory accreditation renewal is required bi-annually and includes an annual review. The two laboratories mentioned above cite recurring annual costs of maintaining formal accreditation to be 160 person work hours and only $3,000 annually.

This rulemaking proposes to provide a 2-year phase-in period from the date of final rule to allow adequate time to prepare documentation and budgeting for formal accreditation. We believe 2 years is more than adequate time for laboratories to obtain the necessary accreditation. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. The FHWA certifies that this proposed action would not have a significant economic impact on a substantial number of small entities. As noted above, there are about ten (10) agencies that test roadside hardware for crashworthiness and two of these have already been certified as proposed herein. Estimated time and cost for an

initial certification is 3 days on-site and $ 9,000. Re-certification is required bi-annually at an estimated annual cost of $3,000.

Executive Order 13132 (Federalism)

The FHWA analyzed this proposed amendment in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policy making discretion of the States and local governments.

Unfunded Mandates Reform Act

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995; 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant proposed action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this is not a significant energy action under this 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. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 13175 (Tribal Consultation)

Since none of the existing test laboratories are owned, operated, or in any way controlled by Indian tribes, the FHWA believes that it will not have any direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

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 uses voluntary consensus standards.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 637

Construction inspection and approval; Highways and roads.

Issued on: March 30, 2007.

J. Richard Capka,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part 637, as set forth below:

PART 637—QUALITY ASSURANCE PROCEDURES FOR CONSTRUCTION

1. The authority citation for part 637 continues to read as follows:

Authority: Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

2. In § 637.209, add paragraph (a)(5) to read as follows:

§ 637.209 Laboratory and sampling and testing personnel qualifications

(a) * * *

(5) After [insert date two years after the date of publication of the final rule in the **Federal Register**], laboratories that perform crash testing for acceptance of roadside hardware by the FHWA shall be accredited by a laboratory accreditation body that is recognized by the National Laboratory Accreditation Cooperation (NACLA), is a signatory to the Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement (MRA), is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), or another accreditation body acceptable to FHWA.

* * * * *

[FR Doc. E7–6533 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–123–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Virginia is proposing to revise its remining regulations to make three provisions permanent by deleting a termination date of September 30, 2004, from the regulations. The amendments are intended to render the State's regulations consistent with recent amendments to SMCRA.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on May 9, 2007. If requested, we will hold a public hearing on the amendment on May 4, 2007. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 24, 2007.

ADDRESSES: You may submit comments, identified by VA–123–FOR, by any of the following methods:

- *E-mail: tdieringer@osmre.gov.* Include VA–123–FOR in the subject line of the message.
- *Mail/Hand Delivery:* Mr. Tim Dieringer, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Big Stone Gap Area Office.

Mr. Tim Dieringer, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (276) 523–4303. E-mail: *tdieringer@osmre.gov.*

Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (276) 523–8100. E-mail: *lsv@mme.state.va.us.*

FOR FURTHER INFORMATION CONTACT: Mr. Tim Dieringer, Director, Knoxville Field Office; Telephone: (276) 523–4303. E-mail: *tdieringer@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''. . . a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Description of the Proposed Amendment

By letter dated February 13, 2007 (Administrative Record Number VA–1058), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment revises Virginia Coal Surface Mining Reclamation Regulations to reflect the deletion from SMCRA at section 510(e) of the termination date of section 510(e) of September 30, 2004.

Section 510 of SMCRA concerns permit approval or denial. Subsection 510(e) provides an exception to the prohibition of subsection (c) , which prohibits the issuance of a permit where any surface coal mining operation owned or controlled by an applicant is currently in violation of SMCRA or such other laws referenced at subsection 510(c). Prior to being amended by the Tax Relief and Health Care Act of 2006, subsection 510(e) provided as follows:

> (e) After the date of enactment of this subsection, the prohibition of subsection (c) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term ''violation'' has the same meaning as such term has under subsection (c). The authority of this subsection and section 515(b)(20)(B) shall terminate on September 30, 2004.

The effect of the deletion of the termination date in the quoted paragraph above (the entire last sentence was deleted) is twofold: (1) To make permanent the authority at subsection 510(e) of SMCRA to approve a permit application for surface coal mining and reclamation notwithstanding the existence of a violation resulting from an unanticipated event or condition at the site, and (2) to make permanent the two-year revegetation responsibility period for lands eligible for remining at subsection 515(b)(20)(B) of SMCRA.

In the proposed program amendments identified below, Virginia is deleting the termination date of September 30, 2004, from three of its program regulations concerning remining.

1. 4 VAC 25–130–785.25. Lands eligible for remining

This provision is proposed to be amended by deleting subsection (c) in its entirety. Currently, 4 VAC 25–130–785.25 provides as follows:

> (a) This section contains permitting requirements to implement 4VAC25–130–773.15(b)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.
>
> (b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall:
>
> (1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.
>
> (2) With regard to potential environmental and safety problems referred in subdivision (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of this chapter can be met.

(c) The requirements of this section shall not apply after September 30, 2004.

In its submittal letter, the DMME stated that the deletion of subsection (c) containing the termination date of September 30, 2004, is intended to reflect the deletion of that same termination date at subsection 510(e) of SMCRA.

2. 4VAC25–130–816.116 and 817.116. Revegetation; Standards for Success

These provisions are proposed to be amended by deleting the phrase ''included in permits issued before September 30, 2004, or any renewals thereof'' at the end of the first sentence in subparts (c)(2)(ii). Currently, 4 VAC 25–130–816.116(c) and 817.116(c) provide as follows:

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than:

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

In its submittal letter, the DMME stated that the deletion of the September 30, 2004, termination date at subparts (c)(2)(ii) is intended to reflect the deletion of that same termination date at subsection 510(e) of SMCRA.

As amended, 4VAC25–130–816.116(c)(2)(ii) and 817.116(c)(2)(ii) provide as follows:

(ii) Two full years for lands eligible for remining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Big Stone Gap Area Office may not be logged in.

Electronic Comments

Please submit Internet comments as an E-mail or Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. VA–123–FOR and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Area office at (276) 523–4303.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on April 24, 2007. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and

promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule 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. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

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. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does 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. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 2, 2007.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E7–6577 Filed 4–6–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–124–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises the Virginia Coal Surface Mining Reclamation Regulations concerning the distribution of topsoil and subsoil materials, revegetation standards for success, and to allow approval of natural stream restoration channel design, as developed in consultation with the Army Corps of Engineers.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on May 9, 2007. If requested, we will hold a public hearing on the amendment on May 4, 2007. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 24, 2007.

ADDRESSES: You may submit comments, identified by VA–124–FOR, by any of the following methods:

- *E-mail: tdieringer@osmre.gov.* Include VA–124–FOR in the subject line of the message.
- *Mail/Hand Delivery:* Mr. Tim Dieringer, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.

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

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Big Stone Gap Area Office.

Mr. Tim Dieringer, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (276) 523–4303. E-mail: *tdieringer@osmre.gov*.

Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (276) 523–8100. E-mail: *lsv@mme.state.va.us*.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Dieringer, Director, Knoxville Field Office; Telephone: (276) 523–4303. E-mail: *tdieringer@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Description of the Proposed Amendment

By letter dated February 13, 2007 (Administrative Record Number VA–1059), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment reflects revisions of the Virginia rules to be consistent with the Federal rules to allow approval of natural stream restoration channel design, as developed in consultation with the Army Corp of Engineers.

Specifically, the following amendments are proposed:

1. 4VAC 25–130–816.22 and 817.22 Topsoil and Subsoil

Subsections (d), concerning redistribution of topsoil and subsoil materials are proposed to be revised. Subsections (d) currently provide as follows:

(d) Redistribution.
(1) Topsoil materials removed under Paragraph (a) of this section shall be redistributed in a manner that—
(i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;
(ii) Prevents excess compaction of the materials; and
(iii) Protects the materials from wind and water erosion before and after seeding and planting.

Subparts (d)(1) are proposed to be amended by inserting the words ''and substitutes'' between the word ''materials'' and the word ''removed.'' Also, the phrase ''and (b)'' is added immediately after the phrase ''under subpart (a).'' Subparts (d)(1)(i) are amended by adding the word ''when'' between the word ''thickness'' and the word ''consistent.'' Also, the following sentence is added at the end of subparts (d)(1)(i): ''Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit.''

As amended, 4VAC 25–130–816.22(d) and 817.22(d) provide as follows:

(d) Redistribution.
(1) Topsoil materials and substitutes removed under Paragraphs (a) and (b) of this section shall be redistributed in a manner that—
(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;
(ii) Prevents excess compaction of the materials; and
(iii) Protects the materials from wind and water erosion before and after seeding and planting.

In its submittal letter, the DMME stated that these changes in the Virginia rules will ensure they are consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; see **Federal Register** Vol. 71, No. 168, pages 51684 through 51706, which became final on August 30, 2006. In that **Federal Register** notice, OSM finalized changes to its regulations to improve the quality and diversity of revegetation in the reclamation of coal mined lands. The revised Federal provisions govern topsoil redistribution and revegetation success standards.

2. 4VAC25–130–816.43 and 817.43 Diversions

Subsections (a), concerning general requirements, are proposed to be amended by revising subparts (a)(4) and deleting subparts (a)(5) in their entirety. Currently, subparts (a)(4) and (a)(5) provide as follow:

(a) General requirements.

* * * * *

(4) Diversions which convey water continuously or frequently shall be lined with rock rip rap to at least the normal flow depth, including an allowance for freeboard. Diversions constructed in competent bedrock and portions of channels above normal flow depth shall comply with the velocity limitations of Paragraph (5) below.

(5) The maximum permissible velocity for the following methods of stabilization are:

Vegetated channel constructed in soil: 3.5 feet per second;
Vegetated channel with jute netting: 5.0 feet per second;
Rock rip rap lined channel: 16.0 feet per second;
Channel constructed in competent bedrock: No limit.

* * * * *

Subparts (a)(4) are amended by deleting the second sentence and by revising the first sentence. In the first sentence, all the words following the phrase ''continuously or frequently shall be'' are deleted and are replaced by the words ''designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this

Part and any other criteria set by the Division.''

As amended, 4VAC 25–130–816.43(a)(4) and 817.43(a)(4) provide as follows:

(4) Diversions which convey water continuously or frequently shall be designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the Division.

In its submittal letter, the DMME stated that these changes to the Virginia rules will allow the approval of natural stream restoration channel design approved by the U.S. Army Corps of Engineers and will ensure they are consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; see **Federal Register** Vol. 71, No. 168, pages 51684 through 51706, which became final on August 30, 2006. In that **Federal Register** notice, OSM finalized changes to its regulations to improve the quality and diversity of revegetation in the reclamation of coal mined lands. The Federal provisions govern topsoil redistribution and revegetation success standards.

3. 4VAC25–130–816.116 and 817.116 Revegetation; Standards for Success

Subsections (a), concerning ground cover, production, or stocking, are proposed to be amended by revising subpart (a)(2). Subsections (b), concerning standards for success, are proposed to be amended by revising subparts (b)(3)(v)(C). Currently, subparts (a)(2) and (b)(3)(v)(C) provide as follows:

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25–130–816.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

* * * * *

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

* * * * *

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

* * * * *

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the surrounding unmined area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of 90% and an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

* * * * *

Subparts (a)(2) are amended by deleting the existing ''90%'' success standard and replacing that standard with a ''70%'' success standard. In addition, the following phrase is added to the end of the first sentence: ''except as provided by (b) of this section.'' Also, the following parenthetical sentence is deleted: ''The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error.''

Subparts (b)(3)(v)(C) are amended by deleting the ''90%'' success standard and replacing that standard with a ''70%'' success standard.

As amended, 4VAC 25–130–816/817.116(a)(2) and (b)(3)(v)(C) provide as follows:

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25–130–816.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 70% of the success standard, except as provided by (b) of this section. Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

* * * * *

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

* * * * *

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

* * * * *

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the surrounding unmined area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of 70% and an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

* * * * *

In its submittal letter, the DMME stated that these changes in the Virginia rules will ensure they are consistent with the corresponding and applicable Federal rules at 30 CFR Parts 816 and 817; see **Federal Register** Vol. 71, No. 168, pages 51684 through 51706, which became final on August 30, 2006. In that **Federal Register** notice, OSM finalized changes to its regulations to improve the quality and diversity of revegetation in the reclamation of coal mined lands. The revisions govern topsoil redistribution and revegetation success standards.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the

Big Stone Gap Area Office may not be logged in.

Electronic Comments

Please submit Internet comments as an E-mail or Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. VA–124–FOR and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Area office at (276) 523–4303.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on April 24, 2007. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule 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. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

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. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does 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. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 2, 2007.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

[FR Doc. E7–6578 Filed 4–6–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–029]

RIN 1625–AA08

Special Local Regulation for Marine Events; Roanoke River, Plymouth, North Carolina

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Plymouth Drag Boat Race Series'', a series of power boat races to be held on the waters of the Roanoke River, Plymouth, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Roanoke River adjacent to Plymouth, North Carolina during the power boat race.

DATES: Comments and related material must reach the Coast Guard on or before May 9, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704–5004, hand deliver them to room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 391–8149, or e-mail them to *Dennis.M.Sens@uscg.mil*. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Federal Building, Fifth Coast Guard District between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Christopher Humphrey, Prevention Department, Sector North Carolina, at (252) 247–4525 or via e-mail to *Christopher.D.Humphrey@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CCGD05–07–029], 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 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

The Outboard Drag Boat Association will be sponsoring a series of seven (7) power boat racing events titled the ''Plymouth Drag Boat Race''. The power boat races will be held on the following dates: June 24, July 22, August 11, 12, 19, September 30 and October 21, 2007. The races will be held on the Roanoke River immediately adjacent to Plymouth, North Carolina. The power boat races will consist of approximately (30) vessels conducting high speed straight line runs along the river and parallel with the shoreline. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the power boat races.

Discussion of Proposed Rule

The Coast Guard proposes to establish special local regulations on specified waters of the Roanoke River, in the vicinity of Plymouth, NC. The regulated area includes a section of the Roanoke River approximately one mile long and bounded in width by each shoreline, immediately adjacent to Plymouth, NC. The effect of this regulation would be to restrict general navigation in the regulated area during the drag boat races. This special local regulation will be enforced from 10 a.m. to 8:30 p.m. on June 24, July 22, August 11, 12, 19, September 30 and October 21, 2007. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. This regulation is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities: owners or operators of vessels intending to transit this section of the Roanoke River from 10 a.m. to 8:30 p.m. on June 24, July 22, August 11, 12, 19, September 30 and October 21, 2007. This proposed rule would not have significant economic impact on a substantial number of small entities for the following reasons. Although the regulated area will apply to a one mile segment of the Roanoke River, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. The Patrol Commander will allow non-participating vessels to transit the area between races. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 U.S. Coast Guard Sector North Carolina, listed at the beginning of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that 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)(h), of the instruction, an ''Environmental Analysis Check List'' is not required for this rule. 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 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35-T05–029 to read as follows:

§ 100.35–T05–029 Roanoke River, Plymouth, North Carolina.

(a) *Regulated area.* The regulated area includes all waters of Roanoke River commencing at the north river bank at latitude 350°52′20″ N, longitude 0760°44′47″ W, thence a line 180 degrees due south across the river to the shoreline thence west along the shoreline to a position located at latitude 35°51′43″ N, longitude 076°43′45″ W, thence 000 degrees due north across the river to the shoreline thence east along the shoreline to the point of origin. All coordinates reference Datum NAD 1983.

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

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

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

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

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any official patrol.

(d) *Enforcement period.* This section will be enforced from 10 a.m. to 8:30 p.m. on June 24, July 22, August 11, 12, 19, September 30 and October 21, 2007.

Dated: March 20, 2007.

Larry L. Hereth,

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

[FR Doc. 07–1621 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–07–010]

RIN 1625–AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone upon certain waters of the Patapsco River, Northwest Harbor, and Inner Harbor during the movement of the historic sloop-of-war USS CONSTELLATION, annually, on the Friday following Labor Day. This action is necessary to provide for the safety of life on navigable waters during the tow of the vessel from its berth at the Inner Harbor in Baltimore, Maryland, to a point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland, and return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

DATES: Comments and related material must reach the Coast Guard on or before June 8, 2007.

ADDRESSES: You may mail comments and related material to Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland, 21226–1791. Coast Guard Sector Baltimore, Waterways Management Division, 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 Commander, U. S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland, 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–010), 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 Coast Guard Sector Baltimore, Waterways Management Division, 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

Each year, the USS CONSTELLATION Museum conducts a ''turn-around''

ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on the Friday following Labor Day. The annual turning of the USS CONSTELLATION aids in the maintenance of the historic ship by ensuring even weathering of her hull. Planned events include a three-hour, round-trip tow of the CONSTELLATION in the Port of Baltimore, with an onboard salute with navy pattern cannon while the historic vessel is positioned off Fort McHenry National Monument and Historic Site. The historic sloop-of-war USS CONSTELLATION will be towed ''dead ship,'' which means that the vessel will be underway without the benefit of mechanical or sail propulsion. The return dead ship tow of the CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted turn-around of the CONSTELLATION on the Patapsco River near Fort McHenry. The Coast Guard anticipates a large recreational boating fleet during this event. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor.

Discussion of Proposed Rule

The historic sloop-of-war USS CONSTELLATION is towed ''dead ship'' annually on the Friday following Labor Day, from its berth at Pier 1 in Baltimore's Inner Harbor to a point on the Patapsco River near Fort McHenry National Monument and Historic Shrine, Baltimore, Maryland. The voyage takes place along a planned route of approximately four nautical miles one-way, which includes waters of the Patapsco River, Northwest Harbor and Inner Harbor. After being turned-around, the USS CONSTELLATION is returned to its original berth at Pier 1, Inner Harbor, Baltimore, Maryland.

The safety of dead ship tow participants requires that persons and vessels be kept at a safe distance from the intended route during this evolution. The Coast Guard proposes to establish a moving safety zone around the USS CONSTELLATION dead ship tow participants annually, between 2 p.m. and 7 p.m., local time, on the Friday following Labor Day, to ensure the safety of participants and spectators immediately prior to, during, and following the dead ship tow. Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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 or operators of vessels intending to operate, remain or anchor within certain waters of the Patapsco River, Northwest Harbor and Inner Harbor, in Baltimore, Maryland, from 2 p.m. through 7 p.m., local time, annually on the Friday following Labor Day. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river and harbors to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit 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 the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that 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 because the rule establishes a safety zone.

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 § 165.512 to read as follows:

§ 165.512 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) *Definitions.* For the purposes of this section:

(1) *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(2) *USS CONSTELLATION ''turn-around'' participants* means the USS CONSTELLATION, its support craft and the accompanying towing vessels.

(b) *Location.* The following area is a moving safety zone: all waters, from surface to bottom, within 200 yards ahead of or 100 yards outboard or aft of the historic sloop-of-war USS CONSTELLATION, while operating in the Inner Harbor, the Northwest Harbor or the Patapsco River.

(c) *Regulations.* (1) The general regulations governing safety zones, found in § 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) With the exception of USS CONSTELLATION ''turn-around'' participants, entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Baltimore, Maryland. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, persons or vessels shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) *Enforcement period.* This section will be enforced from 2 p.m. through 7 p.m., local time, annually on the Friday following Labor Day.

Dated: March 22, 2007.

Jonathan C. Burton,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. E7–6537 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0772; FRL–8296–2]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Minnesota State Implementation Plan (SIP) for sulfur dioxide (SO_2). Specifically, the revisions involve Flint Hills Resources, L.P. (Flint Hills) of Dakota County, Minnesota. In these revisions, Flint Hills is expanding operations at its petroleum refinery. To account for the increased SO_2 emissions from the expansion, Flint Hills is closing its sulfuric acid plant. An analysis of the revisions shows that the area air quality will be protected. Minnesota has also included additional monitoring requirements in the revisions.

DATES: Comments must be received on or before May 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0772, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov.*
- Fax: (312)886–5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0772. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the 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 www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

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

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Is EPA Proposing?
III. What Is the Background for This Action?
IV. What Is EPA's Analysis of the State Submission?
V. What Are the Environmental Effects of This Action?
VI. What Action Is EPA Taking?
VII. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

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

II. What Is EPA Proposing?

EPA is proposing approval of revisions to SO_2 emission limits at the Flint Hills facility. Minnesota submitted its Findings and Order Amendment Eight on July 24, 2006. Flint Hills is expanding operations at its petroleum refinery. This expansion includes adding a new heater, emissions unit 25H–4. Modifications to two heaters, 25H–1 and 25H–3, are also allowed. Potential SO_2 emissions from the new heater and the two modified heaters are restricted by the 878 tons per year facility-wide limit on fuel gas combustion units.

Minnesota is also requiring Flint Hills to install a continuous monitor on either the fuel gas from the 45 mix drum or the heater firing that fuel gas. The monitor will measure reduced sulfur in the fuel gas or SO_2 emissions exhausting from the heater.

III. What Is the Background for This Action?

Flint Hills operates a petroleum refinery in the Minneapolis-Saint Paul metropolitan area. Flint Hills is expanding its crude oil processing operations. The expansion will increase the crude oil unit's gasoline production capacity from 100,000 to 150,000 barrels per day. Minnesota amended its Findings and Order to allow the revisions necessary for the expansion. This is the eighth amendment to the Flint Hills Findings and Order.

Minnesota held a public hearing regarding Findings and Order Amendment Eight on May 25, 2006. No comments on the Flint Hills revisions were received at the public meeting or during the 30-day public comment period.

IV. What Is EPA's Analysis of the State Submission?

Minnesota included air dispersion modeling results in its submission. The modeling analysis includes all Flint Hills SO_2 emissions sources, including the additional and modified sources. Other significant SO_2 sources in the area were also included. The modeling analysis examined the impact of the revisions on the SO_2 air quality standards. The primary SO_2 National Ambient Air Quality Standard (NAAQS) has both an annual and 24-hour averaging period. The secondary NAAQS has a 3-hour averaging period.

Flint Hills used the ISCST3 dispersion model in the regulatory mode. Five years of surface meteorological data from the Minneapolis-Saint Paul International Airport and upper air data from Saint Cloud were used. Building downwash effects from the new and existing structures were accounted for in the modeling. The analysis found that the predicted annual SO_2 concentration is 38.5 $\mu g/m^3$ compared to the standard of 80 $\mu g/m^3$. The modeled 24-hour level of 266.8 $\mu g/m^3$ is under the 365 $\mu g/m^3$ NAAQS. Similarly, the predicted 3-hour average is 726.2 $\mu g/m^3$ which is under the secondary standard of 1300 $\mu g/m^3$.

V. What Are the Environmental Effects of This Action?

Sulfur dioxide causes breathing difficulties and aggravation of existing cardiovascular disease. It is also a precursor of acid rain and fine particulate matter formation. Sulfate particles are a major cause of visibility impairment in America. Acid rain damages lakes and streams impairing aquatic life and causes damage to buildings, sculptures, statues, and monuments. Sulfur dioxide also causes the loss of chloroform leading to vegetation damage.

The expansion of the Flint Hills facility includes an additional source and revised limits on several sources that results in higher SO_2 emissions. The projected increase in SO_2 emissions from this project is 315 tons per year. However, overall SO_2 emissions from Flint Hills have been reduced. When considering all sources at the facility there is no increase in SO_2 emissions, in fact there is a projected decrease of 99.6 tons per year. Therefore, the ''net emissions increase'' is below the Prevention of Significant Deterioration (PSD) significant threshold for SO_2 of 40 tons per year. This project is not subject to PSD requirements.

The effects of the expansion were analyzed. Both the projected SO_2 emissions from the Flint Hills facility and the reductions from other area facilities were considered. That analysis showed that the maximum predicted ambient SO_2 concentrations are below the primary and secondary NAAQS. This indicates that public health and welfare in Dakota County, Minnesota should be protected. The additional monitoring requirements placed on the heater combusting the fuel gas from the 45 mix drum will also help protect the air quality.

VI. What Action Is EPA Taking?

EPA is proposing to approve revisions to SO_2 emissions regulations for Flint Hills Resources, L.P. of Dakota County, Minnesota. The revisions authorize adding a new heater, modifying two heaters, and additional monitoring.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

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

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

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

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

Dated: March 19, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–6619 Filed 4–6–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7713]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground.		Communities affected
		Effective	Modified	
Letcher County, Kentucky, and Incorporated Areas				
North Fork Kentucky River ...	Approximately 0.29 miles downstream of Hazard Road ...	None	+1124	Letcher County (Unincorporated Areas).
	Approximately 0.14 miles downstream of the CSX Railroad (City of Whitesburg Corporate Limits).	None	+1137	
	Approximately 0.16 miles downstream of State Route 15 near Piedmont Drive (City of Whitesburg Corporate Limits).	None	+1161	
	Approximately 0.14 miles upstream of State Route 15 near the confluence with Pert Creek.	None	+1176	

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.

ADDRESSES

Letcher County (Unincorporated Areas)

Maps are available for inspection at 156 Main Street, Whitesburg, KY 41858

Send comments to The Honorable Jim Ward, Letcher County Judge Executive, 156 Main Street, Suite 107, Whitesburg, KY 41858

Trimble County, Kentucky, and Incorporated Areas				
Ohio River	Oldham County Line	None	+457	Trimble County (Unincorporated Areas)
	City of Milton Corporate Limits	None	+463	
	Trimble County Limits (Downstream)	*464	+463	
	City of Milton Corporate Limits	None	+464	
	Carroll County Line	None	+464	
	Trimble County Limits (Upstream)	*465	+464	

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.

ADDRESSES

City of Milton

Maps are available for inspection at 10179 U.S. Highway 421 North, Milton, KY 40045

Send comments to The Honorable Donald Oakley, Mayor, City of Milton, 10179 U.S. Highway 421 North, Milton, KY 40045

Trimble County (Unincorporated Areas):

Maps are available for inspection at 123 Church Street, Bedford, KY 40006

Send comments to The Honorable Randy Stevens, Trimble County Judge Executive, P.O. Box 251, Bedford, KY 40006

Collin County, Texas, and Incorporated Areas				
Cottonwood Creek 1	Approximately 200 feet downstream from Oxbow Creek Lane.	*552	+550	City of Allen. City of McKinney.
	Approximately 600 feet upstream from Ash Lane	None	+712	City of Parker. City of Plano.
Doe Branch	Approximately 2070 feet downstream from County Rd 51	None	+624	City of Celina. Collin County.
	County Road 94	None	+741	(Unincorporated Areas).
East Fork Trinity River	Approximately 3500 feet downstream from Union Pacific Railroad.	None	+524	City of Mckinney. City of Melissa.
	Approximately 1600 feet upstream from County Road 279.	None	+570	Collin County (Unincorporated Areas).
Muddy Creek (Upper Reach)	Approximately one mile downstream from FM 544	*486	+487	City of Wylie. Collin County.
	Just upstream from Stinson Road	*573	+569	(Unincorporated Areas).
Rowlett Creek	McDermott Drive (FM 2170)	*609	+606	City of Allen.
	Approximately 3000 feet upstream from Exchange Parkway.	*626	+627	
Stewart Creek Tributary	Approximately 2500 feet downstream from Fossil Ridge Drive.	*659	+660	City of Frisco.
	Approximately 2800 feet upstream from Woodstream Drive.	None	+718	
Watters Branch	Approximately 2250 feet downstream from Bethany Drive	*586	+585	City of Allen.
	State Hwy 121	*698	+691	
West Rowlett Creek	Confluence with Rowlett Creek	*611	+609	City of Allen.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 1000 feet downstream from State Hwy 121.	*638	+633	City of Plano Collin County (Unincorporated Areas).

*National Geodetic Vertical Datum.
#Depth in feet above ground.
+North American Vertical Datum.

ADDRESSES

City of Allen

Maps are available for inspection at One Butler Circle, Allen, TX 75013

Send comments to The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013

City of Celina

Maps are available for inspection at City of Celina, 320 West Walnut, Celina, TX 75009

Send comments to The Honorable Corbett Howard, Mayor, City of Celina, 302 West Walnut, Celina, TX 75009

City of Frisco

Maps are available for inspection at City of Frisco, 6891 Main Street, Frisco, TX 75034

Send comments to The Honorable Michael Simpson, Mayor, City of Frisco, 6101 Frisco Square Blvd, Frisco, TX 75034

City of Lucas

Maps are available for inspection at 151 Country Club Road, Lucas, TX 75002

Send comments to The Honorable Bob Sanders, Mayor, City of Lucas, 151 Country Club Road, Lucas, TX 75002

City of McKinney

Maps are available for inspection at City of McKinney, 222 North Tennessee Street, McKinney, TX 75070

Send comments to The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee, McKinney, TX 75070

City of Melissa

Maps are available for inspection at City of Melissa, 109 U.S. Hwy 121, Melissa, TX 75454

Send comments to The Honorable David Dorman, Mayor, City of Melissa, P.O. Box 409, Melissa, TX 75454

City of Parker

Maps are available for inspection at City of Parker, 5700 East Parker Road, Parker, TX 75002

Send comments to The Honorable Jerry Tartaglino, Mayor, City of Parker, 5700 East Parker Road, Parker, TX 75002

City of Plano

Maps are available for inspection at City of Plano, 1520 Avenue K, Plano, TX 75086

Send comments to The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086

City of Wylie

Maps are available for inspection at City of Wylie, 114 North Ballard Avenue, Wylie, TX 75098

Send comments to The Honorable John Mondy, Mayor, City of Wylie, 2000 Hwy 78 North, Wylie, TX 75098

Collin County (Unincorporated Areas)

Maps are available for inspection at Collin County Department of Public Works, 210 South McDonald Street, McKinney, TX 75069

Send comments to The Honorable Ron Harris, Judge, Collin County, 210 South McDonald, McKinney, TX 75069

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated March 26, 2007.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–6555 Filed 4–6–07; 845 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2007–27240]

RIN 2127–AJ98

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Appendices A, B, and C of 49 CFR Part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 2004 calendar year before October 25, 2007. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25. We are proposing to add and remove several insurers from relevant appendices.

DATES: Comments must be submitted not later than June 8, 2007. Insurers listed in the appendices are required to submit reports on or before October 25, 2007.

ADDRESSES: You may submit comments, identified by docket number: NHTSA–

2007–27240 and/or RIN number: 2127–AJ98, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the Docket Management System.
- *Fax:* (202) 493–2251.
- *Mail:* Dockets, 400 7th Street, SW., Washington, DC 20590.
- *Hand Delivery/Courier:* Plaza Level Room 401, (PL #401), of the Nassif Building, 400 7th Street, SW., Washington, DC 20590. *Telephone:* 1–800–647–5527.

You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rosalind Proctor, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail to *rosalind.proctor@dot.gov.* Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR Part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best.[1] A.M. Best, publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and 33112(e)(1) and (2),

(2) the insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted.

NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Auto Rental News.[2]

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report before October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on September 5, 2006 (71 FR 52291). Subsequent to publishing the listing, the agency was informed that Travelers Property Casualty Corporation merged with St Paul Companies, officially becoming St Paul Travelers Companies

[1] A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

[2] Automotive Fleet Magazine and Auto Rental News are publications that provide information on the size of fleets and market share of rental and leasing companies.

on April 1, 2004. Therefore, the agency proposes to remove Travelers PC Group and add St Paul Travelers Companies to Appendix A.

Each of the 18 insurers listed in Appendix A are required to file a report before October 25, 2007, setting forth the information required by Part 544 for each State in which it did business in the 2004 calendar year. As long as these 18 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2004, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2004 calendar year data for market shares from A.M. Best, we propose to remove Arbella Mutual Insurance (Massachusetts) and add the Farm Bureau of Idaho Group (Idaho) to Appendix B.

The nine insurers listed in Appendix B are required to report on their calendar year 2004 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2007, and set forth the information required by Part 544. As long as these nine insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Auto Rental News for 2004, NHTSA proposes to add Emkay Inc. Each of the 8 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 2004 no later than October 25, 2007, and set forth the information required by Part 544. As long as those 8 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2006 (see *http://www.bls.gov/cgi-bin/surveymost*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $100,800 for any insurer added to Appendix A, $40, 320 for any insurer added to Appendix B, and $11,632 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would propose to remove one company and add one company; for Appendix B, the agency would propose to remove one company and add one company; and for Appendix C, the agency would propose to add one company. The agency estimates that the net effect of this proposal, if made final, would be a cost increase to insurers, as a group of approximately $11,632.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through August 31, 2009, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language

includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Rosalind Proctor, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: rosalind.proctor@dot.gov*; or

c. *Fax:* (202) 493–2290.

IV. Comments

Submission of Comments

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filling the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR Part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above, in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was ''NHTSA 1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The ''pdf'' versions of the documents are word searchable.

V. Conclusion

Based on the foregoing, we are proposing to amend Appendices A, B, and C of 49 CFR 544, Insurer Reporting Requirements. We are also amending § 544.5 to revise the example given the recent update to the reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2007, will contain the required information for the 2004 calendar year).

* * * * *

3. Appendix A to Part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
Auto-Owners Insurance Group
CNA Insurance Companies
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Mercury General Group
Nationwide Group
Progressive Group
Safeco Insurance Companies
State Farm Group
St Paul Travelers Companies [1]
USAA Group
Farmers Insurance Group

4. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Farm Bureau of Idaho Group (Idaho) [1]
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Safety Group (Massachusetts)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Cendant Car Rental
Dollar Thrifty Automotive Group
EmKay, Inc. 1
Enterprise Rent-A-Car
Enterprise Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
U-Haul International, Inc. (Subsidiary of AMERCO)
Vanguard Car Rental USA

Issued on: March 30, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–6519 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

[1] Indicates a newly listed company, which must file a report beginning with the report due October 25, 2007.

[1] Indicates a newly listed company, which must file a report beginning with the report due October 25, 2007.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070323069–7069–01;I.D. 031907A]

RIN 0648–AV46

Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to establish catch accounting requirements for persons who receive, buy, or accept Pacific whiting (whiting) deliveries of 4,000 pounds (lb) (1.18 mt) or more from vessels using mid-water trawl gear during the primary whiting season. This action would improve NMFS's ability to effectively monitor the whiting fishery such that catch of whiting and incidentally caught species, including overfished groundfish species, do not result in a species' optimum yield (OY), harvest guideline, allocations, or bycatch limits being exceeded. This action would also provide for timely reporting of Chinook salmon take as specified in the Endangered Species Act (ESA) Section 7 Biological Opinion for Chinook salmon catch in the Pacific groundfish fishery. This action is consistent with the conservation goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Comments must be received by April 24, 2007.

ADDRESSES: You may submit comments, identified by I.D. 031907A by any of the following methods:

- E-mail: *HakeProcessors.nwr@noaa.gov*: Include I.D 031907A in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Becky Renko
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northwest Region (see Addresses) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285 Send comments on collection-of-information requirements to the NMFS address above and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Becky Renko, phone: 206–526–6110, fax: 206–526–6736, or e-mail: *becky.renko@noaa.gov*.

Electronic Access: This proposed rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.access.gpo.gov/su__docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfmand* at the Council's Web site at *http://www.pcouncil.org*.

SUPPLEMENTARY INFORMATION: The proposed action is to provide for electronic catch accounting and other monitoring improvements for the shore-based sector of the whiting fishery. The proposed action defines requirements for recordkeeping, reporting, catch sorting, and scale use for persons who receive, buy, or accept unsorted deliveries (generally processors or transporters) of 4,000 lb (1.8 mt) or more of whiting from vessels using midwater trawl gear during the primary season for the shore-based sector. This action is intended to address difficulties that occurred during the 2006 whiting season that could compromise the ability to account for the catch of target, incidental and prohibited species, and which could compromise the ability to manage groundfish species OYs, trip limits, bycatch limits, and Chinook salmon take in relation to Biological Opinion specifications.

The shore-based whiting fishery needs to have a catch reporting system in place that: provides timely reporting of catch data so that whiting, overfished species and Chinook salmon can be adequately monitored and accounted for inseason; and, specifies catch sorting and weight requirements necessary to maintain the integrity of fish ticket values used to manage groundfish species OYs, trip limits, and bycatch

limits. This proposed rule is part of an ongoing process to develop a maximized retention program for the shoreside whiting sector. The rule is intended to address shoreside monitoring that will be implemented in 2007 in conjunction with the issuance of exempted fishing permits (EFPs) to vessels. At its April 2007 meeting, the Council will consider recommending a rulemaking for 2008 and beyond for a related action titled ''A Maximized Retention and Monitoring Program for the Whiting Shoreside Fishery.''

Each year since 1992, EFPs have been issued to vessels in the whiting shoreside fishery to allow unsorted catch to be retained and landed at shoreside processing facilities. The EFPs have specified the terms and conditions that participating vessels must follow to be included in the EFP program. The EFPs have routinely required vessels to deliver EFP catch to state-designated processors. Designated processors were identified by each of the states and were processors that had signed written agreements that specified the standards and procedures they agreed to follow when receiving EFP catch.

The whiting fishery is managed under a ''primary'' season structure where vessels harvest whiting until the sector allocation is reached and the fishery is closed. This is different from most West Coast groundfish fisheries, which are managed under a ''trip limit'' structure, where catch limits are specified by gear type and species (or species group) and vessels can land catch up to the specified limits. Incidental catch of groundfish in the whiting fishery, however, is managed under a trip limit structure. Vessels fishing under the whiting EFPs are allowed to land unsorted catch at shoreside processing facilities, including species in excess of the trip limits and species such as salmon that would otherwise be illegal to have on board the vessel. Without an EFP, groundfish regulations at 50 CFR 660.306(a)(2) and (a)(6) require vessels to sort their catch at sea and discard as soon as practicable all prohibited species (including salmon and halibut), protected species, and groundfish species in excess of cumulative limits at sea.

Overall management of the salmon and groundfish fisheries has significantly changed since the early 1990's, when EFPs were first used in the whiting fishery. Since the beginning of the shore-based whiting fishery in 1992, new salmon Evolutionarily Significant Unit (ESUs) have been listed under the ESA, and several groundfish species that are incidentally taken in the whiting fishery have been declared overfished. In addition, ''bycatch limit'' management of overfished species has been used to allow the whiting fishery full access to the whiting OY. With the bycatch limit management approach, a bycatch limit amount is specified for an overfished species and the whiting fishery is allowed incidental catch of that species up to that amount. If a bycatch limit for any one of the species limits is reached before the whiting allocations are attained, all non-tribal commercial sectors of the whiting fishery must be closed.

The Shoreside Whiting Observation Program (SHOP), a coordinated monitoring effort by the States of Oregon, Washington, and California, was established to provide catch data from vessels fishing under the EFPs. Although the program's structure and priorities have changed over the years, the SHOP has had the primary responsibility of monitoring the shore-based whiting fishery and providing catch data to NMFS for management of the fishery. In 2006, SHOP experienced ongoing difficulties in obtaining timely catch reports from some designated processors. Delays in catch reports can compromise the ability to adequately monitor the catch of whiting, bycatch limits, and in particular the bycatch limits for the overfished species that are most frequently encountered in the whiting fishery. Having the ability to closely monitor bycatch limits and close the whiting fishery if a limit is reached prevents the whiting fishery from affecting the other groundfish fisheries and reduces the risk of exceeding overfished species OYs.

In 2007, the shore-based whiting fishery will be managed under an EFP, similar to what was in place in 2006. Therefore, NMFS believes that it is necessary to implement this rule to prevent catch accounting difficulties experienced in 2006. During 2007, NMFS and the Council will continue to develop the Maximized Retention and Monitoring Program for the whiting Shoreside Fishery, which is intended to be implemented by regulation before the 2008 fishery.

This proposed rule would require persons called ''first receivers'' who receive, buy, or accept whiting deliveries of 4,000 lb (1.8 mt) or more from vessels using mid-water trawl gear during the primary whiting season (generally, these are whiting shoreside processing facilities, but also include entities that truck whiting to other facilities) to have and use a NMFS-approved electronic fish ticket program and to send daily catch reports to the Pacific States Marine Fish Commission (PSMFC). The electronic fish tickets are used to collect information similar to the information currently required in state fish receiving tickets or landing receipts (state fish tickets). The daily reports would be used to track catch allocations, bycatch limits and prohibited species catch. First receivers would provide the computer hardware, software (Microsoft Office with Access 2003 or later,) and internet access necessary to support the electronic fish ticket program and daily e-mail transmissions. Electronic fish tickets must be submitted within 24 hours from the date the catch is received upon landing. Because 2007 will be the first year that the electronic fish ticket program will be used, the proposed action includes waiver provisions and defines alternative means for submitting fish tickets to meet the daily reporting needs of the fishery, should there be performance issues with software or other system failures beyond a receiver's control.

Federal regulations would not replace any state recordkeeping or reporting requirements. Regulations at 50 CFR 660.303 would continue to require vessels to make and/or file, retain, or make available any and all reports (i.e., logbooks, fish tickets, etc.) of groundfish harvests and landings as required by the applicable state law. At this time, only the State of Oregon allows printed and signed copies of the electronic fish tickets to be submitted as the official state fish ticket. The States of Washington and California could continue to require the submission of paper forms as issued by the state.

In addition to the sorting requirements specified at §§ 660.306(a)(7) and 660.370(h)(6)(i), sorting requirements would be specified for whiting catch received by first receivers, since these deliveries may contain groundfish in excess of trip limits, unmarketable groundfish, prohibited species, and protected species that are not addressed by current groundfish regulations. In addition, Federal groundfish regulations would be revised to require that deliveries from vessels participating in the whiting shoreside fishery must be adequately sorted by species or species group and the catch weighed following offloading from the vessel and prior to transporting the catch. If sorting and weighing requirements specified in Federal regulation are more specific than state fish ticket requirements, the first receivers would be required to record the species that are sorted and weighed on all electronic fish ticket submissions.

First receivers would be required to report, on electronic fish tickets, actual

and accurate weights derived from scales. Though there are considerable differences in the requirements between states, each state has requirements for scale performance and testing established by state agencies for weights and measures. How these requirements apply to seafood processors varies between states.

Classification

NMFS has determined that the proposed rule is consistent with the FMP and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the IRFA is available from NMFS (see ADDRESSES). A summary of the analysis follows:

The whiting shoreside fishery has been managed under an EFPs since 1992. However, an EFP is supposed to be a short-term, temporary and exploratory response to issues that potentially should be addressed by permanent regulations. The proposed action (Alternative 2) would be the first step towards replacing the EFP with permanent regulations as it would put in place new Federal catch accounting requirements. Although EFPs will continue to be issued in 2007, the proposed regulations are intended to supplement EFP activities with regulations that mainly affect the processors or other first receivers of whiting EFP catch. The proposed regulations will require the submission of electronic fish tickets within 24 hours of landing, the sorting of catch at time of offload and prior to transporting catch from the port of fish landing, the use of state approved scales with appropriate accuracy ranges for the amount of fish being weighed, and that all weights reported on the electronic fish tickets be from such scales. The proposed Federal regulations mirror or enhance existing state regulations and associated paper-based fish ticket systems or put into Federal regulation provisions associated with current EFP management. This action is expected to provide more timely reporting and improved estimates of the catch of whiting, ESA listed salmon species, and overfished groundfish species. The whiting shoreside fishery needs to have a catch reporting system in place to: adequately track the incidental take of Chinook salmon as required in the ESA Section 7 Biological Opinion for Chinook salmon catch in the whiting fishery; and to track the catch of target and overfished groundfish species such that the fishing industry is not unnecessarily constrained and that the sector allocation and bycatch limits are not exceeded. This action is intended to address catch accounting concerns that occurred during the 2006 season that compromised the ability to account for the catch of target, incidental and prohibited species.

In 2006 there were 23 processors that purchased whiting from fishermen with ten of these processors purchasing from 4 lb (2 kg) to 8,000 lb (3,629 kg) of whiting. The other thirteen processors all processed at least 1 million lb (454 mt) of whiting each. During 2006 these thirteen processors purchased 280 million lb (127,007 mt) of whiting worth $17.4 million ex-vessel, and 110 million lb (49,896 mt) of other fish and shellfish worth $78.5 million. Over the 2000–2006 period there were seventeen different facilities that processed at least 1 million lb (454 mt) in any one year. These processors can be classified into ''Main'' and ''Other'' plants. Over this period there were eight ''Main'' processors that processed 1 million lb (454 mt) in at least seven of the eight years during this period. Because of entry and exit of the processors, the composition of the ''Other'' processor group changes significantly in most years. In 2005, there were no ''Other'' processors while in 2006, five new processors entered, only one of which had operated before. Over the 2000–2006 period, the ''Main'' processors typically harvest 90 to 100 percent of the whiting.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesting entities, for-hire entities, fish processing businesses, and fish dealers. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in the field of operation (including its affiliates) and if it has combined annual receipts not in excess of $3.5 million for all its affiliated operations worldwide. For-hire vessels are considered small entities, if they have annual receipts not in excess of $6 million. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations world wide. Finally, a wholesale business servicing the fishing industry (fish dealer) is a small business if it employs 100 or few persons on a full time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established ''principles of affiliation'' to determine whether a business concern is ''independently owned and operated.'' In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.

Based on the SBA criteria and a review of West Coast processor company websites, state employment websites, newspaper articles, personal communications, and the ''Research Group'' publications (2006), it appears that the thirteen major whiting processors can be grouped into nine businesses under the SBA criteria based on analysis of affiliates. Three of the nine businesses generated at least $500 million in sales in 2003. One of these businesses reported employing 4,000 people, and it is presumed that the other two companies have employment levels much higher than 500 employees. Four of the nine businesses have employment estimates that range from 100–250 employees, while the remainder appear to be in the 50–100 range (because of missing data, one of these relatively small businesses may have less than 50 employees). In terms of the SBA size standard of 500 employees, there are six ''small'' businesses that participated in the shorebased whiting processing sector in 2006. Annual sales information for these ''small'' businesses is

unavailable. Total ex-vessel revenues (the value of the fish purchased from fisherman) is available. In 2006, these six businesses purchased approximately $40 million in whiting and other fish and shellfish from West Coast fishermen. This compares to the $60 million in whiting and other fish and shellfish purchased by the three large businesses.

In sizing up all the potential impacts, implementation of these rules will require firms to bear minimal costs in reporting data electronically that they already are required to report on paper. In terms of equipment purchases, it is expected that there will be few if any instances where processors have to purchase computers or software because this is equipment that most business already have. It is also not expected that processors will need to purchase scale equipment as the presumption about this rule is that it enhances existing state regulations that already require processors to use scales in conducting their businesses but may not specifically require the use of scale weights in reporting fisheries data to state agencies. There may be some interest by a few small processors to weigh and count fish at locations other than the point of first landing, but these instances appear to be few.

In light of the recent economic improvement going on in the whiting fisheries, the proposed regulations are reasonable and affordable and do not appear to place small businesses at a competitive disadvantage to large businesses. The major benefits of this program from a conservation and management context is an allowance for more liberal management to obtain better and quicker data for use in quota monitoring and a potential reduction in costs of monitoring, and to move management measures for monitoring whiting from a temporary ''EFP'' to formal regulations. In the short term, from an industry and fishing community perspective, better management of the whiting shoreside fishery minimizes the risk that sector quotas and bycatch limits are not exceeded in ways that may lead to closure of other fisheries thus affecting other small businesses. In the medium term, the proposed rule will aid development of an Individual Fishing Quota (IQ) catch accounting system. IQs are expected to increase profitability in the fishing industry and improve the sustainability of fishing communities. In the long term, the entire fishing industry and its communities including associated small businesses will benefit by reducing the risk of overfishing and increasing the potential that the rebuilding schedules for the overfished species are maintained, thus increasing the chances that current levels of groundfish ex-vessel revenues of $70 million can be restored to levels above $100 million which were consistently seen in the early to mid 1990's. There were no other alternatives to the proposed action that would have accomplish the stated objectives. Under Status Quo, general catch sorting requirements and prohibited actions would continue to be specified for limited entry trawl vessel; each state would continue to specify requirements for landing reports.

This proposed rule contains collection-of-information requirements approved under OMB control number 0648–0203, as well as a new collection-of-information requirement subject to review and approval under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for preparing and submitting electronic fish tickets is estimated to average ten minutes per individual response for whiting shoreside processors/first receivers in the states of California and Washington, and two minutes per individual response for whiting shoreside processors/first receivers in the State of Oregon, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Northwest Region at the **ADDRESSES** above, and by e-mail to *David__Rostker@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the whiting fishery. During the 2005 whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as

indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a revision of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP, including this current action, is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) and the Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP. After reviewing the available information, NMFS concluded that, in keeping with Section 7(a)(2) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. At the Council=s September and November 2006 meetings, NMFS informed the Council, which includes a tribal representative, of the intent to evaluate and implement catch accounting requirements for whiting shoreside processors. This action does not alter the treaty allocation of whiting, nor does it affect the prosecution of the tribal fishery.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: April 3, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definitions for ''Electronic Monitoring System,'' ''Pacific whiting shoreside or shore-based fishery,'' ''Pacific whiting shoreside first receiver,'' and ''Pacific whiting shoreside vessel'' are added to read as follows:

§ 660.302 Definitions.

* * * * *

Electronic Monitoring System (EMS) means a data collection tool that uses a software operating system connected to an assortment of electronic components, including video recorders, to create a collection of data on vessel activities.

* * * * *

Pacific whiting shoreside first receivers means persons who receive, purchase, take custody, control, or possession of Pacific whiting onshore directly from a Pacific whiting shoreside vessel.

Pacific whiting shoreside or shore-based fishery means Pacific whiting shoreside vessels and Pacific whiting shoreside first receivers.

Pacific whiting shoreside vessel means any vessel that fishes using midwater trawl gear to take, retain, possess and land 4,000 lb (1,814 kg) or more of Pacific whiting per fishing trip from the Pacific whiting shore-based sector allocation for delivery to a Pacific whiting shoreside first receiver during the primary season.

* * * * *

3. In § 660.303, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort datanecessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements.

* * * * *

(e) *Participants in the Pacific whiting shoreside fishery.* Reporting requirements defined in the following section are in addition to reporting requirements under applicable state law and requirements described at § 660.303(b).

(1) *Reporting requirements for any Pacific whiting shoreside first receiver*—(i) *Responsibility for compliance.* The Pacific whiting shoreside first receiver is responsible for compliance with all reporting requirements described in this paragraph.

(ii) *General requirements.* All records or reports required by this paragraph must: be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner as required in paragraph (e)(1)(iv) of this section.

(iii) *Required information.* All Pacific whiting shoreside first receivers must provide the following types of information: date of landing, delivery vessel, gear type used, first receiver, round weights of species landed listed by species or species group including species catch with no value, number of salmon by species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(iv) *Electronic fish ticket submissions.* The Pacific whiting shoreside first receiver must:

(A) Sort catch, prior to first weighing, by species or

species groups as specified at § 660.370 (h)(6)(iii).

(B) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.373 (j)(2)(i) and the catcher vessel identification number.

(C) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.373 (j)(2)(ii)(A);

(D) Install, use, and update as necessary, any NMFS-approved software described at § 660.373 (j)(2)(ii)(B);

(E) Submit a completed electronic fish ticket for every landing that includes 4,000 lb (1,814 kg) or more of Pacific whiting (round weight equivalent) no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified at paragraph (e)(1)(vii) of this section.

(v) *Revising a submitted electronic fish ticket submission.* In the event that a data error is found, electronic fish ticket submissions may be revised by resubmitting the revised form. Electronic fish tickets are to be used for the submission of final catch data. Preliminary data, including estimates of catch weights or species in the catch, shall not be submitted on electronic fish tickets.

(vi) *Retention of records.* [Reserved]

(vii) *Waivers for submission of electronic fish tickets.* On a case-by-case basis, a temporary waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a Pacific whiting shoreside first receiver would result in inadequate data submissions using the electronic fish ticket system. The

duration of the waiver will be determined on a case-by-case basis.

(viii) *Reporting requirements when a temporary waiver has been granted.* Pacific whiting shoreside first receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper fish tickets must be sent by facsimile to NMFS, Northwest Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way NE, Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

(2) [Reserved]

4. In § 660.306, paragraphs (b)(4) and (f)(6) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(b) * * *

(4) Fail to comply with all requirements at § 660.303 (d); or to fail to submit, submit inaccurate information, or intentionally submit false information on any report required at § 660.303 (d) when participating in the Pacific whiting shoreside fishery.

* * * * *

(f) * * *

(6) *Pacific whiting shoreside first receivers.* (i) Receive for transport or processing catch from a Pacific whiting shoreside vessel that does not have a properly functioning EMS system as required by Federal regulation or by an EFP, unless a waiver for EMS coverage was granted by NMFS for that trip.

(ii) Fail to sort catch from a Pacific whiting shoreside vessel prior to first weighing after offloading as specified at § 660.370 (h)(6)(iii) for the Pacific whiting fishery.

(iii) Process, sell, or discard groundfish catch that has not been weighed on a scale that is in compliance with requirements at § 660.373 (j)(1)(i) and accounted for on an electronic fish ticket with the identification number for the catcher vessel that delivered the catch.

(iv) Fail to weigh catch landed from a Pacific whiting shoreside vessel prior to transporting any fish from that landing away from the point of landing.

* * * * *

5. In § 660.370, paragraph (h)(6)(iii) is added to read as follows:

§ 660.370 Specifications and management measures.

* * * * *

(h) * * *

(6) * * *

(iii) *Sorting requirements for the Pacific whiting shoreside fishery.* Catch delivered to Pacific whiting shoreside first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, to the species groups specified in paragraph (h)(6)(i)(A) of this section for vessels with limited entry permits. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, Other salmon. Non-groundfish species must be sorted as required by the state of landing.

* * * * *

6. In § 660.373, paragraph (j) is added to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(j) *Additional requirements for participants in the Pacific Whiting Shoreside fishery*—(1) *Pacific whiting shoreside first receiver responsibilities*—(i) *Weights and measures.* All groundfish weights reported on fish tickets must be recorded from scales with appropriate weighing capacity that ensures accuracy for the amount of fish being weighed. For example: amounts of fish less than 1,000 lb (454 kg) should not be weighed on scales that have an accuracy range of 1,000 lb–7,000 lb (454 - 3,175 kg) and are therefore not capable of accurately weighing amounts less than 1,000 lb (454 kg).

(ii) *Electronic fish tickets*—(A) *Hardware and software requirements.* First receivers using the electronic fish ticket software provided by Pacific States Marine Fish Commission are required to meet the hardware and software requirements below. Those whiting first receivers who have NMFS-approved software compatible with the standards specified by Pacific States Marine Fish Commission for electronic fish tickets are not subject to any specific hardware or software requirements.

(*1*) A personal computer with Pentium 75–MHz or higher. Random Access Memory (RAM) must have sufficient megabyte (MB) space to run the operating system, plus an additional 8 MB for the software application and available hard disk space of 217 MB or greater. A CD-ROM drive with a Video Graphics Adapter(VGA) or higher resolution monitor (super VGA is recommended).

(*2*) Microsoft Windows 2000 (64 MB or greater RAM required), Windows XP (128 MB or greater RAM required) or later operating system.

(*3*) Microsoft Access 2003 or newer for.

(B) *NMFS Approved Software Standards and Internet Access.* The Pacific whiting shoreside first receiver is responsible for obtaining, installing and updating electronic fish tickets software either provided by Pacific States Marine Fish Commission, or compatible with the standards specified by Pacific States Marine Fish Commission and for maintaining internet access sufficient to transmit data files via email.

(C) *Maintenance.* The Pacific whiting shoreside first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever the Pacific whiting primary season deliveries are accepted.

(2) Pacific whiting shoreside first receivers and processors that receive groundfish species other than Pacific whiting in excess of trip limits from Pacific whiting shoreside vessels fishing under an EFP issued by the Assistant Regional Administrator are authorized to possess the catch.

(3) Vessel owners and operators, or shoreside processor owners, or managers may contact NMFS in writing to request assistance in improving data quality and resolving monitoring issues. Requests may be submitted to: Attn: Frank Lockhart,National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA 98115, or via email to *frank.lockhart@noaa.gov*.

[FR Doc. E7–6643 Filed 4–6–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 67

Monday, April 9, 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.

U.S. 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 0412–0012.

Form Number: 282.

Title: Supplier's Certificate Agreement with the U.S. Agency for International Development Invoice-and-Contract Abstract.

Type of Submission: Renewal of Information Collection.

Purpose: The U.S. Agency for International Development (USAID) finances goods and related services under its Commodity Import Program which are contracted for by public and private entities in the countries receiving the USAID Assistance. Since USAID is not a party to these contracts, USAID needs some means to collect information directly from the suppliers of the goods and related services and to enable USAID to take an appropriate action against them in the event they do not comply with the applicable regulations. USAID does this by securing from the suppliers, as a condition for the disbursement of funds a certificate and agreement with USAID which contains appropriate representations by the suppliers.

Annual Reporting burden:

Respondents: 800.

Total annual responses: 2,400.

Total annual hours requested: 1,200 hours.

Dated: March 30, 2007.

Joanne Paskar,

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

[FR Doc. 07–1728 Filed 4–6–07; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–TM–07–0035; TM–07–07]

Nominations for Member of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15-member board that is responsible for developing and recommending to the Secretary a proposed National List of Allowed and Prohibited Substances. The NOSB also advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill one Environmentalist position on the NOSB. The Secretary of Agriculture will appoint a person to serve a 5-year term of office that will commence on January 24, 2008, and run until January 24, 2013. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

DATES: Written nominations, with resumes, must be post-marked on or before August 17, 2007.

ADDRESSES: Nomination cover letters and resumes should be sent to Ms. Katherine E. Benham, Advisory Board Specialist, USDA–AMS–TMP–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine E. Benham, (202) 205–7806; E-mail: *katherine.benham@usda.gov*; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Allowed and Prohibited Substances and to advise the Secretary on other aspects of the National Organic Program.

The current NOSB has made recommendations to the Secretary regarding the establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill an Environmentalist vacancy. Individuals appointed to this NOSB position must demonstrate expertise in areas of environmental protection and resource conservation as they relate to organic agricultural production.

To nominate yourself or someone else please submit, at a minimum, a cover letter stating your interest and a copy of the nominee's resume. You may also submit a list of endorsements or letters of recommendation, if desired.

Nominees will be supplied with an AD–755 background information form that must be completed and returned to USDA within 10 working days of its receipt. Resumes and completed background information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent

minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: April 3, 2007

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–6532 Filed 4–6–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0040]

Notice of Request for Extension of Approval of an Information Collection; Export Health Certificate for Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the export of animal products from the United States.

DATES: We will consider all comments that we receive on or before June 8, 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–2007–0040 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–2007–0040, 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–2007–0040.

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: For information on an information collection associated with the export of animal products from the United States, contact Dr. Joyce Bowling-Heyward, Assistant Director, Technical Trade Services-Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3278. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Export Health Certificate for Animal Products.

OMB Number: 0579–0256.

Type of Request: Extension of approval of a new information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and products, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Many countries that import animal products from the United States require a certification from APHIS that the United States is free of certain diseases. These countries may also require that our certification statement contain additional declarations regarding the U.S. animal products being exported. This certification must carry the USDA seal and be endorsed by an APHIS representative (e.g., a Veterinary Medical Officer). Veterinary Services Form 16–4, Health Certificate-Export Certificate-Animal Products, is used to meet these requirements.

Regulations pertaining to export certification of animals and animal products are contained in 9 CFR parts 91 and 156.

We are asking the Office of Management and Budget (OMB) to approve our use of this form for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: U.S. exporters of animal products.

Estimated annual number of respondents: 33,000.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 132,000.

Estimated total annual burden on respondents: 66,000 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.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of April 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–6596 Filed 4–6–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a joint meeting, followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 Decennial Census Program. Last-minute changes to the schedule are possible, which could prevent advance notification.

DATES: The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on May 3–4, 2007. On May 3, the meetings will begin at 9 a.m. and end at 5:15 p.m. On May 4, the meetings will begin at 8:30 a.m. and end at 3:30 p.m.

Location: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Committee Liaison Officer, U.S. Census Bureau, Room 8H153, 4600 Silver Hill Road, Suitland, Maryland 20746, telephone (301) 763–2070; TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees represent an outside-user perspective about how research and design plans for the 2010 Decennial Census, the American Community Survey, and other related programs achieve goals and satisfy needs associated with these communities. The Committees also recommend to the Census Bureau how data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public, with a brief period set aside for public comment. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Dated: April 3, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–6615 Filed 4–6–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper from the People's Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting the first administrative review of the antidumping duty order on certain tissue paper (tissue paper) from the People's Republic of China (PRC). The period of review (POR) is September 21, 2004, through February 28, 2006. We have preliminarily determined that two of the three respondents made sales of the subject merchandise at prices below normal value.

EFFECTIVE DATE: April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Kristina Horgan or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2005, the Department published in the **Federal Register** an antidumping duty order covering tissue paper from the PRC. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*). On March 2, 2006, the Department published a *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 71 FR 10642 (March 2, 2006).

On March 30, 2006, Cleo Inc., an importer of subject merchandise, requested, in accordance with 19 CFR 351.213(b), an administrative review of the antidumping duty order on tissue paper from the PRC for China National Aero–Technology Import & Export Xiamen Corp. (China National), Putian City Hong Ye Paper Products Co., Ltd. (Hong Ye), and Putian City Chengxiang Qu Li Feng (Chengxiang) covering the POR. On March 31, 2006, Seaman Paper Company of Massachusetts, Inc., petitioner, requested, in accordance with 19 CFR 351.213(b), an administrative review of the antidumping duty order on tissue paper from the PRC for 16 companies. The companies are: AR Printing and Packaging (AR P&P); China National; Fujian Naoshan Paper Industry Group Co., Ltd. (Naoshan); Fuzhou Magicpro Gifts Co., Ltd. (Magicpro); Giftworld Enterprise Co., Ltd. (Giftworld); Guilin Qifeng Paper Co., Ltd. (Guilin Qifeng); Goldwing Co., Ltd. (Goldwing); Kepsco, Inc. (Kepsco); Max Fortune Industrial Limited; Foshan Sansico Co., Ltd., PT Grafitecindo Ciptaprima, PT Printec Perkasa, PT Printec Perkasa II, PT Sansico Utama, Sansico Asia Pasific Limited (collectively, the Sansico Group); and Vietnam Quijiang Paper Co., Ltd. (Quijiang).

On March 31, 2006, Samsam Productions Ltd. (Samsam) requested, in accordance with 19 CFR 351.213(b), an administrative review of the antidumping duty order on tissue paper from the PRC for itself and its affiliated Chinese supplier Guangzhou Baxi Printing Products Co., Ltd., as did Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively, Max Fortune). On April 28, 2006, the Department initiated an administrative review of the above–mentioned 20 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006) (*Initiation Notice*).

On May 10, 2006, Naoshan submitted a letter to the Department claiming it had no shipments of subject merchandise to the United States during

the POR. On May 10, 2006, the Department issued quantity and value questionnaires to 18 companies for which the review was initiated, and on May 11, 2006, the Department issued quantity and value questionnaires to the remaining two companies, Naoshan and Magicpro. On May 15, 2006, the Department sent another quantity and value questionnaire to PT Printec Perkasa II using an alternate address. On May 22, 2006, Samsam and Max Fortune submitted separate quantity and value questionnaires, as requested by the Department, indicating that each company had sales of subject merchandise during the POR. On May 24, 2006, Naoshan stated again that it had no shipments of subject merchandise during the POR. On May 30, 2006, petitioner submitted comments on Naoshan's May 10, 2006, submission, requesting that the Department seek further information regarding its claims of no shipments of subject merchandise during the POR.

On June 5, 2006, the Department sent a second quantity and value questionnaire to Kepsco, China National, Guilin Qifeng, Hong Ye, Giftworld, MagicPro, and Chengxiang, asking them to respond and informing the companies that, in failing to respond, the Department might find them uncooperative and use facts available with an adverse inference to determine the appropriate antidumping duty margins. On June 23, 2006, the Department issued a letter to the Chinese Ministry of Commerce requesting its assistance in finding a correct address for MagicPro; however, the Department received no response.

On July 3, 2006, the Department stated in a memorandum to the file that only three companies had replied to its quantity and value questionnaires indicating that they had sales of subject merchandise during the POR; therefore, the Department issued questionnaires to these companies: Guilin Qifeng and Quijiang,[1] Max Fortune, and Samsam. *See* Memorandum to The File, through Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, from Bobby Wong, Case Analyst, AD/CVD Operations, Office 9, regarding *Certain Tissue Paper Products from the People's Republic of China: Respondent Questionnaires* (July 3, 2006). On July 17, 2006, Naoshan reiterated on the record that it had no shipments of subject merchandise during the POR and replied to petitioner's May 30, 2006, comments. On July 18, 2006, the Department outlined, in a memorandum to the file, the various steps it took to attempt to deliver the quantity and value questionnaire to Magicpro, and indicated that it had not succeeded in its various attempts. On July 18, 2006, the Department placed letters from Goldwing and AR P&P on the record, in which each company stated that it had no shipments of subject merchandise during the POR. On July 20, 2006, the Department sent a letter to Naoshan stating that our research had indicated that Naoshan had shipments of subject merchandise during the POR and requested that the company respond to the research finding.

On July 24, 2006, petitioner requested that the Department extend the deadline for withdrawing requests for specific producers and exporters in the instant review. On July 26, 2006, in accordance with 19 CFR 351.213(d)(1), the Department granted an extension for withdrawing requests until August 25, 2006. On July 31, 2006, Guilin Qifeng submitted a Section A response to the Department's questionnaire. On August 15, 2006, Naoshan replied to the Department's July 20, 2006, request for further information. On August 23, 2006, Guilin Qifeng submitted Section C and D responses to the Department. On August 25, 2006, petitioner filed a letter withdrawing its request for review of five companies: Naoshan, Magicpro, Guilin Qifeng, Goldwing, and AR P&P.

On September 11, 2006, we invited interested parties to comment on the Department's surrogate country selection and/or to submit publicly available information to value the factors of production. On September 29, 2006, the Department rescinded this review with respect to Naoshan, Magicpro, Guilin Qifeng, Goldwing, and AR P&P because the only requesting party withdrew its request for review in a timely manner. *See Certain Tissue Paper Products from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 57471 (September 29, 2006). On October 10, 2006, petitioner submitted comments with regard to surrogate country selection. On October 24, 2006, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until February 16, 2007. *See Certain Tissue Paper Products from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 71 FR 62249 (October 24, 2006). On October 27, 2006, the Department extended the time limit for submitting surrogate country and surrogate value comments.

On November 6, 2006, the Department, in response to petitioner's November 3, 2006, request to reopen the record of the review to submit new factual information, extended the opportunity to submit new factual information. On November 27, 2006, the Department received a letter from the law firm of Grunfeld, Desiderio, Lebowitz, Silverman, and Klestadt LLP, notifying the Department that it had withdrawn its representation of Samsam. On December 6, 2006, we received surrogate value comments from Max Fortune. Petitioner commented on surrogate values on December 11, 2006.

On January 4, 2007, the Department received a letter from Grunfeld, Desiderio, Lebowitz, Silverman, and Klestadt LLP notifying the Department that it was again representing Samsam in the instant review. On January 23, 2007, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department further extended the deadline for the preliminary results of review until April 2, 2006. *See Certain Tissue Paper Products from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 72 FR 2859 (January 23, 2007).

On March 22, 2007, petitioner submitted comments on Max Fortune's dye and ink factors of production allocation. On March 23, 2007, petitioner submitted comments on the *bona fides* nature of Samsam's POR sales. On March 30, 2007, petitioner also submitted comments on Max Fortune paper making division's financial statements. On April 2, 2007, Samsam replied to petitioner's March 23, 2007, comments.[2]

During the course of the administrative review, the Department also received timely filed original and supplemental questionnaire responses from Max Fortune and Samsam.

Quijiang

In response to the Department's quantity and value questionnaire, on May 25, 2006, Quijiang stated that it had no shipments of subject merchandise during the POR. After the Department issued a full questionnaire to Guilin Qifeng and Quijiang on July 3, 2006, Quijiang asked the Department on July 12, 2006, to clarify how it should reply

[1] We note that Guilin Qifeng and Quijiang are affiliated parties. *See* Section A Questionnaire Response from Guilin Qifeng (July 31, 2006) at 9. The Department issued one questionnaire addressed to both companies.

[2] Because these parties submitted these comments just before the preliminary results, the Department was not able to consider these comments for the preliminary results. However, the Department will consider these comments for the final results.

to the antidumping duty questionnaire, as it stated it had no shipments of subject merchandise during the POR on May 25, 2006. On July 18, 2006, the Department informed Quijiang, in a memorandum to the file, that ''to the extent that it did not sell or resell the subject merchandise to the United States during the POR, {it}is not required to submit a response to the Department's July 3, 2006, antidumping questionnaire.'' *See* Memorandum to The File, through Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, from Kristina Boughton, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding *First Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China: Clarification of Respondent Selection* (July 18, 2006). As noted above, while Guilin Qifeng submitted responses to the Department's questionnaire before the review was rescinded for Guilin Qifeng, it did so only on behalf of itself and not on behalf of its affiliate, Quijiang.

The Sansico Group

In response to the Department's quantity and value questionnaire, on May 22, 2006, the Sansico Group submitted a letter to the Department claiming each of its affiliated companies had no shipments of subject merchandise during the POR. On May 30, 2006, petitioner submitted comments on the Sansico Group's May 22, 2006, submission, requesting that the Department seek further information from the Sansico Group regarding its claims of no shipments of subject merchandise during the POR. On June 7, 2006, the Sansico Group responded to the petitioner's comments on its claim of no shipments during the POR.

In response to the Department's opening of the record to new factual information, as mentioned above, on November 13, 2006, petitioner submitted comments analyzing the Sansico Group's production and export activities. On December 22, 2006, petitioner resubmitted, at the Department's request, the November 13, 2006, submission with revised bracketing. On January 3, 2007, the Sansico Group responded to the petitioner's comments on its export and production activities, restating that it did not export Chinese–origin tissue paper to the United States. On January 8, 2007, the Department issued a supplemental questionnaire to the Sansico Group regarding its POR export and production activities. On January 29, 2007, the Sansico Group submitted its response to the Department's supplemental questionnaire. On February 8, 2007, the Department received petitioner's comments on the Sansico Group's supplemental response. On March 23, 2007, petitioner submitted additional comments on the Sansico Group and its claims of no shipments. On April 2, 2007, the Sansico Group replied to petitioner's March 23, 2007, comments.[3]

China National, Hong Ye, Chengxiang, Kepsco, and Giftworld

In its first quantity and value questionnaire, the Department established a deadline of May 22, 2006, for submitting such responses; however, the Department did not receive responses from China National, Hong Ye, Chengxiang, Kepsco, and Giftworld. The Department sent follow–up quantity and value questionnaires to each of the above–referenced firms on June 5, 2006, requesting a response within five days of the receipt of the June 5 letter. The Department also noted in this letter that it might resort to facts available with an adverse inference if the companies failed to file a response. *See* Letters to China National, Hong Ye, Chengxiang, Kepsco, and Giftworld from Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, regarding *Certain Tissue Paper from the People's Republic of China: Quantity and Value Follow–Up Questionnaire* (June 5, 2006). Although China National, Hong Ye, Chengxiang, Kepsco, and Giftworld received the initial questionnaire and the follow–up letter, which included the quantity and value questionnaire, Hong Ye, Chengxiang, Kepsco, and Giftworld did not reply to the Department. *See* Memorandum to the File, from Bobby Wong, International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding *Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China: Proof of Delivery to China National, Hong Ye, Chengxiang, Kepsco, and Giftworld* (April 2, 2007).

On June 28, 2006, the Department placed a facsimile it received from China National on the record, in which the company stated that it would not participate in the review. *See* Memorandum to the File, from Bobby Wong, International Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding *Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China: Notice of non–participation by China National Aero–Technology Import & Export Xiamen Corporation* (June 28, 2006).

Scope of the Order

The tissue paper products subject to this order are cut–to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut–to-length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[4]

Excluded from the scope of this order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs

[3] Because parties submitted these comments just before the preliminary results, the Department was not able to consider these comments for the preliminary results. However, the Department will consider these comments for the final results.

[4] On January 30, 2007, at the direction of U.S. Customs and Border Protection (CBP), the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that Quijiang[5] and the Sansico Group made no shipments of subject merchandise during the POR of this administrative review. In making this determination, the Department examined PRC tissue paper shipment data maintained by CBP. Based on the information obtained from CBP, we found no entries of subject merchandise during the POR manufactured and/or exported by Quijiang or the Sansico Group to the United States. The Department also issued no–shipment inquiries to CBP in March 2007 asking CBP to provide any information contrary to our findings of no entries of subject merchandise for Quijiang and the Sansico Group during the POR. We received no response from CBP. *See* Memorandum to The File, from Kristina Horgan, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding *2004–2006 Administrative Review of Certain Tissue Paper Products from the People's Republic of China: CBP No Shipment E-mail Inquiries* (April 2, 2007).

Petitioner has alleged that the Sansico Group is selling Chinese–origin tissue paper via its Indonesian facilities. The Sansico Group has stated on the record, and provided supporting evidence, that none of its companies exported Chinese–origin subject merchandise to the United States during the POR. The Department has analyzed record information and preliminarily finds that the Sansico Group did not export subject merchandise to the United States during the POR. However, the Department may solicit additional information prior to the final results of this review from the Sansico Group to confirm the veracity of its no shipment claims.

Therefore, based on the results of our corroborative CBP query, indicating no shipments of subject merchandise by Quijiang or the Sansico Group during the POR, as well as Quijiang's and the Sansico Group's claim that each had no subject shipments, we are preliminarily rescinding the administrative review, in accordance with 19 CFR 351.213(d)(3), with respect to Quijiang and the Sansico Group.

[5] We note that Quijiang is the respondent in a concurrent anti-circumvention inquiry in tissue paper from the PRC. *See Certain Tissue Paper Products from the People's Republic of China: Notice of Initiation of Anti-circumvention Inquiry*, 71 FR 53662 (September 12, 2006).

Separate Rates

In proceedings involving non–market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (Sparklers). In this review Max Fortune and Samsam submitted information indicating that they are both wholly owned Hong Kong–registered companies in support of their claims for company–specific rates. *See* Letter to the Department of Commerce from Samsam, regarding *Certain Tissue Paper from the People's Republic of China: Samsam Productions Ltd. Section A Questionnaire Response* (August 2, 2006); *see also* Letter to the Department of Commerce from Max Fortune, regarding *Certain Tissue Paper from the People's Republic of China: Max Fortune's Section A Questionnaire Response* (July 31, 2006).

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over each respondent's export activities, we preliminarily determine that Max Fortune and Samsam have each met the criteria for the application of a separate rate consistent with past practice. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China*, 64 FR 69723 (December 14, 1999), unchanged in *Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000).

Use of Facts Otherwise Available and the PRC–Wide Rate

For the reasons outlined below, we have applied total adverse facts available to China National, Hong Ye, Chengxiang, Kepsco, and Giftworld. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

By failing to respond to the Department's requests for information (*i.e.*, responding to the quantity and value questionnaire) and by not allowing the Department to conduct verification, China National, Hong Ye, Chengxiang, Kepsco, and Giftworld, respectively, have not proven they are free of government control and are, therefore, not eligible to receive a separate rate. In the *Initiation Notice*, the Department stated that if one of the companies on which we initiated a review does not qualify for a separate rate, all other exporters of tissue paper from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC–wide entity of which the named exporter is a part. *See Initiation Notice* at n.1. For these preliminary results, China National, Hong Ye, Chengxiang, Kepsco, and Giftworld will all be considered part of the PRC–wide entity, subject to the PRC–wide rate.

According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Rep. No. 103–316, Vol. 1 at 870 (1994).

As explained above, the PRC–wide entity (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld) did not respond to the Department's requests for information. Therefore, the PRC–wide entity did not cooperate to the best of its ability. Because the PRC–wide entity did not cooperate to the best of its ability in the proceeding, the Department finds it necessary, pursuant to sections 776(a)(2)(A),(B) and (C) and 776(b) of the Act, to use adverse facts available (AFA) as the basis for these preliminary results of review for the PRC–wide entity.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3)

any previous review or determination, or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). The Court of International Trade (CIT) and the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 112.64 percent, the highest rate on the record of any segment of the proceeding, to the PRC–wide entity (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld) as AFA. *See, e.g., Tissue Paper Order*. As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as AFA. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the highest rate from any segment of this proceeding, which is the rate currently applicable to all exporters subject to the PRC–wide rate. The AFA rate in the current review (*i.e.*, the PRC–wide rate of 112.64 percent) represents the highest rate from the petition in the LTFV investigation. *See Tissue Paper Order*.

For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005). Moreover, no information has been presented in the current review that calls into question the reliability of this information.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. The information used in calculating this margin was based on sales and production data submitted by the petitioner in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. As there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate has relevance.

As the 112.64 percent rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this AFA rate to exports of the subject merchandise by the PRC–wide entity.

Normal Value Comparisons

To determine whether the respondents' sales of the subject merchandise were made at prices below normal value, we compared their United States prices to normal values, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

Export Price

For Max Fortune, we based U.S. price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. Where applicable, for Max Fortune, we deducted foreign inland freight, insurance, foreign brokerage and handling expenses, ocean freight, and marine insurance from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Constructed Export Price

For Samsam, we calculated CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the PRC–based company by its U.S. affiliate to unaffiliated purchasers. We based CEP on FOB prices to the first unaffiliated purchaser in the United States. Where appropriate, for Samsam, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included foreign inland freight, international freight, U.S. freight from the port to the warehouse, and U.S. duties.

In accordance with section 772(d)(1) of the Act, we also deducted for

Samsam those selling expenses associated with economic activities occurring in the United States, including credit expenses, inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

For both Max Fortune and Samsam, where foreign inland freight, insurance, or foreign brokerage and handling were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (*see* ''Factors of Production'' section below for further discussion). For those expenses that were provided by a market–economy provider and paid for in market–economy currency, we used the reported expense, pursuant to 19 CFR 351.408(c)(1).

Normal Value

NME Country

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. *See, e.g., Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16. 2006). Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market–economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development. *See* Letter to All Interested Parties from Carrie Blozy, Program Manager, AD/CVD Operations, Office 9, regarding *Certain Tissue Paper from the People's Republic of China: Request for Comments on Surrogate Country and Surrogate Values* (September 11, 2006). In addition, based on publicly available information placed on the record (*e.g.*, production data), India is a significant producer of comparable merchandise. *See* Memorandum to The File, through James C. Doyle, Director, AD/CVD Operations, Office 9, Import Administration, and Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Catherine Bertrand, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding *Antidumping Duty Administrative Review of Certain Tissue Paper from the People's Republic of China: Selection of a Surrogate Country* (April 2, 2007). Accordingly, we have selected India as the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate–country selection. *See Id*. Where Indian import statistics were unavailable, *i.e.*, paraffin oil, the Department has used Indonesian import statistics, as published by the World Trade Atlas (WTA), based on the fact that Indonesia is economically comparable and a producer of comparable merchandise. *See Id*.

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors of production reported by the producer for materials, energy, labor, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian surrogate values.

Certain of Max Fortune's inputs into the production of the merchandise under review were purchased from market economy suppliers and paid for in market economy currencies. We used the reported weight–averaged market economy prices to value the appropriate input when the item was paid for in a market economy currency and accounted for a significant portion of the total purchases of that input. For purposes of the preliminary results, we have determined that only two of Max Fortune's reported market economy purchases accounted for a significant portion of total purchases of that input and, therefore, have used the reported purchase prices for those two inputs in our calculation. *See* Memorandum to the File, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Kristina Horgan, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding *Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively, Max Fortune) Analysis Memorandum for the Preliminary Results of Review* (April 2, 2007).

Max Fortune also reported by–product sales. With respect to the application of the by–product offset to normal value, consistent with the Department's determination in *Diamond Sawblades from the PRC*, because our surrogate financial statements refers to income from by–product sales and because Max Fortune reported that it sold its by–product, we will deduct the surrogate value of the by–product from normal value. This is consistent with accounting principles based on a reasonable assumption that if a company sells a by–product, the by–product necessarily incurs expenses for overhead, SG&A, and profit. *See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 9 (unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006)).

Normally, the Department prefers to use factors of production data that accurately represent the quantity of inputs consumed on a control number (CONNUM)-specific basis. In the present case, however, Max Fortune has indicated that its records for dye and ink consumption in the papermaking and paper printing stages of production do not permit it to report the FOP data in a manner consistent with the Department's requests. While we prefer greater specificity in the reporting of these factors of production, for these preliminary results, we have used Max Fortune's reported aggregate consumption in the calculation of normal value, subject to verification.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our normal practice. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66

FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data from the Ministry of Commerce of India (Indian Import Statistics) for September 2004 through February 2006, as published by the WTA, to value inputs sourced domestically by PRC suppliers, we added a surrogate cost for freight using the shorter of the reported distance from the domestic supplier to the factory or the distance from the closest seaport to the factory. *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). When we used non–import surrogate values for factors sourced domestically by PRC suppliers (*e.g.*, coal, market economy purchased inputs), we based freight for this input on the actual distance from the input supplier to the site at which the input was consumed.

Additionally, in instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non–industry-specific subsidies which may benefit all exporters to all export markets (*i.e.*, Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1; *see also* Memorandum to the File, through James C. Doyle, Director, Office 9, and Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Bobby Wong, International Trade Analyst, AD/CVD Operations, Office 9, and Kristina Horgan, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding *Factors of Production Valuation Memorandum for the Preliminary Results of Antidumping Administrative Review of Certain Tissue Paper from the People's Republic of China* (April 2, 2007) (Factor Valuation Memo). This memorandum is on file in the Central Records Unit (CRU), room B–099 of the Department building.

Where we could not obtain publicly available information contemporaneous with the POR to value factors of production, we inflated the surrogate value using the Indian Wholesale Price Index (WPI), as published in the *International Financial Statistics* of the International Monetary Fund, for those surrogate values in Indian rupees to be contemporaneous with the POR. We also made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchanges rates posted on the Import Administration Web site (*http://www.trade.gov/ia/*). See Factor Valuation Memo.

Specifically, the Department used Indian Import Statistics to value the raw material[6] and packing material inputs that Max Fortune and Samsam used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all surrogate values used for respondents, *see* Factor Valuation Memo.

To value paraffin oil, also known as kerosene, we used Indonesian import statistics, as published by the WTA, instead of Indian Import Statistics, because India did not import this input during the POR.

To value water, we calculated the average water rates from various regions as reported by the Maharashtra Industrial Development Corporation, *http://midcindia.org*, dated June 1, 2003. We inflated the value for water using the POR average WPI rate. *See* Factor Valuation Memo.

We valued diesel, electricity and coal using the rates provided by the OECD's International Energy Agency's publication: *Key World Energy Statistics* from 2004 and 2005. For diesel, the prices are based on 2004 and 2005 first quarter prices of automotive diesel fuel retail prices. For electricity, the prices are based on 2002 fourth quarter prices; we inflated the value for electricity using the POR average WPI rate. For coal, the prices are based on 2004, 2005, and 2006 first quarter prices. *See* Factor Valuation Memo.

Consistent with the determination in the LTFV investigation, to value the surrogate financial ratios of factory overhead, selling, general & administrative expenses, and profit, the Department relied on the publicly available information in the financial statements for Pudumjee Pulp & Paper Mills Ltd. (Pudumjee) for fiscal year 2005–2006, submitted by petitioner on December 11, 2006. The annual report covers the period April 1, 2005, to March 31, 2006 and includes data for the 2004–2005 fiscal year as well, covering the entire POR. We determine that Pudumjee's financial statements are appropriate for use in these preliminary results because Pudumjee is a producer of comparable merchandise and its financial data are contemporaneous with the POR. *See* Factor Valuation Memo.

Because of the variability of wage rates in countries with similar levels of per capita gross national product, 19 CFR 351.408(c)(3) requires the use of a regression–based wage rate. Therefore, to value the labor input, we used the PRC's regression–based wage rate published by Import Administration on its Web site, *http://www.trade.gov/ia/*. We note that this wage rate is calculated in accordance with the Department's revised methodology. *See Expected Non Market Economy Wages: Request for Comments on 2006 Calculation*, 72 FR 949 (January 9, 2007) and *Antidumping Methodologies: Market Economy Inputs, Expected Non Market Economy Wages, Duty Drawback, and Request for Comments*, 71 FR 6176 (October 19, 2006). *See also* Factor Valuation Memo.

To value truck freight, we calculated a weighted–average freight cost based on publicly available data from *www.infreight.com*, an Indian inland freight logistics resource Web site. See Factor Valuation Memo.

To value brokerage and handling, we used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in Essar Steel Ltd.'s (Essar) February 28, 2005, Section C submission in the antidumping duty review of certain hot–rolled carbon steel flat products from India, for which the POR was December 1, 2003, through November 30, 2004; information from Agro Dutch Industries Ltd.'s (Agro Dutch) May 25, 2005, Section C submission, taken from the administrative review of preserved mushrooms from India, for which the POR was February 1, 2004, through January 31, 2005; and information from Kejriwal Paper Ltd.'s (Kejriwal) January 9, 2006, Section C submission, taken from the investigation of certain lined paper from India, for which the POR was July 1, 2004, through June 30, 2005. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006); *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006);

[6] Regarding the surrogate value for dyes and inks, the Department used an average of three types of dyes and inks as there was not more specific information regarding the types of dyes and inks used by respondents' on the record. The Department intends to ask respondents for more specific information on the composition of the dyes and inks used in the production process after the preliminary results.

and *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006). *See also* Factor Valuation Memo.

In accordance with 19 CFR 351.301(c)(3)(ii), for the preliminary results of this administrative review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Individually Reviewed Exporters	
Max Fortune Ltd.	0.15%
Samsam Productions Ltd.	115.24%

PRC–Wide Rate	
PRC–Wide Rate (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld)	112.64%

For details on the calculation of the antidumping duty weighted–average margin for each company, see the respective company's analysis memorandum for the preliminary results of the first administrative review of the antidumping duty order on tissue paper from the PRC, dated April 2, 2007. Public versions of these memoranda are on file in the CRU.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review. For assessment purposes, where possible, we calculated importer–specific assessment rates for tissue paper from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 112.64 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited in accordance with 19 CFR 351.309(c)(2)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–6635 Filed 4–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–907]

Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of coated free sheet paper from the

People's Republic of China. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice. The version released on Friday, March 30, 2007, contained a ''Benchmarks'' section that was intended to be deleted from the final version because it was duplicative, so this amended preliminary determination corrects that error. This error was discovered prior to publication in the **Federal Register**, consequently, this amendment is being published in its place.

EFFECTIVE DATE: April 9, 2007.

FOR FURTHER INFORMATION CONTACT: David Layton or David Neubacher, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0371 or (202) 482–5823, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department of Commerce's (the Department) notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper From the People's Republic of China, Indonesia and the Republic of Korea*, 71 FR 68546 (November 27, 2006) (*Initiation Notice*).

On December 1, 2006, the Department selected the two largest Chinese producers/exporters of coated free sheet paper, Gold East Paper (Jiangsu) Co., Ltd. (Gold East) and Shandong Chenming Paper Holdings Ltd. (Chenming) as mandatory respondents. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Respondent Selection'' (December 1, 2006). This memorandum is on file in the Department's Central Records Unit in Room B–099 of the main Department building (CRU). On December 4, 2006, we issued the countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC), Gold East and Chenming.

On December 29, 2006, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of coated free sheet paper (CFS) from China, Indonesia, and Korea. *See Coated Free Sheet Paper China, Indonesia, and Korea*, Investigation Nos. 701–TA–444–446 (Preliminary) and 731–TA–1107–1109 (Preliminary), 71 FR 78464 (December 29, 2006).

Also on December 29, 2006, we published a postponement of the preliminary determination of this investigation until March 30, 2007. *See Coated Free Sheet Paper From Indonesia, the People's Republic of China, and the Republic of Korea: Notice of Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 71 FR 78403 (December 29, 2006).

We received responses from the GOC on December 11, 2006 and January 31, 2007, Gold East on January 31, 2007, and Chenming on February 2, 2007. On February 9, 2007, the petitioner, New Page Corporation, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (USW), a domestic interested party, submitted comments regarding these questionnaire responses. We issued supplemental questionnaires to Gold East and Chenming on February 15, 2007, and to the GOC on February 21, 2007. We received responses to these supplemental questionnaires from the GOC on March 15, 2007, Chenming on March 12, 2007, and Gold East on March 9 and 13, 2007. We issued a second supplemental questionnaire to the GOC, Gold East and Chenming on February 22, 2007, and received responses to these questionnaires from Chenming on March 12, 2007, and the GOC and Gold East on March 15, 2007.

On February 20, 2007, the USW submitted two new subsidy allegations. These allegations were timely as they were filed 40 days prior to the scheduled date of the preliminary determination, in accordance with 19 CFR 351.301(d)(4)(i)(A). We decided to include both of these newly alleged programs in our investigation. *See* Memorandum to Susan Kuhbach, Office Director, ''New Subsidy Allegation'' (March 5, 2007). On March 7, 2007, we issued a questionnaire to each of the respondents with respect to the new programs. We received responses to these questionnaires from Gold East on March 15, 2007, and from the GOC and Chenming on March 19, 2007.

On March 8, 2007, the petitioner submitted comments for consideration in the preliminary determination. The USW filed comments on March 14, 2007. We also received comments from Gold East on March 20, 2007, and March 22, 2007.

On March 26, 2007, petitioner requested that the final determination of this countervailing duty investigation be aligned with the final determinations in the companion antidumping duty investigations in accordance with section 705(a)(1) of the Act. We will address this request in a separate **Federal Register** notice.

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (POI), is calendar year 2005.

Scope of the Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not more than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323, (May 19,

1997) (*Preamble*) and *Initiation Notice*, 71 FR at 68546.

On December 18, 2006, respondents in the antidumping duty investigation of CFS from Indonesia submitted timely scope comments. On January 12, 2007, the Department requested that the respondents file these comments on the administrative record of the *CFS Investigations. See* Memorandum from Alice Gibbons to The File (January 12, 2007). On January 12, 2007, the respondents re-filed these comments on the administrative record of the *CFS Investigations.* On January 19, 2007, the petitioner filed a response to these comments.

The respondents requested that the Department exclude from its investigations cast-coated free sheet paper. The Department analyzed this request, together with the comments from the petitioner, and determined that it is not appropriate to exclude cast-coated free sheet paper from the scope of these investigations. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Request to Exclude Cast-Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper,'' (March 22, 2007) (memorandum is on file in the Department's CRU).

Application of the Countervailing Duty Law to Imports from the PRC

On December 15, 2006, the Department requested public comment on the applicability of the countervailing duty law to imports from the People's Republic of China (PRC). *See Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comments*, 71 FR 75507 (December 15, 2006). The comments we received are on file in the Department's CRU, and can be accessed on the Web at *http://ia.ita.doc.gov/ia-highlights-and-news.*

Informed by those comments and based on our assessment of the differences between the PRC's economy today and the Soviet and Soviet-style economies that were the subject of *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986), we preliminarily determine that the countervailing duty law can be applied to imports from the PRC. Our analysis is presented in a separate memorandum, Memorandum to David M. Spooner, Assistant Secretary for Import Administration, ''Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Whether the analytical elements of the Georgetown Steel holding are applicable to the PRC's present-day economy,'' (March 29, 2007) (''Georgetown Memo'') (memorandum is on file in the Department's CRU).

Subsidies Valuation Information

Allocation Period

The average useful life (''AUL'') period in this proceeding as described in 19 CFR 351.524(d)(2) is 13 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States*, 166 F. Supp. 2d. 593, 604 (CIT 2001).

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

Chenming: Chenming reported that it is the only producer of CFS among the companies affiliated with Shandong Chenming Paper Holdings, Ltd. Chenming further reported that its pulp supplier did not receive subsidies from the GOC. Therefore, we are attributing the subsidies received by Chenming to its sales of CFS or total sales, as appropriate.

Gold East: Gold East has responded to the Department's original and supplemental questionnaires on behalf of itself, its parent company and Gold Huasheng Paper Co., Ltd. (GHS). Gold East reported that GHS produces CFS, but that GHS did not produce CFS that is subject to investigation during the POI.

Gold East has also acknowledged that it and GHS are affiliated with a domestic pulp supplier that provides inputs to both companies. Gold East asserts, however, that the pulp supplied by this company cannot be considered an ''input product'' within the meaning of 19 CFR 351.525(b)(6)(iv) because the pulp provided by this supplier is not suitable for use in the CFS paper that is exported to the United States. Instead, this pulp was used exclusively in the production of lower-end paper products that were sold in the PRC and would not meet the specifications of its U.S. customers. Furthermore, Gold East states that it and GHS strictly segregate the pulp provided by the domestic supplier and the pulp used in export sales. Gold East claims that its situation is analogous to that in *Cold-Rolled Steel Flat Products from Korea*,[1] where the Department did not find a subsidy because the input allegedly sold for less than adequate remuneration was not used to produce subject merchandise. Therefore, Gold East argues that the pulp provided by the domestic supplier is not an input product that is primarily dedicated to the production of the subject merchandise.

Based on information currently on the record, we preliminarily determine that because of common ownership, cross-ownership exists between Gold East, GHS, the parent company, the affiliated pulp supplier and other affiliated companies, in accordance with 19 CFR 351.525(b)(6)(vi).

We further preliminarily determine that Gold East and GHS are cross-owned producers of the subject merchandise, as addressed in 19 CFR 351.525(b)(6)(ii). Although Gold East has claimed that GHS did not produce subject merchandise during the POI, there is no evidence indicating that GHS could not produce subject merchandise. Therefore, the subsidies received by Gold East and GHS have preliminarily been attributed to the combined sales of the two companies. Although we have combined Gold East and GHS in this

[1] *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat products From the Republic of Korea*, 67 FR 9685, 9683 (March 4, 2002) (*Cold-Rolled Steel Flat Products from Korea*).

manner, we have continued to refer the respondent as ''Gold East'' in this notice.

Additionally, we preliminarily determine that subsidies received by Gold East's parent company should be attributed to the consolidated sales of the parent company and its subsidiaries. *See* 19 CFR 351.525(b)(6)(iii).

Finally, we preliminarily determine that subsidies received by Gold East's cross-owned pulp supplier should be attributed to the combined sales of the input and the downstream products produced from those inputs. This is consistent with the Department's prior determination that pulp is ''primarily dedicated'' to the production of paper, as required by 19 CFR 351.525(b)(6)(iv). *See Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia,* 71 FR 47174 (August 16, 2006), and accompanying Issues and Decision Memorandum at Comment 3. Moreover, absent a showing that the domestic pulp cannot be used to produce CFS sold to the United States, there is no basis to tie subsidies bestowed on these input products exclusively to sales in the domestic Chinese market.

Certain other of Gold East's affiliated companies are discussed in a separate, proprietary memorandum, Memorandum to Susan Kuhbach, ''Gold East: Cross-owned Companies'' (March 29, 2007) (memorandum is on file in Department's CRU).

Benchmarks

Summary: The Department is investigating loans received by respondents from Chinese banks, including state-owned commercial banks (SOCBs), which are alleged to have been granted on a preferential, non-commercial basis. Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(2)(i). However, the Department does not treat loans from government banks as commercial if they were provided pursuant to a government program. See 19 CFR 351.505(a)(2)(ii). Because the loans provided to the respondents by SOCBs are under the ''Government Policy Lending Program,'' explained below, these loans are the very loans for which we require a suitable benchmark. Additionally, if respondents received any loans from foreign banks, these would be unsuitable for use as benchmarks because, as explained in greater detail below, the GOC's intervention in the banking sector creates significant distortions, even restricting and influencing foreign banks within the PRC.

If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii). However, the Chinese national interest rates are not reliable as benchmarks for these loans because of the pervasiveness of the GOC's intervention in the banking sector. Loans provided by Chinese banks reflect significant government intervention and do not reflect the rates that would be found in a functioning market. The statute directs that the benefit is normally measured by comparison to a ''loan that the recipient could actually obtain on the market.'' Section 771(5)(E)(ii) of the Act. Thus, the benchmark should be a market-based benchmark, yet, there is not a functioning market for loans within the PRC. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market-based benchmark that is a simple average of the national lending rates for countries with comparable gross national income (GNI), as explained below. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber*, the Department used U.S. timber prices to measure the benefit for government provided timber in Canada. *See Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada,* 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum, at ''Provincial Stumpage Programs'' (''*Softwood Lumber*''). In the current proceeding, as described in detail, below, the GOC plays a predominant role in the banking sector resulting in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. Therefore, as in lumber, where domestic prices are not reliable, we have resorted to prices outside the PRC.

Discussion: In its analysis of the PRC as a non-market economy in the recent lined paper investigation, the Department found that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the sector. *See* ''the People's Republic of China (PRC) Status as a Non-Market Economy,'' May 15, 2006 (''May 15 Memorandum''); and ''China's Status as a Non-Market Economy,'' August 30, 2006 (''August 30 Memorandum'') (collectively, the ''memoranda''). The PRC's stated goal for banking sector reforms since 1994 has been to develop banks that operate on a commercial basis. *See* May 15 Memorandum at 4; and August 30 Memorandum at 56–58. Despite ongoing efforts made by the GOC to move toward this goal, SOCBs in the PRC continue to be plagued by functional and operational problems that have necessitated repeated, large government capital injections and debt write-offs to stave off insolvency. In addition to a chronic problem of non-performing loans, the Department discussed in its memoranda the aspects of the PRC's banking sector that led International Monetary Fund (IMF) economists to conclude in 2006 that, despite a decade of reform, ''it is difficult to find solid empirical evidence of a strong shift to commercial orientation by the SOCBs.'' *See* August 30 Memorandum at 58, citing ''Progress in China's Banking Sector Reforms: Has Bank Behaviour Changed?,'' Washington, DC: International Monetary Fund Working Paper, at 4 (March 2006). For example, the Department found that funds continue to be allocated in a ''manner consistent with the general policy to maintain the state-owned industrial sector'' and loan pricing remains undifferentiated, despite liberalization of lending caps. *See* May 15 Memorandum at 5; and August 30 Memorandum at 58.

As one commentator notes, the PRC's banking sector has ''fallen short in its task of allocating credit to the most productive players in the economy,'' which is the hallmark of a banking system operating on a commercial basis. *See* August 30 Memorandum at 54, citing ''Putting China's Capital to Work: The Value of Financial System Reform,'' McKinsey & Company, at 25 (May 2006). The Department concluded that the PRC's banks are ''still in the process of developing the institutional underpinnings and human resources necessary to operate on a fully commercial basis.'' *See* August 30 Memorandum at 52.

In addition, ''the various levels of government in the PRC, collectively, have not withdrawn from the role of resource allocator in the financial sector, principally the banking sector.'' *See* May 15 Memorandum at 3. The GOC's continued ownership of virtually all of the banking sector assets is ''the

fundamental gap in banking sector's reform'' inhibiting the sector from operating on a commercial basis. *Id.* at 3–4. In fact, the PRC has the highest level of state ownership of banks of any major economy in the world. The four largest SOCBs, the Bank of China (''BOC''), the China Construction Bank (''CCB''), the Agricultural Bank of China (''ABC'') and the Industrial and Commercial Bank of China (''ICBC''), (collectively, the ''Big Four''), represent over 50 percent of the formal sector's assets and deposits. Small state-owned institutions, such as rural credit cooperatives, which are characterized by extremely poor performance, account for 9–10 percent of banking assets. Foreign banks account for approximately 2 percent of total assets. Although limited ownership diversification has been introduced through minority foreign shareholdings in the BOC, CCB and the joint-stock commercial banks (with the latter category of banks accounting for 13 percent of the sector's assets), the GOC continues to control the vast majority of financial intermediation in the banking sector. A further portion of the PRC's banking sector is accounted for by smaller entities, such as city banks and credit cooperatives, which are likewise government-owned, albeit on a sub-central level. *See* August 30 Memorandum at 54–55, citing ''Economic Survey of China,'' Paris: Organization for Economic Cooperation and Development, at 139 (2005).

While foreign banks have recently been permitted to purchase minority stakes in a number of state-owned domestic Chinese banks, such investment does not signal a decisive shift towards putting the banks on a fully commercial footing. This is because foreign investment in PRC banks is tightly constrained, and the GOC has signaled its intentions to preserve its control over the banking sector indefinitely. *See* August 30 Memorandum at 61, citing ''Go Away, Crocodiles?,'' the Economist Intelligence Unit, Business China (March 27, 2006). Continued GOC control of the Chinese banking sector is possible because, while foreign banks have recently been allowed to purchase minority stakes in certain banks in the PRC, total foreign purchases of shares in existing SOBCs have been limited to 25 percent. *See* August 30 Memo at 60, citing ''It's so Far, so Good for China's Banking Sector,'' the Economist Intelligence Unit, Business China (March 27, 2006). Similarly, some domestic banks in the PRC are now listed on foreign stock exchanges, but majority control remains with the GOC. Foreign interests have acquired approximately 10 percent of the CCB, ICBC and BOC, and are afforded just one place on the board at each bank. *See* August 30 Memo at 61, citing ''What are the Prospects for Foreign Banks in China,'' the Economist Intelligence Unit, Viewswire, China Finance (March 15, 2006). These investments bring market expertise to the management and board of the state-owned banks, but the foreign-owned shares remain small, thereby limiting the degree of influence over bank operations. *See* August 30 Memo at 61, citing Overmyer, Michael, ''WTO: Year Five,'' the US-China Business Council, The China Business Review, at 2 (January—February 2006). Therefore, the constrained degree of foreign investment that the GOC has permitted in the domestic Chinese banking sector does not alter the Department's preliminary conclusion that the domestic PRC banking sector does not operate on a commercial basis.

Because the GOC still dominates the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis, the Department preliminarily determines that the interest rates of the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this proceeding. Moreover, while foreign-owned banks do operate in the PRC, they are subject to the same restrictions as the SOCBs, including a government-imposed cap on deposit rates, which puts downward pressure on lending rates. In addition, foreign banks' share of assets and lending is negligible compared with the SOCBs. SOCBs issue most of the credit in the PRC and lend at rates close to the Central Bank's announced base lending rate. *See* ''Economic Survey of China,'' Paris: Organization for Economic Cooperation and Development, at 153 (2005) (''Economic Survey of China''). Accordingly, foreign banks participating in this system are inevitably influenced by this broader environment in the rates at which they issue loans. Additionally, while foreign banks are slowly increasing their participation in the domestic PRC banking sector, the OECD has observed that foreign banks, in addition to providing only a tiny share of credit in the PRC, still operate mostly in niche markets, rather than compete directly with the state-owned commercial banks. *See* August 30 Memorandum at 60, citing ''Economic Survey of China,'' at 150–151. Therefore, foreign bank lending does not provide a suitable benchmark.

The Department's conclusion that the lending rates offered by foreign banks do not offer a suitable benchmark because of the market-distorting behavior of the GOC is consistent with the Department's determination in the countervailing duty investigation in *Softwood Lumber*. That case dealt with the provision of goods for less than adequate remuneration. The Department explained that, ''if there is no market benchmark price available in the country of provision, it is obviously impossible to determine adequacy of remuneration except by reference to sources outside the country.'' *See Softwood Lumber* at ''Provincial Stumpage Programs.'' Further, ''a valid benchmark must be independent of the government price being tested; otherwise the benchmark may reflect the very market distortion the comparison is intended to detect.'' *Id.* In that proceeding, the Department determined that the small private market for timber in Canada was not a suitable basis for comparison because of the dominant position of the government in the marketplace. *Id.* This is quite similar to the fact pattern in the current proceeding, where a small private (foreign) sector exists alongside a vastly larger state-owned sector where a considerable portion of lending is not conducted on terms and conditions consistent with commercial considerations. Just as the prices in the private market for timber were found to be distorted by the presence of a largely state-controlled sector, lending rates by foreign banks in the PRC would be affected by the non-commercial lending rates of the much larger and dominant state-owned banks.

On March 22, 2007, Gold East cited to the PRC's Accession Protocol and argued that before rejecting benchmarks within the PRC, the Department should ''adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.'' However, it is not practical to adjust internal PRC lending rates for benchmarking the loans made by respondents. The distortions in the Chinese banking sector cannot be attributed to a single factor or set of factors that the Department could account for by adjusting an internal lending figure. Rather, this distorted sector is due to the PRC's history of government domination of the banking system and continuing ownership of the sector. Under these circumstances, for the purposes of this preliminary determination, it is necessary for the Department to disregard all internal benchmark data for loans.

We now turn to the issue of choosing an external benchmark. Selecting an appropriate external interest rate benchmark is particularly important in this case because, unlike prices for certain commodities and traded goods, lending rates vary significantly across the world. Nevertheless, there is a broad inverse relationship between income levels and lending rates. In other words, countries with lower per capita gross national income (GNI) tend to have higher interest rates than countries with higher per capita GNI, a fact demonstrated by the lending rates across countries reported in *International Financial Statistics.* There are several possible explanations for this phenomenon. High-income countries generally have stronger market-supporting institutions, which reduce the risk and transaction costs associated with lending. High income countries may also be more stable, further reducing perceived risk, and have high levels of credit in the economy, which helps to achieve economies of scale. For these reasons, the Department has determined that it is appropriate to use income level as a criterion for choosing the external lending rate to use as a benchmark.

Nevertheless, relying on a single country's figure could introduce distortions in the benchmark calculation if, for example, the country's central bank temporarily tightened monetary policy to reduce inflationary pressures. Because such factors, and their effect on interest rates vary across countries, the Department has preliminarily determined that a cross-country average lending rate is the most appropriate benchmark rate in this proceeding. A lending rate averaged across countries with similar income levels to the PRC captures the broad relationship between income and interest rates, as well as the institutional and macroeconomic factors that affect interest rates. Moreover, a large number of the world's countries report comparable lending rates to *International Financial Statistics*, providing a suitable basis for calculating a cross-country average.

The Department has used the country classifications of the World Bank to determine which countries to include in the benchmark average. The World Bank divides the world's economies into four categories, based on per capita GNI: Low income, lower-middle income, upper-middle income, and high income. The PRC, with its 2005 per capita GNI of $1740, falls into the lower-middle income category, a group that includes 58 countries as of July 2006. The Department then calculated an average of the lending rates that these countries reported to *International Financial Statistics* in 2005. This calculation excludes those economies that the Department considered to be non-market economies for antidumping purposes in 2005: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine. The average necessarily also excludes any economy that did not report lending data to International Financial Statistics in 2005. The Department also excluded two aberrational countries, Angola, with a rate of 67.72 percent, and Brazil, with a rate of 55.38 percent. The Department then computed a simple average of 13.147 percent of the remaining 37 lending rates and used this average to determine whether a benefit existed for the loans received by Chenming and Gold East on their short-term loans in 2005. The resulting average provides an appropriate benchmark because the loan figures reported to *International Financial Statistics* represent base short-term lending rates in each reporting country.

The lending rates reported in *International Financial Statistics* represent short-term lending, and there is no publicly available long-term interest rate data. To identify and measure any benefit from long-term loans, the Department developed a ratio of short-term and long-term lending for 2005. The Department then applied this ratio to the benchmark short-term lending figure (using the methodology explained above) to impute a long-term lending rate. For example, for loans issued in 2000, the Department calculated an average of the 37 lower-middle income countries' short-term lending rates in 2000. To convert the resulting short-term interest rate into a long-term rate, the Department calculated a ratio between short-term lending drawn from London Interbank Offered Rate (LIBOR) data and long-term interest rates from in the interest rate swap market. The ratio of the two figures provides an indication of the varying cost of money over different time periods. In this case, the Department computed a ratio of the average short-term LIBOR rate in 2005 and the prevailing interest rates on long-term (five-year) interest rate swaps reported by the Federal Reserve for the year in question. That is, if the long-term swap rate were 25 percent higher than the short-term LIBOR rate, the Department would inflate the average short-term lending rate by 25 percent to arrive at a long-term interest rate benchmark. This methodology is appropriate because the interest rate swap rates are based on short-term LIBOR rates, and the ratio between them offers an estimate of the market consensus premium that borrowers would pay on a long-term loan over a short-term loan.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)–(D), the Department normally examines the following four types of information: (1) Receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the Department's view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65367 (November 28, 1998). For government-owned firms, we will make our creditworthiness determination by examining this factor and the other factors listed in 19 CFR 351.505 (a)(4)(i).

Chenming: The Shouguang State-Owned Asset Administration owned 31.24 percent of Chenming during the POI. Therefore, for purposes of the creditworthiness determination, we are preliminarily treating Chenming as government-owned and are not considering the existence of commercial borrowing to be dispositive of the company's creditworthiness.

Chenming's consolidated financial statements show that the Group had negative working capital in 2003 through 2005, and its cash flow was negative in 2005. In addition, the current and quick ratios were less than 1 during the same time period and have

consistently declined since 2001.[2] Chenming's 2005 financial statements indicate that the Group has a large amount of short-term debt, and that working capital was applied in the expansion and construction of production facilities in the Group. Indeed, its annual reports show that the Group completed several large projects in 2004 and 2005 (fixed assets increased by 83% from the end of 2003 to the end of 2005), including new facilities. While the net profit margin, times interest earned, return on assets, and return on equity have decreased since 2003, they are comparable to or greater than the Group's 2001 ratios. The ''times interest earned'' ratio calculates the extent to which pre-tax income covers interest expense and creditors monitor it to gauge the risk of default. Cash flow to liabilities, which indicates bankruptcy risk, has been very variable since 2001. Debt-to-equity and debt-to-assets, two solvency ratios, have increased since 2001, and demonstrate that the Group has become more leveraged. Turnover, however, has increased by at least 20 percent each year since 2001. In addition, despite the negative working capital and negative net cash flow, the company continued to pay dividends in 2004 and 2005.

In Chenming's consolidated 2005 financial statements, the auditors explained that the Group is exposed to liquidity risk because a significant percentage of the Group's capital funding requirements are financed through short-term bank borrowing. The company acknowledged this risk and intended to convert a significant portion of such short-term debt to long-term debt in the near future. A December 2, 2005 article in *Euroweek*, indicated that Sumitomo Mitsui Banking Corporation (a foreign bank) was arranging an $80 million three-year term-loan for Chenming. The article explains that the deal is the company's debut international loan, although the company was in the market in 2005 as a sponsor of an affiliated company project.[3] The group also had a five-year convertible bond issue in September 2004.

We note that the financial statements, upon which the above ratios have been calculated, are for the consolidated Chenming Group. In its response, Chenming submitted financial ratios based on the unconsolidated parent company, which is the responding company and, according to its response, the sole producer within the consolidated group of the merchandise under investigation. These ratios show that the parent company's current ratios for 2004 and 2005 are more than 1 and its quick ratios are nearly 1, which indicate that the parent company is in a more liquid position. In addition, the time interest earned ratios for these years are stronger for the parent than for the Group. While Chenming has not submitted the unconsolidated financial statements upon which these ratios are based, the Department has found publicly available financial statements for Chenming for the first half 2005, which show the financial information for the parent and the Group. These statements confirm that the current ratio for the parent company is greater than 1 and the quick ratio is substantially better for the parent than the Group. In addition, the parent had positive working capital, although its cash flow in the first half 2005 was negative.

We find the ratios for the Chenming Group provide varying indications of the firm's financial creditworthiness. While working capital is negative, working capital is only a rough indication of changes in liquidity and supplemental analysis with other ratios is required. Working capital in this case is negative due in large part to the large amount of short-term liabilities. The liabilities in this case were used to finance Group expansion, which should provide for future sales increases. While a company with excellent long-term prospects could fail to realize them if forced into bankruptcy because it could not pay its short-term liabilities, there is no indication that this is the case for the Chenming Group.

Indeed, Chenming acknowledges this risk and states its intention to mitigate it through the acquisition of long-term debt. The December 2005 article cited above demonstrates that the company was likely to be successful in carrying out this intention. Moreover, there is no information on the record that Chenming has defaulted on any of its debt or failed to meet any of its financial obligations. To the contrary, it has even continued to pay dividends. Also, the record shows that Chenming has continued to borrow from private parties, as evidenced by the 2004 convertible bond issue. We note that while we have performed this analysis for the Chenming Group, the unconsolidated financial situation for the parent company, the respondent in this case, appears to be even better.[4]

In summary, while certain financial ratios indicate some degree of financial distress, there are several factors that weigh against finding Chenming uncreditworthy, such as: Continuing annual sales growth, its positive net income in 2005, and its ability to meet its interest expenses and issue convertible bonds. Therefore, we preliminarily determine Chenming to be creditworthy in 2004 and 2005.

Gold East: On March 8, 2007, the petitioner alleged that the APP companies, including Gold East, should be considered uncreditworthy beginning in 2001.

On March 20, 2007, Gold East objected to petitioner's allegation on the grounds that it was untimely filed. Specifically, Gold East argues that any new subsidy allegation, including an allegation of uncreditworthiness, is due no later than 40 days before the scheduled date of the preliminary determination, citing 19 CFR 351.301(d)(4)(i)(A).

We disagree with Gold East that uncreditworthiness allegations must be filed within the same timeframe established for new subsidy allegations in 19 CFR 351.301(d)(4)(i)(A). Uncreditworthiness in and of itself is not a countervailable subsidy. Instead, it is a valuation issue that is properly addressed in the course of an investigation as long as parties have ample time to submit information and argument on the point. In this case, adequate time exists. Therefore, we have analyzed petitioner's allegation.

According to 19 CFR 351.505(a)(6), the Department ''will not consider the uncreditworthiness of a firm absent a specific allegation by petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy.'' The petitioner has submitted financial ratios for the companies and has pointed to other evidence on the record. (Because this allegation is based almost exclusively on proprietary information, it is described in a separate memorandum, Memorandum to Susan Kuhbach, ''Uncreditworthiness Allegation for APP Companies'' (March 29, 2007) (''APP Creditworthiness Allegation Memo'') (memorandum is on file in the Department's CRU).

Based on our review of the allegation, we find that the petitioner has provided a reasonable basis to believe or suspect that the APP companies were uncreditworthy in 2001–2005. *See* APP Creditworthiness Allegation Memo.

[2] *See* Memorandum to File, ''Creditworthiness Determination for Chenming,'' (March 29, 2007) (''Chenming Creditworthy Memo'') (providing the calculation of the financial ratios for 2001 through 2005). It is the Department's standard practice to examine ratios for the years in which a creditworthiness determination is to be made and the three preceding years.

[3] *See* Chenming Creditworthy Memo.

[4] *See* Chenming Creditworthiness Memo.

Therefore, we intend to investigate the creditworthiness of the APP companies for those years between 2001 and 2005 in which the companies received subsidies under investigation in this case. We intend to make a preliminary finding on the companies' creditworthiness prior to our final determination and will provide the parties with an opportunity to comment on that finding.

Denominator

In its March 20, 2007 filing, Gold East asks the Department to adjust its subsidy rate to reflect the fact that the company's exports to the United States are invoiced by an affiliate. Gold East claims that the Department previously made such an adjustment in *Ball Bearings and Parts Thereof from Thailand; Final Results of Countervailing Duty Administrative Review,* 57 FR 26646 (June 15, 1992) (*''Ball Bearings from Thailand''*).

Based upon our review of *Ball Bearings from Thailand* and the information submitted by Gold East in support of its claim, it appears that the pattern of transactions differ in the two situations, and it is not clear that the adjustment is appropriate for Gold East's situation. However, we intend to seek further information and analyze this claim further for our final determination.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Grant Programs

The petitioner alleged that the GOC, including local and provincial authorities, provide grants to CFS producers and their cross-owned companies, pursuant to five-year plans for the pulp and paper industry.

The GOC has identified two grant programs that relate to this allegation: The State Key Technology Renovation Fund, and the Clean Production Technology Fund. The former is discussed below, and the latter is addressed under ''Programs Preliminarily Determined to be Not Used.''

The State Key Technology Renovation Project Fund

The State Key Technology Renovation Project Fund program (''Key Technology Program'') was created pursuant to state circular GUOJINGMAOTOUZI (1999) No. 886 (Circular No. 886), and operates under the regulatory guidelines provided in Circular No. 886, including ''Measures for the Administration of National Debt Special Fund for National Key Technological Renovation Project'' (''Special Fund Measures''), GUOJINGMAOTOUZI (1999) No. 122, GUOJINGMAOTOUZI (1999) No. 1038 and state circular GUOJINGMAOTOUZI (2000) No. 822. The purpose of this program is to promote: (1) Technological renovation in key industries, key enterprises, and key products; (2) facilitation of technology upgrade; (3) improvement of product structure; (4) improvement of quality; (5) increase of supply; (6) expansion of domestic demand; and (7) continuous and healthy development of the state economy.

Under the Key Technology Program, companies can apply for funds to cover the cost of financing specific technological renovation projects. Under Article 9 of the Special Fund Measures, Key Technology Program grants are disbursed in the form of ''project investment facility'' grants covering two years' worth of interest payable on loans to fund the project, or up to three years for enterprises located in certain regions. Under Article 11 of the Special Fund Measures, Key Technology Program funds may also be disbursed as ''loan interest grants,'' which are calculated with reference to the amount of the project loans and prevailing interest rates during a period of one to two years.

Pursuant to Article 4 of Circular No. 886, the recipients of these funds will mainly be selected from large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries. To be considered for funding, the enterprise files an application that is reviewed at various levels of government, with final approval given by the State Council. Once approved, the local finance bureaus appropriate the funds into the enterprise's account.

The GOC has reported that Chenming was among the 512 key enterprises or 120 pilot enterprise groups, and that Gold East was not included in these groups. Also, the GOC reported approving funding for Chenming under the Key Technology Program in 2000, and that the funds were disbursed in 2001.

The GOC has further reported that the Key Technology Program has not operated since 2003, although the implementing regulations remain in effect. This is due to institutional reform in the government—the implementing agency, the State Economic and Trade Commission, was dissolved and the program was not taken over by another agency.

We preliminarily determine that the Key Technology Program provides countervailable subsidies to Chenming within the meaning of section 771(5) of the Act. We find that these grants are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). We further preliminarily determine that the grants provided under this program are limited as a matter of law to certain enterprises, *i.e.*, large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries, and, hence, are specific under section 771(5A)(D)(i) of the Act.

According to the GOC, the program is intended to provide one-time assistance and each project funded by the a grant requires a separate application and approval. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grant received under this program as ''non-recurring.'' We do not have the information needed to perform the ''expensing'' test described in 19 CFR 351.524(b)(2), and for purposes of this preliminary determination have allocated the benefit over the AUL.

To calculate the countervailable subsidy, we used our standard grant methodology. Because the approved project was for CFS, we divided the benefits attributable to the POI by the total value of Chenming's sales of CFS during that period. On this basis, we preliminarily determine the countervailable subsidy to be 1.28 percent *ad valorem* for Chenming.

As noted above, the grants provided under this program are to cover interest owed on loans. Our regulations provide differing allocation methodologies for interest assumptions, depending on whether the recipient knew of the assumption before taking out the loan. *See* 19 CFR 351.508(c)(2). We intend to seek further information on this issue for our final determination.

B. Government Policy Lending Program

Petitioner has alleged a GOC lending program to provide loans at a discount to the forestry and paper industry in accordance with the GOC's industrial policy, as set out, *inter alia*, in ''The PRC Civilian Economy and Social Development 10th Five-Year Plan Outline'' and ''The Tenth Five-Year and 2010 Special Plan for the Construction of National Forestry and Papermaking Integration Project.'' Petitioner further

alleges that discounted loans, interest subsidies, and debt forgiveness are provided through policy banks and state-owned banks providing policy loans.

Chenming and Gold East have stated that they did not receive any preferential policy loans. In its response, the GOC states that the Five-Year plans are a ''projection of the {state-council's} economic work in the forthcoming years'' and are ''not necessarily translated into any specific action.'' As such, the GOC asserts that it does not normally provide loans to industries; rather, banks provide loans and operate as independent commercial entities, typically basing their decision to provide a loan on commercial and risk assessment factors.

To determine whether the program alleged by petitioner confers countervailable subsidies on the producers and exporters of the subject merchandise, the Department must first ascertain whether the GOC has a program in place to support the development of the paper industry. Specifically, the Department must determine whether record evidence supports the conclusion that the GOC carries out industrial policies that encourage and support the growth of the paper sector through the provision of preferential loans.

Petitioner has claimed that the GOC has an explicit policy of supporting the paper industry with preferential loans. To support this assertion, petitioner cites to the ''The PRC Civilian Economy and Social Development 10th Five-Year Plan Outline'' (10th Five-Year Plan) and ''The Tenth Five-Year and 2010 Special Plan for the Construction of National Forestry and Papermaking Integration Project'' (10th Five-Year Plan for the Forestry and Paper Industry), among other administrative measures.

One of the goals of the 10th Five-Year Plan is to ''accelerate reform and renovation'' of certain industries, including the ''wood pulp, high quality paper and paperboard'' industry. Subsequent Five-Year Plans have reaffirmed this goal. Taking into consideration the broad goals set out in the 10th Five-Year Plan, in March 2001 the GOC released the 10th Five-Year Plan for the Forestry and Paper Industry. This plan was developed ''in order to ensure the smooth construction of our national forestry and papermaking integration project, to make comprehensive plans, to take actions according to local circumstances, to make decisions on scientific bases, and for the government to play the role of macroeconomic readjustment and control'' (emphasis added). In addition, the government has established specific production capacity targets in this Plan, stating that ''{w}e plan to construct pulp producing capacity of 1.13 million ton'' and after 2010 ''we can build a pulp producing capacity of more than 2.15 million ton * * * and a matching paper making capacity of about 2.3 million ton.'' Further, the GOC estimates that the amount of investment required during the period of the 10th and 11th Five-Year Plans will be RMB 244.3 billion, stating that, ''{t}herefore, investment has to be strengthened vigorously and financing channels are to be widened * * *'' As such, this Plan specifically contemplates policy measures that are necessary to achieve these goals, including the provision of ''appropriate financial support to the construction of forestry and papermaking integration in its early phase by way of infusing capital in cash or loans with discount.''

In addition to the 10th Five-Year Plan and the 10th Five-Year Plan for the Forestry and Paper Industry, in August 2001, the State Economic and Trade Commission released the ''10th Five-Year Plan in the Paper Production Industry.'' The purpose of this Plan is to outline goals of the paper production industry over the next 5 years. A key policy recommendation addressed in the plan is increased access to financial resources, including: (1) Opening essential financing channels for adjustment and development of the industry; (2) encouraging the opening of multilateral investment and financing channels to increase technological restructuring and rapid growth; and (3) providing discounted loans with special terms for environmental conservation projects.

Beyond the various Five-Year Plans mentioned above, several additional administrative measures released by the GOC demonstrate a clear governmental policy or program of support to the forestry and paper industry. For example, in June 2000, The PRC's National Key Economy and Trade Committee released the National Key Technology Renovation ''Shuang Gao Yi You'' Project. The purpose of this measure was to outline key areas of economic structural adjustment needed by enterprises to increase technology renovation, technical and industrial advancement. One of the stated goals was to ''emphatically select key paper enterprises which produce high quality newspaper, high class culture paper product (LWC), high class packaging paperboard (carton paperboard), and enterprises that produce paper making machine and other supporting networks; eliminate backward equipment and products which are not market suitable.''

On the basis of the record information cited above, we preliminarily determine that the GOC has a specific and detailed policy to encourage and support the development of the domestic forestry and paper industry. The GOC itself has stated that Five-Year Plans are a ''projection of the [state-council's] economic work in the forthcoming years.'' In order to implement the policies enumerated in the Five-Year Plan, the GOC's policy specifically calls for the provision of discounted loans and other financing in order to support the growth and development of this industry.

The GOC has further stated in its March 15 questionnaire response that ''the administrative system ensures that provincial and local policy goals and objectives are in conformity with the central policy goals and objectives.'' According to the 1979 Law of Local People's Congresses at Various Levels and Local People's Government at Various Levels of the PRC, as amended, local governments must follow the laws and regulations made by the central government. *See* Chinese Law and Legal Research, Wei Luo, at 31 (2005). Further,

> the State Council guides the local administration in terms of policies and assigns tasks to local governments in terms of plans. In doing so, the central government confers on the local governments the necessary authorities to carry out the policies of the central government. The central government also evaluates the local governments' application of policies, laws and plans made by the central government. *See* id. (emphasis added.)

In other words, local governments must align their industrial policies with stated central government policies and carry out those polices to the extent that such measures affect their locality. As such, based on record statements, Five-Year Plans should be considered a central government policy or program that local governments adopt and implement through SOCBs.

Having determined that the record evidence establishes a government policy or program to support the forestry and paper industry, the Department next turns to whether these policies were carried out by the central and local governments through the provision of loans extended by GOC policy banks and SOCBs. Under the Department's practice, loans provided by government policy banks, such as the China Development Bank, are considered government loans and, thus, constitute direct financial contributions under the Act. *See, e.g., Dynamic*

Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 72 FR 7015, February 14, 2007, and accompanying Issues and Decision Memorandum, at 6. Loans by SOCBs, however, are not necessarily treated as government loans because these banks often operate on a commercial basis in many countries. *See Preamble*, 63 FR at 65363. However, as discussed below, the PRC's banking system presents a significantly different fact pattern than those in market economy countries that the Department has previously encountered and that were contemplated in the *Preamble*. Information on the record indicates that the PRC's banking system suffers from a legacy of complete state control, the vestiges of which allow for continued government control, especially at the local level, resulting in the allocation of credit in accordance with government policies.

As discussed in the *Georgetown Memo* and the Department's memoranda from the investigation on *Certain Lined Paper Products from the PRC* regarding the PRC's status as a non-market economy, the PRC's banking system is more flexible than the Soviet-style banking sectors, where central banks directly allocated all credit in accordance with the wishes of the party and the central planners. The GOC abolished the mandatory credit plan in 1997, under which the People's Bank of China (PBOC) directly allocated credit to specific sectors, often supporting the operations of loss-making state-owned enterprises (SOEs). The credit plan was replaced with non-binding targets, which were to serve as guidance for credit allocation. See August 30 Memorandum, at 51. SOCBs were afforded legal autonomy from the state in most matters, which allowed them to lend, at least in theory, on terms and conditions consistent with commercial considerations. Current law, however, remains contradictory with regard to the SOCB's independence from the state. Under the 1995 Commercial Banking Law of the People's Republic of China, commercial banks are responsible for their own profits and losses, must protect the interests of their depositors, and are protected from government influence. However, Article 34 of the Commercial Bank Law paradoxically states that banks are required to adhere to the PRC's ''national industrial policies.'' *See* August 30 Memorandum, at 53.

Notwithstanding certain dictates that the SOCBs act independently of the government, as discussed in the ''Benchmark'' section of this notice, the near-complete state ownership over these banks enables the GOC to utilize SOCBs as policy instruments and, thus, to allocate credit in accordance with its policies, as enumerated in the Five-Year Plans. Specifically, the Department found that ''{w}hile the Big Four (along with smaller regional banks and cooperatives) now have greater autonomy than in the past, government interests at both the central and local levels still exercise a great deal of control over banking operations and lending decisions.'' *See* May 15 Memorandum, at 5. As noted by the IMF, ''{r}ooting out the legacy of government directed lending, and training banks to make lending decisions based on purely commercial considerations, with adequate regard to viability and riskiness of projects remains a major reform challenge.'' *See* August 30 Memorandum, at 52, n. 248, citing Finance and Development, Next Steps for China, Washington, DC: International Monetary Fund, (September 2005).

State-direction of credit as well as protracted lending on a non-commercial basis has been evidenced by repeated cycles of the accumulation of a large number of non-performing loans and government bailouts of the banking sector. *See* ''Benchmark'' section above. For example, wholly- and partially-owned SOEs continue to receive a disproportionate share of credit, in line with industrial policy objectives to maintain a central role for the state-owned sector of the economy. *See* May 15 Memorandum, at 5; and August 30 Memorandum, at 59.

Some of the misallocation of resources may be attributed to lack of experience or inertia. However, as discussed above in the ''Benchmarks'' section, the continued government intervention in bank operations, especially by local governments, acts as a significant impediment to true commercialization of the banks. Prior to reforms, local governments utilized SOCB branch offices as the main source of capital to fund policy-driven investment projects and support local SOEs, which in turn provided local employment and government revenue. Although SOCBs are no longer the sole instrument by which to allocate funds, local governments continue to guide and direct the allocation of credit through their local bank branches. *See* August 30 Memorandum, at 60.

Third-party commentators have arrived at similar conclusions regarding the state's continued influence, especially at the local level, on SOCB operations. For example, a 2005 Organization for Economic Cooperation and Development (OECD) report found that,

> The chief executives of the head offices of the SOCBs are government appointed and the party retains significant influence in their choice. Moreover, the traditionally close ties between government and bank officials at the local level have created a culture that has given local government officials substantial influence over bank lending decisions. *See* August 30 Memorandum, at 60, n. 294 and 301, citing to Economic Survey of China, Paris: Organization for Economic Cooperation and Development, at 140–141 (2005).

A 2005 IMF Staff Report concurred, stating that, {t}he staff acknowledged the progress made in reducing government involvement in management and business operations of banks. However, more needs to be done, particularly with regard to local governments, to remove this serious impediment to fully commercializing banks.'' *See* the August 30 Memorandum at 60, citing People's Republic of China: 2005 Article IV Consultation—Staff Report; Staff Supplement; and Public Information Notice on the Executive Board Discussion, Washington, DC, International Monetary Fund, at November 2005), p. 19.

As the Department found in its May 15 Memorandum, ''the continued significant government involvement in the PRC's banking sector reflects an assumption that the state, not markets, should determine the growth sectors or individual companies that deserve access to credit.'' *See* May 15 Memorandum, at 8. On the basis of the evidence cited above, the Department determines for the purposes of this preliminary determination that the GOC continues to use its ownership of and influence over SOCBs to guide and direct the allocation of credit in accordance with its stated policy objectives, including those contained in the 10th Five-Year Plan for the Forestry and Paper Industry. In addition, evidence on the record also indicates that the above-mentioned Five-Year Plans are in fact implemented by paper companies. For example, Chenming's 2005 Annual Report states that, ''{a}ll of the projects the Company had launched were those which satisfying the national industrial policy and to be replacing the imported products and high in value adding.'' In addition, this report states that, ''the Company will keep studying and following with the national policies to grasp the trend of overall planning, to make sure the Company's development is complying with the national policy on the industry.'' As such, the

Department preliminarily finds that the PRC's SOCBs should be considered extensions of the government and are the instruments by which the government implemented the preferential lending component of the program described above.

For the reasons stated above, the Department preliminarily determines that loans provided by Policy Banks and SOCBs in the PRC constitute government-provided loans pursuant to section 771(5)(D)(i) of the Act. We further preliminarily determine that this loan program is specific in law because the GOC has a policy in place to encourage and support the growth and development of the forestry and paper industry. *See* section 771(5A)(D)(i) of the Act. Finally, this program provides a benefit to the recipients, equal to the difference between what the recipient paid on the loan and the amount the recipient would have paid on a comparable commercial loan. *See* section 771(5)(E)(ii) of the Act.

Chenming, Gold East, and certain of Gold East's cross-owned companies had outstanding loans under this program during the POI.

To calculate the benefit, we used the interest rates described in the ''Benchmark'' section above and the methodology described in 19 CFR 351.505(c)(1) and (2). On this basis, we preliminarily determine that a countervailable benefit of 3.15 percent *ad valorem* exists for Chenming and a countervailable benefit of 14.02 percent *ad valorem* exists for Gold East for this program.

C. Income Tax Programs

The ''Two Free, Three Half'' Program

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC.

According to Article 8 of the FIE Tax Law, FIEs that are ''productive'' and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed ''productive'' if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. This provision specifies a list of industries in which FIEs must operate in order to qualify for benefits under this program. The activities listed in the law are: (1) Machine manufacturing and electronics industries; (2) energy resource industries (not including exploitation of oil and natural gas); (3) metallurgical, chemical and building material industries; (4) light industries, and textiles and packaging industries; (5) medical equipment and pharmaceutical industries; (6) agriculture, forestry, animal husbandry, fisheries and water conservation; (7) construction industries; (8) communications and transportation industries (not including passenger transport); (9) development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; (10) other industries as specified by the tax authorities under the State Council. The GOC, in its response, has stated that if a FIE meets the above conditions, eligibility is automatic and the amount exempted appears on the enterprise's tax return.

Gold East reported that, during the POI, Gold East and certain of its cross-owned companies filed tax statements for a ''free'' year under this program. Chenming reported that its eligibility for participation in this program ended in 2001 and that the company did not receive any benefits under this program during the POI.

We preliminarily determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

The GOC claims that FIEs are a separate type of business operation under Chinese law, similar to partnerships, proprietorships, domestic corporations, for example, and that differences in tax liabilities for these different types of businesses do not make the income tax rate applicable to FIEs specific. The GOC further claims that the large number of FIEs and the vast number of industries they participate in further indicate that this program is not specific. However, we have preliminarily determined that limiting a program to ''productive'' FIEs is a sufficient basis to find specificity and, having found specificity as a matter of law, it is not necessary to reach the issue of whether the subsidy is specific in fact. *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, at 930 (1994) (''SAA'').

To calculate the benefit from this program, we treated the income tax exemption enjoyed by Gold East its cross-owned companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the rate paid by the Gold East companies (zero percent) to the rate that would be paid by a domestic corporation in the PRC (30 percent). We attributed the tax savings received by Gold East and GHS to the combined sales of the two companies. Additional information on this calculation is provided in the Calculation Analysis memorandum for Gold East. On this basis, we preliminarily determine that a countervailable benefit of 2.88 percent *ad valorem* exists for Gold East for this program.

Reduced Income Tax Rates for FIEs Based on Location

FIEs are encouraged to locate in designated coastal economic development zones, special economic zones, and economic and technical development zones in the PRC through preferential income tax rates. This program was originally created in 1988 under the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIE in Coastal Economic Zone of the Ministry of Finance and is currently administered under the FIE Tax Law, and Decree 85 of the State Council of 1991 (Decree 85). Under Article 7 of the FIE Tax Law and Article 71 of Decree 85, ''productive'' FIEs located in the designated economic zones pay corporate income tax at a reduced rate of either 15 or 24 percent, depending on the zone.

For the income tax return filed during the POI, Chenming paid income tax at a reduced rate of 24 percent, based on its location in a Economic and Technical Development Zone. Because Gold East and GHS did not pay income taxes during the POI (due to their participation in the Two Free, Three Half program), we are treating this program as not used by Gold East during the POI.

We preliminarily determine that the reduced income tax rate paid by ''productive'' FIEs located in certain zones confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue

forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this program is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Chenming as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by Chenming's total sales during that period. To compute the amount of tax savings, we compared the rate paid by Chenming (24 percent) to the rate that would be paid by a domestic corporation in the PRC (30 percent). On this basis, we preliminarily determine that a countervailable benefit of 0.34 percent *ad valorem* exists for Chenming for this program.

Local Income Tax Exemption and Reduction Program for ''Productive'' FIEs

Under Article 9 of the FIE Tax Law, the governments of the provinces, the autonomous regions, and the centrally governed municipalities have been delegated the authority to provide exemptions and reductions of local income tax for industries and projects for which foreign investment is encouraged. As such, the local governments establish the eligibility criteria and administer the application process for any local tax reductions or exemptions. Therefore, the requirements and application procedures for this program may vary between jurisdictions.

Chenming, Gold East, and GHS reported receiving local income tax exemptions under this program. Chenming's local tax authority granted the company an exemption because Chenming was an FIE located in a coastal economic zone, specifically, in an Economic and Technical Development Zone.

Gold East references Article 3 of the Regulations for the Local Income Tax Exemption and Reduction of Jiangsu Province for Enterprises with Foreign Investment as the basis for its local tax exemption. Under these provincial regulations, productive FIEs in the Jiangsu Province are exempt from local income taxes during the period in which they use the ''Two Free, Three Half'' program. Because Gold East and GHS participated in the ''Two Free, Three Half'' program during the POI, they were exempt from the local income tax.

We preliminarily determine that the local tax exemption and reduction program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the local governments and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption afforded to Chenming by this program is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. In the case of Gold East, we preliminarily determine that the program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and is specific under section 771(5A)(D)(i) of the Act for the reasons explained above.

To calculate the benefit, we treated the income tax savings enjoyed by the companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the zero percent rate paid by Chenming, Gold East and GHS to the rate that would otherwise be paid by a domestic corporation in the PRC (3 percent). For Chenming, we divided the income tax savings during the POI by Chenming's total sales. For Gold East, we attributed the tax savings received by Gold East and GHS to the combined sales of the two companies. On this basis, we preliminarily determine that a countervailable benefit of 0.17 percent *ad valorem* exists for Chenming and a countervailable benefit of 0.31 percent *ad valorem* exists for Gold East.

Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs

Provisions in GUOSHUIFA (2000) No. 90, Administrative Measures on Enterprise Income Tax Credits for Purchase of Domestic Equipment by FIEs and Foreign Enterprises, and CAISHUI (2000) No. 49, Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Credits for Purchase of Domestic Equipment by Foreign Invested Enterprises and Foreign Enterprises, permit FIEs to obtain tax credits of up to 40 percent of the purchase value of domestically produced equipment. Specifically, the tax credit is available to FIEs and foreign-owned enterprises whose projects are classified in either the Encouraged or Restricted B categories of the Catalog of Industrial Guidance for Foreign Investment. The credit applies to any domestically produced equipment so long as the equipment is not listed in the Catalog of Non-Duty-Exemptible Articles of Importation. The program has been in effect since 1999 and its purpose, according to the GOC, is to attract foreign investment.

To receive a tax credit under this program, requesting enterprises must submit an application to the local tax authority within two months of purchasing the equipment. Once approved, the credit can be claimed on the enterprise's income tax return. The amount of the credit is limited to the lesser of 40 percent of the purchase price of the domestically produced equipment or the incremental increase in income taxes owed over the previous year.

Chenming reported receiving tax credits under this program during the POI; Gold East did not.

We preliminarily determine that income tax credits on the purchase of domestically produced equipment by FIEs are countervailable subsidies. The tax credits are a financial contribution in the form of revenue forgone by the local governments and they provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Chenming as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the benefit received during the POI by Chenming's sales of CFS during that period. On this basis, we preliminarily determine that a countervailable benefit of 2.98 percent *ad valorem* exists for Chenming for this program.

D. VAT and Duty Exemptions

VAT Rebates on Purchases of Domestically Produced Equipment

As outlined in GUOSHUIFA (1999) No. 171, Trial Administrative Measures on Purchase of Domestic Equipment by Projects with Foreign Investment (1999 VAT Measures), the GOC refunds the VAT on purchases by FIEs of certain domestically produced equipment. Article 3 of the 1999 VAT Measures specifies that this program is limited to FIEs including exclusively foreign-owned enterprises. Article 4 of the 1999 VAT Measures defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and

Restricted B categories listed in the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (No. 37 (1997)) and equipment for projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State. Based on the GOC's and companies' responses, the receipt of the VAT rebates on domestically produced equipment is granted to FIEs upon presentation of documents showing their FIE status.

Chenming, Gold East, and certain of Gold East's cross-owned companies reported receiving VAT rebates on their purchases of domestically produced equipment during the POI.

We preliminarily determine that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the VAT rebates as a recurring benefit, consistent with 19 CFR 351.524(c)(1). For Chenming, we divided the VAT rebates received during the POI by Chenming's sales of CFS in that period. For Gold East, we calculated the benefit in accordance with the attribution rules described in 19 CFR 351.525(b)(6). On this basis, we preliminarily determine that a countervailable benefit of 1.45 percent *ad valorem* exists for Chenming and a countervailable benefit of 0.35 percent *ad valorem* exists for Gold East for this program.

The GOC has claimed that the goal of this program is to equalize the tax burden on the purchase of domestically produced and imported equipment by FIEs. (As explained below, FIEs are also exempt from paying the value added tax on imported equipment.) Thus, the GOC argues, the Department should not find the VAT rebates on domestically produced equipment to be an import substitution subsidy.

Although the VAT rebates are available to FIEs on both domestically produced and imported equipment, the GOC has not demonstrated that both rebates are integrally linked. In accordance with 19 CFR 351.502(c), the Department will consider whether two programs are integrally linked for purposes of making its specificity determination, but the burden lies with the GOC to claim that the VAT exemptions/rebates are linked and to provide evidence in support of the claim. That burden has not been met. Moreover, as explained above, we are preliminarily determining that FIEs constitute a specific group of enterprises. Consequently, even if we were to treat the VAT rebate and exemption programs as integrally linked, we would still find the benefits to be specific.

VAT and Tariff Exemptions on Imported Equipment

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37) (Circular No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.

Chenming, Gold East and certain of Gold East's cross-owned companies received VAT and duty exemptions under this program due to their status as FIEs. Specifically, the companies are authorized to receive the exemptions based on their FIE status and the list of assets approved by the GOC at the time their FIE status was approved. Domestic enterprises eligible for the VAT and duty exemptions must have government-approved projects that are in line with the current ''Catalog of Key Industries, Products, and Technologies the Development of Which is Encouraged by the State.'' Whether an FIE or domestic enterprise, only equipment that is not listed in the Catalog on Non-Duty Exemptible Article for Importation is eligible for the VAT and duty exemptions. (Different Catalogs are prepared for FIEs and domestic enterprises.) To receive the exemptions, a qualified enterprise only has to show a certificate provided by the National Development and Reform Commission (''NDRC''), or its provincial branch, to the customs officials upon importation of the equipment.

We preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the VAT and tariff savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

With regard to specificity, certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program as well as FIEs. Based on the information provided by the GOC, it does not appear that the addition of these domestic enterprises broadens the reach or variety of users sufficiently to render the program non-specific. For example, to be eligible, the domestic enterprise must have been involved in an investment project that was ''in line with'' the Current Catalog of Key Industries, Products and Technologies the Development of Which is Encouraged by the State. While this Catalog was reportedly revoked in 2005, the projects still must apparently be approved by the State Council, the NDRC, or an agency to which authority has been delegated (*see* Certificates for State-Encouraged Foreign-or Domestically-Invested Projects for Domestically-Invested Enterprises FAGAIGUIHUA (2003) 900). Therefore, we preliminarily find the VAT and tariff exemptions to be specific under section 771(5A)(D)(iii)(I). To calculate the benefit, we treated the VAT and tariff exemptions as a recurring benefit, consistent with 19 CFR 351.524(c)(1). For Chenming, we divided the amount of the VAT and tariff exemptions enjoyed by Chenming during the POI by the company's sales in that period. For Gold East, we calculated the benefit in accordance with the attribution rules described in 19 CFR 351.525(b)(6). On this basis, we preliminarily determine that a countervailable benefit of 0.10 percent ad valorem exists for Chenming and a countervailable benefit of 2.60 percent ad valorem exists for Gold East for this program.

E. Domestic VAT Refunds for Companies Located in the Hainan Economic Development Zone

According to Yangpu local tax regulations, enterprises located in the Economic Development Zone of Hainan may enjoy several tax preferences. These preferences are described in Preferential Policies of Taxation, which includes the eligibility criteria needed to qualify for the preferences. Under ''Preferential Policies Regarding Investment by Manufacturer,'' high-tech or labor intensive enterprises with investment over RMB 3 billion and more than 1000 local employees may be refunded 25 percent of the VAT paid on domestic sales (the percentage of the tax received by the local government) starting in the first year the company has production and sales. The VAT refund can continue for five years.

One of Gold East's cross-owned companies was a qualifying manufacturing enterprise in the Economic Development Zone of Hainan

and reported that it received the VAT refund in the POI. The cross-owned company further added that becaue the capital and number of employees are registered with the local government, the tax refund is automatically granted.

We preliminarily determine that the domestic VAT refunds confer a countervailable subsidy. The refund is a financial contribution in the form of revenue forgone by the local government and it provides a benefit to the recipient in the amount of the refunded taxes. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a). In addition to the investment and employee eligibility criteria described above, it appears that recipients must be located in the Economic Development Zone because these enterprises also pay income tax at a regionally-reduced rate. *See* ''Reduced Income Tax Rates for FIEs Based on Location,'' above. Therefore, we preliminarily determine that the program is limited to enterprises located in a designated geographical region and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the VAT refund received by the cross-owned company as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then attributed the benefit to sales of the input and the downstream products. On this basis, we preliminarily determine that a countervailable benefit of 0.19 percent ad valorem exists for Gold East.

F. Other Subsidies (Chenming)

Chenming reported four additional programs in which it participated. These programs may be connected to programs discussed above, but the information on the current record does not allow us to decide that. Chenming cited municipal government circulars relevant to these programs, but neither Chenming nor the GOC provided copies of these documents. However, based on the information submitted by Chenming, we preliminarily determine that these programs constitute countervailable subsidies within the meaning of section 771(5) of the Act.

Due to Chenming's request that the Department treat information about these four programs as business proprietary, we discuss these additional programs in more detail in the Proprietary Analysis Memorandum, at xx. As calculated in the Proprietary Analysis Memorandum, we determine the combined countervailable subsidy for these programs to be 1.45 percent *ad valorem* for Chenming.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Debt-to-Equity Swap for APP China

In 2001, Asia Pulp & Paper (APP) defaulted on nearly $14 billion of debt. A portion of the debt was owed by one of APP's subsidiaries, APP China. According to petitioner, in 2003, APP China agreed to a debt-to-equity swap in which the Chinese creditors participated. The petitioner alleges that APP China was unequityworthy at the time of the equity infusion and that the transaction was at the discretion of the GOC state-owned banks, as well as being inconsistent with the usual investment practice of private investments.

In response to our original and supplemental questionnaires, the GOC and Gold East have asserted that no GOC banks were involved in a debt-to-equity swap with APP or any of its Chinese subsidiaries, including Gold East. Furthermore, Gold East has provided additional proprietary information regarding the above allegation.

Based on record information, we preliminarily determine that GOC state-owned banks were not involved in a debt-to-equity swap with APP China or any of its subsidiaries. Therefore, we do not find this program countervailable. Our analysis is presented in a separate memorandum because of the proprietary nature of the issue. *See* Memorandum to Susan Kuhbach, ''APP Debt-to-Equity Analysis'' (March 29, 2007) (memorandum is on file in Department's CRU).

III. Programs Preliminarily Determined To Be Not Used

Clean Production Technology Fund

The purpose of this program is to provide incentives and rewards (monetary or non-monetary) to encourage enterprises to conduct clean production inspections, with the goal of protecting the environment. The program entered into force in October 2004, and was authorized by Decree No. 16 of the NDRC and the National Administration of Environmental Protection entitled Provisional Measures on Clean Production Inspection (Decree No. 16).

Any payments under this program are made at the local level. Shouguang City, the relevant authority for Chenming, reported that it made no grants under this program during 2004 and 2005. Gold East reported that it received a grant under this program.

Based on our analysis, any potential benefit to Gold East under this program is less than 0.005 percent. Where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total countervailing duty rate. *See*, *e.g.*, *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 39998 (July 12, 2005), and the accompanying Issues and Decision Memorandum, at ''Purchases at Prices that Constitute 'More than Adequate Remuneration' '' (citing *Final Results of Administrative Review: Certain Softwood Lumber Products from Canada*, 69 FR 75917 (December 20, 2004), and the accompanying Issues and Decision Memorandum, at ''Other Programs Determined to Confer Subsidies''). Therefore, we do not plan to pursue this alleged subsidy further in this investigation.

We preliminarily determine that the producers/exporters of CFS did not apply for or receive benefits during the POI under the programs listed below.

A. *Direction Adjustment Tax on Fixed Assets*

B. *Income Tax Exemption Program for Export-oriented FIEs*

C. *Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-oriented Enterprises*

D. *Discounted Loans for Export-Oriented Enterprises*

E. *Exemption from Payment of Staff and Worker Benefits for Export-oriented Enterprises*

F. *Subsidies to Input Suppliers* [5]

1. *Preferential tax policies for FIEs engaged in forestry and established in remote underdeveloped areas.*

2. *Preferential tax policies for enterprises engaged in forestry*

3. *Special fund for projects for the protection of natural forestry*

4. *Compensation fund for forestry ecological benefits*

For purposes of this preliminary determination, we have relied on the GOC's and respondent companies' responses to preliminarily determine non-use of the programs listed above. During the course of verification, the Department will examine whether these programs were used by respondent companies during the POI.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated

[5] For a discussion of these programs, please see the ''Input Products'' section above.

an individual rate for each exporter/manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/manufacturer	Net subsidy rate (percent)
Gold East Paper (Jiangsu) Co., Ltd.	20.35
Shandong Chenming Paper Holdings Ltd.	10.90
All Others	18.16

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we have determined an ''all others'' rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States, if available, or CFS exports to the United States. The all others rate does not include zero and *de minimis* rates or any rates based solely on the facts available.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of CFS from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: April 2, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–6498 Filed 4–6–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

C–560–821

Coated Free Sheet Paper from Indonesia: Notice of Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of coated free sheet paper (CFS) in Indonesia. For information on the subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Sean Carey, Jacqueline Arrowsmith, or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3964, (202) 482–5255, or (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2006, the Department initiated a countervailing duty (CVD) investigation of CFS from Indonesia. *See Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea*, 71 FR 68546 (November 27, 2006) (*Initiation Notice*) (*CFS Investigations*). In the *Initiation Notice*, the Department set aside a period for all interested parties to raise issues regarding product coverage. The comments we received are discussed in the ''Scope Comments'' section below. On November 30, 2006, the Department issued a CVD questionnaire to the Government of Indonesia (GOI). The questionnaire informed the GOI that it was responsible for forwarding the questionnaire to producers/exporters of CFS. The Department also provided courtesy copies of the questionnaire to PT. Pabrik Kertas Tjiwi Kimia Tbk. (TK) and to PT. Pindo Deli Pulp and Paper Mills (PD), who the GOI identified as the sole producers/exporters of CFS from Indonesia.

On December 29, 2006, the Department postponed the preliminary determination until March 30, 2007. *See Coated Free Sheet Paper from Indonesia, the People's Republic of China and the Republic of Korea: Notice of Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 71 FR 78403 (December 29, 2006). On January 25, 2007, TK and PD (collectively, respondents), and the GOI submitted their questionnaire responses. On February 2 and February 12, 2007, the Department received comments from the petitioner regarding these questionnaire responses. On February 16, 2007, the Department issued supplemental questionnaires to the GOI and to the respondents. The GOI and the respondents submitted their

supplemental responses on March 6, 2007.

On December 15, 2006, New Page Corporation, the petitioner, submitted two new subsidy allegations. The GOI and the respondents filed comments concerning these new allegations on December 26, 2006. On January 30, 2007, the petitioner submitted additional information regarding the December 15, 2006 new subsidy allegations. On February 7, 2007, the Department received additional comments from the respondents regarding the petitioner's January 30, 2007 submission.

On March 15, 2007, the Department determined that the requirements of section 702 of the Tariff Act of 1930, as amended (the Act) were met, and initiated an investigation of the following new subsidy allegations: (1) debt forgiveness through the GOI's acceptance of allegedly worthless shares in the Sinar Mas Group/Asia Pulp & Paper Company's (SMG/APP) affiliated bank as debt repayment; and, (2) debt forgiveness through the GOI allowing SMG/APP to repurchase its own debt at a steep discount through an affiliated company. For a complete discussion on the Department's decision to initiate on these programs, *see* the Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VI, *Countervailing Duty Investigation: Coated Free Sheet Paper from Indonesia; New Subsidy Allegations*, dated March 15, 2007, which is on file in the Import Administration Central Records Unit (CRU), Room B–099 of the Commerce Department Building.

The Department has not had sufficient time to gather the information necessary to analyze the countervailability of these two programs for purposes of this preliminary determination. However, after the Department has gathered and analyzed information from the GOI and respondents, we intend to issue an interim analysis describing our preliminary findings with respect to these programs before the final determination so that parties may have the opportunity to comment on our findings before the final determination.

On March 9, 2007, the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied and Industrial Service Workers International Union, AFL–CIO-CLC (''USW'') and the Sierra Club filed an additional new subsidy allegation, contending that illegal logging in Indonesia results in additional countervailable subsidies to Indonesian producers/exporters of CFS.[1] In the submission, the USW acknowledges that the allegation is untimely in accordance with section 351.301(d)(4)(i)(A) of the Department's regulations. However, the USW cites section 351.311 of the Department's regulations, which addresses instances in which the Department discovers a practice that appears to provide a countervailable subsidy during a countervailing duty investigation. As noted by the USW, under section 351.311(b) of the Department's regulations, the Department may include such a subsidy program in its investigation as long as sufficient time remains before the scheduled final determination. On March 21, 2007, respondents submitted comments regarding the USW allegation, arguing that it should be rejected as untimely filed.

With respect to the USW allegation, although it is untimely, we note that we are already investigating the provision of standing timber for less than adequate remuneration. If, during the course of our investigation, we find that cross–owned companies in the CFS production chain harvested pulp logs for which no stumpage or reforestation fees were paid, or less than the required fees were paid, we would include any such subsidy benefits in the calculation of any subsidy rate for these pulp logs in accordance with our stumpage subsidy calculation methodologies.

On March 19, 2007, the petitioner submitted comments for the Department to consider for purposes of the preliminary determination. On March 23, 2007, petitioner filed a few additional pre–preliminary determination comments. At the request of the Department, the petitioner refiled this submission on March 26, 2007. On March 26, 2007, petitioner requested that the final determination of this countervailing duty investigation be aligned with the final determination in the companion antidumping duty investigations in accordance with section 705(a)(1) of the Act. We will address this request in a separate **Federal Register** notice.

On March 26, 2007, respondents filed pre–preliminary determination comments. With respect to these comments, they were filed too late to be fully considered for purposes of this preliminary determination, but we note that they identify a number of issues we are already addressing in the ''Subsidies Valuation'' and ''Analysis of Programs'' sections below. Respondents also filed rebuttal comments to petitioner's additional pre–preliminary determination comments on March 27 and 28, 2007. In addition, on March 28, 2007, the USW submitted additional comments concerning its March 9, 2007 new subsidy allegation and respondents' March 21, 2007 comments on its new subsidy allegation. We did not have sufficient time to review these submissions for purposes of this preliminary determination.

Scope of the Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not–more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface–coated, surface–decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double–side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product

[1] The Sierra Club does not have standing to file a subsidy allegation in accordance with sections 702(b) and 771(9) of the Act; however the USW is an interested party in this proceeding pursuant to section 771(9)(D) of the Act and may submit subsidy allegations.

coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On December 18, 2006, the respondents submitted timely scope comments in the antidumping duty investigation of CFS from Indonesia. On January 12, 2007, the Department requested that the respondents file these comments on the administrative record of the *CFS Investigations*. *See* Memorandum from Alice Gibbons to The File, dated January 12, 2007. On January 12, 2007, the respondents re–filed these comments on the administrative record of the *CFS Investigations*. On January 19, 2007, the petitioner filed a response to these comments.

The respondents requested that the Department exclude from its investigations cast–coated free sheet paper. The Department analyzed this request, together with the comments from the petitioner, and determined that it is not appropriate to exclude cast–coated free sheet paper from the scope of these investigations. *See* the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, *Request to Exclude Cast–Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper*, dated March 22, 2007, on file in the CRU.

Injury Test

Because Indonesia is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to a United States industry. On December 15, 2006, the ITC transmitted its preliminary determination to the Department. *See Coated Free Sheet Paper from China, Indonesia, and Korea: Investigation Nos. 701–TA–444–446 (Preliminary) and 731–TA–1107–1109 (Preliminary)*, USITC Publication 3900 (December 2006). On December 29, 2006, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from China, Indonesia, and Korea of subject merchandise. *See Coated Free Sheet Paper China, Indonesia, and Korea*, 71 FR 78464.

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2005 through December 31, 2005, which corresponds to the most recently completed fiscal year for the respondents. See section 351.204(b)(2) of the Department's regulations.

Subsidies Valuation

Cross–Ownership

Information on the record indicates the name SMG/APP is commonly used to refer to a group of forestry/logging companies, pulp producers, and paper producers linked by varying degrees of common ownership involving the Widjaja family. The respondents in this investigation, TK and PD, have reported affiliations with each other through a parent holding company Purinusa Ekapersada (Purinusa); with two pulp producers (PT. Lontar Papyrus Pulp and Paper Industry (Lontar) and PT. Indah Kiat Pulp and Paper Tbk. (IK)); and with five forestry/logging companies (Arara Abadi (AA), Wira Karya Sakti (WKS), PT. Satria Perkasa Agung (SPA), PT. Riau Abadi Lestrari (RAL), and PT. Finnantara Intiga (FI)).

The Department's regulations at section 351.525(b)(6)(vi) state that cross–ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross–ownership standard. *See Countervailing Duties* 63 FR 65347, 65401 (*CVD Preamble*).

According to the *CVD Preamble*, relationships captured by the cross–ownership definition include those where the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (including subsidy benefits) of the other corporation in essentially the same way it can use its own assets (including subsidy benefits). The cross–ownership standard does not require one corporation to own 100 percent of the other corporation. Normally, cross–ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a ''golden share'' may also result in cross–ownership. *See CVD Preamble* at 63 FR 65401.

As such, the Department's regulations make it clear that we must examine the facts presented in each case in order to determine whether cross–ownership exists. If we find that cross–ownership exists between TK and PD, the producers/exporters under investigation, and among and across the companies within the input supply chain, we will treat all companies as one company, and calculate a single rate for any countervailable subsidies that we identify and measure, in accordance with section 351.525(b)(6) of the Department's regulations.

Further, in accordance with section 351.525(b)(6)(iv) of the Department's regulations, if the Department determines that the suppliers of inputs primarily dedicated to the production of paper products are cross–owned with the producers/exporters under investigation, then the Department treats subsidies provided to the input producers as subsidies conferred on the production of the finished product.

In this investigation, we are examining whether the two producers/exporters of the subject merchandise, TK and PD, are cross–owned with one another, and with their input suppliers as outlined in section 351.352(b)(6)(iv) of the Department's regulations. The alleged subsidies we are investigating are conferred on the forestry/logging companies which harvest and sell pulp logs, which in turn are sold to the pulp producers that supply the paper producers/exporters. Therefore, we must examine whether cross–ownership exists among and across the suppliers of pulp logs, the pulp producers, and the CFS producers/exporters.

Based on information on the record, we preliminarily determine that cross–ownership exists, in accordance with section 351.525(b)(6)(vi) of the Department's regulations, among and across the following companies involved in the production and sale of the subject merchandise: the respondent paper producers/exporters, TK and PD; pulp producers, Lontar and IK; and the forestry and logging companies, AA, WKS, RAL, SPA, and FI. Since much of our analysis supporting this conclusion involves business proprietary information, a full discussion of the bases for our preliminary determination is set forth in the Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, *Cross–Ownership*, dated March 29, 2007 (*Cross–Ownership Memo*), a public version of which is on file in the CRU.

In addition to the five cross–owned forestry/logging companies identified above, we are also preliminarily finding that certain additional timber suppliers from which pulp logs were purchased during the POI are cross–owned. In the questionnaire responses, respondents reported that some of the five cross–owned forestry/logging companies identified above also purchased pulp logs from unaffiliated timber suppliers. The Department examined the information provided in the questionnaire responses about these reportedly unaffiliated timber suppliers, and conducted additional independent research concerning these timber suppliers. *See Cross–Ownership Memo* for a full discussion of the Department's analysis and research. In addition, the Department examined information about these reportedly unaffiliated timber suppliers, and supporting documentation, provided by petitioner. After analyzing all of this information and documentation, we find that the information and documentation supports a preliminary finding that certain of these timber suppliers are cross–owned with the SMG/APP Group. Since the names of these suppliers are business proprietary, a complete discussion of the bases for our preliminary finding that these additional timber suppliers are also cross–owned with the other companies in the production chain is provided in the *Cross–Ownership Memo*.

Attribution of Subsidies Provided to Cross–Owned Input Suppliers

As discussed above, the Department's regulations at section 351.525(b)(6)(iv) state that if there is cross–ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

The respondents, TK and PD, have argued that they do not have to respond for AA, WKS, RAL, SPA, and FI because the input products in question, logs, are not ''primarily dedicated to the production of CFS'' and therefore, do not meet the standard in accordance with section 351.525(b)(6)(iv) of the Department's regulations. *See* respondents' March 2, 2007 response at page 3. The respondents state that they believe the Department should conduct its ''primarily dedicated analysis'' with respect to the Indonesian economy as a whole, and that its analysis should determine whether facts on the record support the conclusion that timber and other resources under the Forestry Program are primarily dedicated to the production of CFS. Additionally, the respondents state that the Department should give ''proper weight and consideration to the word *primarily*,'' arguing that the word is defined as ''chiefly'' or ''in the first place.'' *See* respondents' March 6, 2007 response at page 28.

The respondents claim that they, and their affiliated companies, produce a variety of products such as pulp, photocopier paper, and tissue, as well as CFS, and that timber accounts for roughly 25 percent of all Indonesian industry groupings, ranging from paper to furniture to chemical products. Therefore, the respondents conclude, the primarily dedicated test would not be met even if the Department were to perform its analysis specifically for the group of companies to which the respondents belong. *Id.*

The Department has previously addressed the issue regarding pulp logs as input products in the production of pulp and paper products in the *Notice of Preliminary Affirmative Countervailing Duty Determination: Certain Lined Paper Products from Indonesia*, 71 FR 7524, 7527–28 (February 13, 2006) (*Lined Paper Prelim*). In *Lined Paper Prelim*, the Department determined that harvested pulp logs, and the pulp they are used to produce, are input products primarily dedicated to the downstream product within the meaning of section 351.525(b)(6)(iv) of the Department's regulations. In *Lined Paper Prelim*, the Department determined that ''the issue is not whether the potentially subsidized inputs are used exclusively or nearly exclusively for the production of the subject merchandise. Rather, it is a question of whether the inputs are primarily dedicated to the production of the downstream product.''

In *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006) (*Lined Paper Final*), and accompanying *Issues and Decision Memorandum* at *Comment 3*, the Department remained consistent with its preliminary determination, and determined that the logs harvested by the logging companies and sold to the pulp producers are primarily dedicated to the production of pulp and, thus, to the production of the downstream product, paper, which included certain lined paper products, the subject merchandise in that case.

In the instant case, pulp logs harvested by the cross–owned forestry/logging companies are processed into pulp by pulp producers Lontar and IK. This pulp is consumed by the respondents, TK and PD, to make paper and paper products including the subject merchandise, CFS. Because the pulp logs are primarily dedicated to the production of pulp and, ultimately, to the production of paper products, it is reasonable to conclude that a subsidy to pulp logs also benefits pulp and paper production where all of the companies involved are cross–owned.

Based on the information on the record, we preliminarily determine that the production of pulp logs are an input product that is primarily dedicated to the production of pulp and paper products, including CFS. *See Cross–Ownership Memo*. In accordance with section 351.525(b)(6)(iv) of the Department's regulations, any subsidies found will be attributed to the appropriate combined sales of the products produced by the cross–owned companies, excluding any inter–company sales.

Loan Benchmarks

In measuring the benefit from loan programs, section 351.505(a)(1) of the Department's regulations provides that a ''benefit exists to the extent that the amount the firm pays on the government–provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market.'' In section 351.505(a)(2)(ii), the Department's regulations address the selection of a commercial loan as the appropriate basis for comparison, stating ''the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market.'' TK and PD have not provided sufficient information regarding actual financing they (or the other cross–owned companies) obtained at the same time that the loans under examination were obtained and thus we are unable to rely on the companies' own financing experience as the basis for our loan interest rate benchmark. Therefore, we are guided by section 351.505(a)(3)(ii) of the Department's regulations, which states, ''{i}f the firm did not take out any comparable commercial loans during the period . . . the Secretary may use a national average interest rate for comparable commercial loans.'' Accordingly, to measure the loan benefits, we have used as our benchmark the rate charged by

private national banks for ''Investment'' (long–term loans) as shown in the Bank of Indonesia Interest Rates Table 39 ''Commerical Bank Credits In Ruppiah by Group of Commercial Banks,'' in Exhibit 19 of the GOI's January 24, 2007 response and in Exhibit 8 of the respondents' January 24, 2007 response, for the years in which the loans were approved.

The petitioner alleged that the Indonesian companies were uncreditworthy beginning in 2001 and thereafter. The Department initiated on this allegation. *See Initiation Checklist: Coated Free Sheet Paper from Indonesia*, dated November 20, 2006 (*Initiation Checklist*), a public version of which is on file in the CRU. Because the loans under investigation were all approved prior to 2001 (the earliest year for which the Department initiated an uncreditworthiness investigation), we have not analyzed the creditworthiness of the respondents and their cross–owned suppliers and, consequently, we have not added a risk premium to the benchmark for long–term loans as provided for in section 351.505(a)(3)(iii) of the Department's regulations.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. GOI Provision of Standing Timber for Less than Adequate Remuneration

According to the GOI, it controls and administers over 57 million hectares of public harvestable forest land, which accounts for virtually all the harvestable forest land in Indonesia. *See* GOI's January 25, 2007 response at pages 4 and 13. Record information shows that timber can be harvested from the GOI land under two main types of licenses: licenses to harvest timber in the natural forest, known as ''HPH'' licenses, and licenses to establish, and harvest from, plantations, which are known as ''HTI'' licenses. *See* the GOI's January 25, 2007 response at page 5. Respondents and the GOI reported that AA, WKS, SPA, RAL and FI are affiliated forestry/logging companies which harvested pulp logs during the POI from plantations under HTI licenses. *Id.* at page 11; *see also* respondents' January 25, 2007 response at pages 19–20. As discussed above in the ''Cross–Ownership'' section, the Department has preliminarily determined that these forestry/logging companies are cross–owned with pulp producers IK and Lontar, and with CFS producers/exporters TK and PD. In addition, as discussed above in the ''Cross–Ownership'' section, we have found, for purposes of this preliminary determination, certain forestry/logging companies from whom AA and WKS purchased pulp logs during the POI to be cross–owned with the companies in the production chain. As such, the Department is including all of these cross–owned forestry/logging companies in our analysis of whether the GOI has provided standing timber for less than adequate remuneration.

The GOI provided the laws that outline the types of fees and royalties assessed for the harvest of standing public timber in Indonesia. *Id.* at Exhibit 7. Specifically, the GOI stated that HTI license holders pay an initial license fee at the granting of each concession. In addition, these HTI license holders pay ''cash stumpage fees'' known as PSDH royalty fees which are paid per unit of timber harvested (usually a per ton or per cubic meter unit of measure). The PSDH rate in effect during the POI for acacia harvested from plantations was five percent in accordance with Regulation 59/1998. *Id.* at Exhibit 7. Regulation 74/1999 increased the PSDH rate for all timber harvested from the natural forest from six percent to ten percent, the rate in effect during the POI. *Id.*; *see also* GOI's March 6, 2007 response at page 5. These percentage rates are multiplied by the reference prices set by the GOI for each type of wood harvested to determine the PSDH fee a company should pay per unit of timber harvested. *See* the GOI's January 25, 2007 response at page 15. There were two sets of reference prices in effect during the POI. The first was in effect until February 3, 2005; the second published set of reference prices was put into effect on February 4, 2005. *Id.* at Exhibit 7 under Regulations 436/MPP/Kep/7/2004 and 18/M/Kep/2005, respectively. According to the GOI, the reference prices reflect the market prices for each type of log sold in Indonesia. *Id.* at page 15.

In addition to the PSDH fee, a per unit Rehabilitation Fee (dana reboisasi or DR) is paid for timber harvested from the natural forest and remained the same throughout the POI. *Id.* at page 13; *see also* the GOI's January 25, 2007 response at Exhibit 7 for the fee paid during the POI under Regulation 92/1999. The GOI stated that HTI license holders are not subject to the DR when ''the wood harvested comes from their own plantation assets.'' *Id.* at page 6. However, respondents reported that for pre–existing timber that is cleared within the plantation boundaries to allow new planting on the plantations, they ''pay PSDH and DR fees on timber that is harvested during clearing exercises.'' *See* respondents' March 6, 2007 response at page 14. As stated above, all five of the forestry/logging companies reported in the questionnaire response as being affiliated with respondents, harvested from their own plantations. They harvested acacia, mixed tropical hardwood (MTH) chipwood, and smaller volumes of MTH pulp logs.

The GOI initially reported that numerous products, both timber and non–timber, are harvested from public land owned by the GOI. *See* GOI's January 25, 2007 response at page 4; however, the GOI did not report the number of industries that had rights to harvest standing timber. In our supplemental questionnaire, we requested that the GOI identify for the years 2002 through 2005, every company, and the industry in which it was classified, that applied for and was approved or rejected for either an HPH or HTI license. *See* the Department's February 16, 2007 Supplemental Questionnaire at 2. The GOI did provide a list of company names but did not identify the company's industry classification. We also requested that the GOI identify the Indonesian industrial classifications for companies that harvest timber and consume timber as a primary input. *Id.* at 2. In response, the GOI stated that the following five industries used standing timber either through consumption of timber as a primary input or through products that are produced with timber: the wood and wood products, paper and paper products, publishing and printing, chemical, and furniture industries. *See* GOI's March 6, 2006 response at page 6 and Exhibit Supp–5.

Although we are concerned that in its supplemental questionnaire response the GOI broadened the scope of our question by adding in industries that do not harvest timber or consume timber as a primary input, we are relying on the GOI's statement that five industries are provided standing timber by the GOI for purposes of this preliminary determination. We also asked the GOI to identify the total number of industries in Indonesia at the same level of industrial classification in which the GOI placed the industries that harvest or consume timber. *See* the Department's February 16, 2007 Supplemental Questionnaire at 2. In response, the information provided by the GOI identifies a total of 23 industries at the level of large and medium manufacturing activities. *See* the GOI's March 6, 2006, response at page 6 and Exhibit Supp–5. Therefore, even relying on the GOI's statement that five industries use this program, these five industries constitute a limited group of industries within the universe of 23

industries identified by the GOI. Accordingly, we preliminarily determine that provision of standing timber by the GOI is *de facto* specific in accordance with section 771(5A)(D)(iii) of the Act.

We also preliminarily determine that the provision of standing timber provides a financial contribution as described in section 771(5)(D)(iii) of the Act (provision of goods or services other than general infrastructure). Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) of the Act further states that ''the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided . . . in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of . . . sale.''

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. This hierarchy reflects a logical preference for achieving the objectives of the statute.

The most direct means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import). This is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.

Thus, in accordance with the first preference in the hierarchy, to determine the existence and extent of the benefit, we would need to identify an observed market stumpage price from a private supplier in Indonesia. The GOI reported that there were only 233,811 hectares of private forest land and that it does not maintain information on the value of any private sales of standing timber in Indonesia. *See* the GOI's March 6, 2007 response at page 3. We preliminarily determine that there are no market–determined stumpage fees in Indonesia upon which to base a ''first tier'' benchmark. This is consistent with our finding in *Lined Paper Final* at ''Benchmark for Stumpage'' section. As noted above, the GOI has not provided any information on the sale of either privately–owned standing timber in Indonesia, or the stumpage fees charged by private timber companies. *See* the GOI's March 6, 2007 response at page 3. Nor has the Department been able to identify such information from any other available source. Accordingly, the Department has no private stumpage data in Indonesia that could even be evaluated for purposes of a ''first tier'' benchmark.

The ''second tier'' benchmark, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in–country purchaser. As discussed in the *CVD Preamble*, the Department will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government–provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods. *See CVD Preamble* at 63 FR 65377.

We have insufficient evidence of world market prices for standing timber on the record of this investigation. This finding is also consistent with *Lined Paper*. Respondents have provided information regarding stumpage rates in the United States and have argued that the Department should use U.S. stumpage rates as a benchmark, consistent with our determination in *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (''*Lumber*'') and accompanying *Issues and Decision Memorandum* at section ''C.I.B.'' However, respondents have not demonstrated that the types of U.S. timber they are suggesting for comparison purposes are grown in similar conditions as those in Indonesia and are similar to the species harvested in Indonesia as pulpwood. These were all important factors which supported the Department's decision to use U.S. stumpage prices in *Lumber*. *Id.* Based on the record in this investigation, we preliminarily determine that U.S. stumpage prices do not satisfy the ''second tier'' benchmark requirements.

In the alternative, respondents have also provided information on Malaysian stumpage rates for acacia, one of the species used to produce pulp and paper products in Indonesia. However, the information respondents provided is a study commissioned by them for purposes of this investigation and consists of a statement of opinion that includes no supporting documentation to establish the authenticity of the figures used to calculate this benchmark rate. Even if this study were independent and the data in it supported, the respondents have not addressed how these Malaysian stumpage rates are representative of rates that would be available to a purchaser in Indonesia. Consequently, these data do not provide an appropriate basis for a ''second tier'' benchmark.

Since we are not able to conduct our analysis under the ''second tier'' of the regulations, consistent with the hierarchy, we are preliminarily measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles. This approach is set forth in section 351.511(a)(2)(iii) of the Department's regulations and is explained further in the *CVD Preamble* at 65378: ''Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price–setting philosophy, costs (including rates of

return sufficient to ensure future operations), or possible price discrimination.'' The regulations do not specify how the Department is to conduct such a market principle analysis. By its nature the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case–by-case basis.

The GOI has not provided information or documentation which demonstrates that the stumpage fees it charges are established in accordance with market principles. Although the PSDH rates are established as a percentage of the reference price of logs, we cannot conclude that the log reference price is reflective of market principles or is a market–determined price. The GOI reported that the reference price is normally determined by a weighted–average of both the Indonesian domestic and export prices for logs. However, since a log export ban is in place, the reference price is currently determined solely from domestic prices. *See* GOI's January 25, 2007 response at page 15. Through its ownership of virtually all of Indonesia's harvestable forests, the GOI has complete control over access to the timber supply. In addition, the ban on the export of logs affects the price for logs. *Id.* at Exhibit 7 under Regulations 1132/Kpts–II/2001 and 292/MPP/Kep/10/2001; *see also* GOI's March 6, 2007 response at Exhibit Supp–12 and the paper by the Centre for Strategic and International Studies on ''Competitiveness and Efficiency of the Forest Product Industry in Indonesia'' (noting a study on page 6 that the ''stumpage value was reduced by 33% under the log export ban policy.''). As such, the reference prices for logs cannot be considered market–based. Thus, we preliminarily determine that the stumpage fees charged by the GOI which are charged as a percentage of a non–market determined reference price are not based on market principles.

Since the government price was not set in accordance with market principles, we looked for an appropriate proxy to determine a market–based stumpage benchmark. It is generally accepted that the market value of timber is derivative of the value of the downstream products. The species, dimension and growing condition of a tree largely determine the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the products produced from these logs. *See e.g., Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company–Specific Reviews: Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004), and accompanying *Issues and Decision Memorandum* at pages 16–18.

As a result of the geographic proximity and the similarities of forest conditions, climate, and tree species between Indonesia and Malaysia, we have selected Malaysian pulp log export prices as the most appropriate basis for evaluating whether Indonesian stumpage is priced consistent with market principles. *See* section 351.511(a)(2)(iii) of the Department's regulations; *see also Preliminary Affirmative Countervailing Duty Determination on Coated Free Sheet Paper from Indonesia: Analysis Memorandum on Calculations for PT. Pabrik Kertas Tjiwi Kimia Tbk and PT. Pindo Deli Pulp and Paper Mills* (*Preliminary Analysis Memo*), dated March 29, 2007. This is consistent with our finding in *Lined Paper Final*. Furthermore, neither party has argued that Malaysian pulpwood is not suitable for comparison purposes. These export transactions reflect prices resulting from private transactions between Malaysian pulp log sellers and pulp log buyers in the international market; thus, they represent market–determined prices. Accordingly, we are using the value of pulp log exports from Malaysia during the POI, as reported in the ''World Trade Atlas,'' as the starting point for determining whether the GOI is providing standing timber for less than adequate remuneration.

To determine which Malaysian export statistics to include in the benchmark, we evaluated the suggestions submitted by the parties regarding Malaysian log export prices for several types and species of logs. The respondents have reported that acacia and MTH are the types of timber that were harvested from HTI plantations for pulp and paper production in Indonesia and that AA, WKS, SPA, RAL, and FI harvested either one or both of these types of pulpwood from plantations. *See* respondents' March 6, 2007 questionnaire response at Exhibit Supp–10; *see also Cross–Ownership Memo* on timber purchased by AA and WKS from the suppliers that we have preliminarily determined are also cross–owned. For acacia, none of the parties suggested using anything other than the value of acacia pulp log exports from Malaysia. No record information suggests that exports of acacia pulp logs are not the appropriate basis to use as the starting point for determining whether the GOI is providing acacia pulpwood for less than adequate remuneration.

For MTH, respondents suggested that we rely on export data for three categories of pulpwood, one of which is identified as light hardwood pulpwood and the other two as light hardwood pulpwood of the species batai and meransi. Petitioner has suggested that we use the same benchmark for MTH that we used in *Lined Paper Final*, which was based on the value of exports of sawlogs, veneer logs, and other wood of the species kapur, keruin, ramin, and other tropical woods. We do not find it appropriate to use the export values of the types of logs used in the *Lined Paper Final*, as suggested by petitioner, because those log types included saw logs and veneer logs, as adverse facts available in that case. In addition, we have preliminarily determined not to include the batai and meransi categories of pulp logs suggested by respondents because they have not demonstrated that these particular types of wood are harvested as pulpwood in Indonesia. If the GOI can demonstrate that these other types of wood are harvested as pulpwood in Indonesia, we will consider including them in any calculation of the Malaysian export values in the final determination. Therefore, for purposes of this preliminary determination, we have decided to use Malaysian exports of light hardwood pulpwood, of a type not elsewhere specified (HTS 4403.99.195) as the starting point for determining whether the GOI is providing MTH pulp logs and chipwood for less than adequate remuneration.

Using the Malaysian export data for acacia and light hardwood pulpwood, we calculated two unit values: one to use for acacia pulp logs and one to use for MTH chipwood and pulp logs. *See Preliminary Analysis Memo*. To derive a market–based benchmark price for Indonesian stumpage, we then adjusted the Malaysian export log prices to remove the Indonesian costs of extraction (harvesting) of the standing timber. To determine the Indonesian harvesting costs (including a reasonable amount for profit associated with extraction), we used information contained in ''Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia; Implications of Forest Sustainability and Government Policy.'' This study, which was submitted as Exhibit V–8 of the October 31, 2006 petition, provided the only independent source that specifies extraction costs and profit in Indonesia. The amounts in this report are $17 for extraction costs and $5 for profit in connection with extraction.

Both the petitioner and the respondents have argued (albeit for

different reasons and for different adjustments) that the Department could use the forestry/logging companies' reported actual costs for harvesting to adjust the Malaysian log export prices. However, for purposes of this preliminary determination, we have decided not to use these actual costs. We may consider using these actual costs for the final determination if the GOI can demonstrate that it has a system in place to evaluate exactly which costs are legitimately considered to be harvesting and extraction costs, and that it has evaluated how to distinguish the types of costs relevant to harvesting on plantations versus the natural forest, and that it has a system in place to distinguish the costs of extraction on plantations versus other plantation development and maintenance costs.

Based on our analysis of the information on the record, as well as our own research which shows that acacia is grown on plantations in Malaysia just as it is in Indonesia, we preliminarily determine that no other adjustments (other than the extraction costs and the profit associated with extraction) are necessary to the Malaysian export prices to derive a market–based stumpage price in Indonesia. *See Preliminary Analysis Memo*.

We then compared this derived market–based stumpage price to the stumpage fees paid by respondents' cross–owned forestry/logging companies.[2] Where possible, we used the reported PSDH royalty fees and the relevant DR reforestation fees that the respondents' cross–owned forestry/logging companies reported paying during the POI for each of the types of Indonesian pulp logs (acacia and MTH) harvested during the POI. *See* respondents' March 6, 2007 response at Exhibit Supp–10. For MTH chipwood and pulp logs (the GOI defines chipwood as timber of any length whose diameter is less than 29 centimeters), respondents reported payments of both PSDH and DR; for acacia, respondents only reported payments of PSDH because DR fees are not required on these logs which are harvested from the plantation. *Id.* at page 16.

To determine the existence and extent of the benefit for acacia and MTH on a per–unit basis, we compared the actual payment of PSDH fees by AA, WKS, SPA, RAL and FI on accacia to the benchmark stumpage fee derived from the Malaysian export prices for accacia pulp logs. We then compared, where possible, the actual PSDH fees and DR fees paid by AA, WKS, SPA, RAL and FI on MTH chipwood and pulp logs, to the corresponding derived stumpage benchmark for MTH pulpwood. Respondents claimed that the Department should make adjustments to these actual stumpage payments to the GOI for a number of harvesting costs, taxes and annual license fees that the companies incur. We have already factored in, as a deduction from the Malaysian export prices, an amount for total harvesting costs. The GOI has provided no basis for making an adjustment for taxes. While an adjustment for an annual licensing fee may be warranted, the GOI did not provide any information on what those annual licensing fees are and the companies did not report what they paid in annual licensing fees during the POI.

Based on the comparison of the per–unit stumpage fees actually paid on each type of wood with the market–derived stumpage benchmark, we determine that the GOI provided standing timber for less than adequate remuneration. We then multiplied the difference between the actual fee paid on a per–unit basis and the benchmark stumpage rate, by multiplying this per–unit stumpage benefit for each type of wood by the reported volume of each type of wood that was harvested and sold to IK and Lontar during the POI for these five forestry/logging companies.

For the pulp logs purchased by AA and WKS from the additional suppliers that we have preliminarily determined are cross–owned (*see* ''Cross–Ownership'' section above), we did not have information about the actual stumpage and DR fees paid. We calculated the amount of the stumpage paid for acacia by multiplying the volume of acacia pulp logs produced by these suppliers which was purchased by AA and WKS, by the PSDH that would have been charged by the GOI during the POI. The MTH stumpage payments were calculated by multiplying the volume of MTH pulp logs produced by these suppliers which was purchased by AA and WKS, by the PSDH that would have been charged by the GOI during the POI, plus the DR fee charged on MTH pulp logs that would have been charged by the GOI during the POI. We compared the resulting calculated stumpage and DR fees paid by pulp log type, to the appropriate benchmark. We multiplied the resulting difference by the volume of pulp logs sold to AA and WKS by these cross–owned pulp log suppliers to determine the benefit.

Since we have preliminarily determined that the forestry/logging companies are cross- owned with the pulp and paper producers and that the pulp logs produced by these cross–owned forestry/logging companies are primarily dedicated to the production of the downstream products (*see* ''Cross–Ownership'' section above), we preliminarily find that the GOI's provision of timber for less than adequate remuneration provides a countervailable subsidy to TK/PD. To determine the subsidy rate, we first summed all of the benefit amounts calculated for the cross–owned forestry/logging companies. We then divided the aggregate benefit by the sum of the external sales values of TK, PD, IK, and Lontar (*i.e.*, total FOB sales values minus any cross–owned inter–company sales), adjusted, where possible, for sales returns, claims, and discounts. We have not included in the denominator any external sales of the cross–owned forestry/logging companies because, as discussed above, we are capturing in the benefit calculation only pulp logs that were harvested/produced by the cross–owned forestry/logging companies that were sold to IK and Lontar. This calculation yields a countervailable subsidy rate of 21.23 percent *ad valorem* for the combined entity TK/PD.

Although the Department initiated an investigation of whether the GOI ban on log exports provides a countervailable subsidy to the respondents, we determine that the issue of the countervailability of the log export ban need not be reached for purposes of this preliminary determination. First, the only source of pulp logs for IK and Lontar, the cross–owned pulp producers which supplied pulp to TK and PD during the POI, was from the cross–owned forestry/logging companies. Respondents stated that ''IK and Lontar did not purchase timber from any supplier other than AA and WKS during the POI.'' *See* respondents' March 6, 2007 response at page 10. Second, we have preliminarily found that IK's and Lontar's total supply of pulp logs is roughly equivalent to the total quantity of pulp logs harvested by AA and WKS, plus the quantity of pulp logs purchased by AA and WKS from cross–owned forestry/logging companies in the CFS production chain. As such, we find it reasonable to conclude for purposes of

[2] Because the Malaysian export values are reported in ringgits and the Indonesian stumpage fees are in rupiahs, and because the sales values reported by IK, Lontar, TK and PD were in U.S. dollars, we have converted all values into U.S. dollars using the annual average exchange rate for the POI reported in the International Monetary Fund Statistics. In addition, where it was necessary to convert between tons and cubic meters, we used a conversion factor reported in the Food and Agriculture Organization of the United Nations' ''Forest Products Yearbook 2003'' which we have placed on the record in the *Preliminary Analysis Memo*.

this preliminary determination that IK's and Lontar's supply of pulp logs was exclusively sourced from the production of these cross–owned companies.

Because we would not attribute to the downstream cross–owned pulp and paper producers a benefit that encompasses a quantity of pulp logs that is greater than the quantity of pulp logs actually produced and sold by the cross–owned forestry/logging companies to the downstream producers, we need not evaluate whether the remaining purchases by AA and WKS of pulp logs from unaffiliated suppliers are benefitting from a subsidy through the log export ban. Furthermore, because we have used export prices of pulp logs from Malaysia as the starting point for deriving a market–based stumpage benchmark, the amount of any benefit to the combined entity TK/PD that might be found in an evaluation of the log export ban is included in the calculation for the provision of standing timber for less than adequate remuneration. Thus, because the total quantity of pulp logs produced by the cross–owned forestry logging companies in the production chain captures the total quantity of pulp logs sold by the cross–owned forestry/logging companies to IK and Lontar, the entire amount of any countervailable subsidy is subsumed under the ''Provision of Standing Timber for Less than Adequate Remuneration'' program, noted above.

B. Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program): ''Zero Interest'' Rate Loans

The GOI reported that ''zero interest'' rate loans were available to some holders of HTI licenses; such licenses are issued for harvesting timber from plantations. The GOI has reported that there are three types of plantations in Indonesia: (1) Privately owned, (2) voluntary HTI joint ventures, and (3) compelled HTI joint ventures for the purpose of implementing transmigration policy. Of these three types of plantations, only HTI joint ventures could apply for zero–interest rate loans.

The GOI reported that the loaned amounts came from the DR Fund. The HTI joint venture could apply for zero–interest loans from the DR Fund for the establishment phase of the plantation. According to the GOI, loan amounts were payable to the joint venture in increments based on the amount of harvesting done each year and the total amount of the loan could not exceed 32.5 percent of the calculated plantation costs. The GOI required that the private party guarantee the loan repayment in full. In 2000, the GOI discontinued funding joint ventures through the DR Fund loan programs, although existing joint ventures which had previously obtained loans through the DR Fund would receive loan disbursements and would be required to make loan payments as required by loan agreements finalized before 2000.

The respondents reported that of the cross–owned forestry/logging companies (see ''Cross–Ownership'' section above), only RAL (a compelled joint venture) and FI (a voluntary joint venture) received ''zero interest'' loans prior to 2000 that remained outstanding during the POI. These loans provide a financial contribution as described in section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans. The loans give rise to a benefit in the amount of the difference between the amount of interest the borrowers actually paid and the amount of interest the borrowers would have paid on a comparable commercial loan under section 771(5)(E)(ii) of the Act. The loan program is specific within the meaning of section 771(5A)(D)(i) of the Act, because participation in the program is limited to HTI joint venture plantations. Therefore, we preliminarily determine that these loans confer countervailable subsidies.

To calculate the benefit (the amount of the interest savings), we applied the benchmark interest rate described in the ''Loan Benchmarks'' section above to the average loan balance outstanding during the POI for both RAL and FI. We then divided the amount of interest savings by the total external sales values of all the cross–owned companies in the production chain (*i.e.*, total FOB sales values minus any cross–owned inter–company sales), adjusted, where possible, for sales returns, claims, and discounts. Thus, we preliminarily determine the countervailable subsidy from the HTI zero–interest rate loan program to be 0.01 percent *ad valorem* for the combined entity TK/PD.

II. Programs Preliminarily Determined To Be Not Used

A. Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program): Commercial Rate Loans

Neither TK, PD, nor any of their cross–owned suppliers reported receiving loans under this program. Therefore, we preliminarily determine that this program was not used.

B. Subsidized Funding for Reforestation (Hutan Tanaman Industria or HTI Program): Government Capital Infusions into Joint Venture Forest Plantation

The respondents reported that RAL and FI, both HTI joint ventures, received captial infusions in the 1990s under this program. However, petitioner's unequityworthiness allegation, and the Department's subsequent initiation, addressed the companies' unequityworthiness from 2001 through the POI (*see Initiation Checklist*). Because the capital infusions were provided prior to 2001, we have not examined whether the GOI provision of capital to joint venture forest plantations provides a countervailable subsidy. Therefore, we preliminarily determine that this program was not used.

Verification

As provided in section 782(i)(1) of the Act, we intend to conduct verification of the GOI's and respondents' questionnaire responses following the issuance of the preliminary determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated a single subsidy rate for the two cross–owned producers/exporters of the subject merchandise. We preliminarily determine the total countervailable subsidy rate to be:

Producer/exporter	Rate
PT. Pabrik Kertas Tjiwi Kimia Tbk/ PT. Pindo Deli Pulp and Paper Mills	21.24 %
All Others	21.24 %

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, we have set the ''all others'' rate as the rate for TK/PD because it is the only producer/exporter investigated.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from Indonesia, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our

determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Notification of Parties

In accordance with section 351.224(b) of the Department's regulations, we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, interested parties may submit case briefs within 50 days of the date of publication of the preliminary determination in accordance with section 351.309(c)(i) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited pursuant to section 351.309(c)(2) of the Department's regulations. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case briefs are filed in accordance with section 351.309(d) of the Department's regulations.

In accordance with section 351.310 of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing of the Department's regulations must submit a written request pursuant to section 351.310(c) within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Pursuant to section 351.310(c) of the Department's regulations, parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: March 29, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–6499 Filed 4–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–857]

Coated Free Sheet Paper From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') preliminarily determines that countervailable subsidies are being provided to producers and exporters of coated free sheet paper (''CFS paper'') from the Republic of Korea (''Korea''). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords or Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3146 and (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2006, the Department received the petition filed in proper form by NewPage Corporation (''petitioner''). This investigation was initiated on November 20, 2006. *See Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea*, 71 FR 68546 (November 27, 2006) (''Initiation Notice''), and accompanying Initiation Checklist for CVD Petition on CFS paper from Korea (November 20, 2007) (''Initiation Checklist'').[1] On December 19, 2006, petitioner timely requested a 65-day postponement of the preliminary determination for this investigation. On December 22, 2006, the Department postponed the deadline for the preliminary determination by 65 days to no later than March 30, 2007, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). *See Coated Free Sheet Paper from Indonesia, the People's Republic of China and the Republic of Korea: Notice of Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 71 FR 78403 (December 29, 2006).

Due to the large number of producers and exporters of CFS paper in Korea, we determined that it is not possible to investigate each producer or exporter individually and selected four producers/exporters of CFS paper to be mandatory respondents: EN Paper Mfg. Co., Ltd. (''EN Paper'') (formerly Shinho Paper Co., Ltd. (''Shinho Paper'')), Kyesung Paper Co., Ltd. (''Kyesung''), Moorim Paper Co. Ltd. (''Moorim'') (formerly Shinmoorim Paper Mfg. Co., Ltd.), and Hansol Paper Co., Ltd. (''Hansol'') (collectively, ''respondents''). *See* Memorandum from the Team, through Office Director Melissa Skinner, to Deputy Assistant Secretary Stephen J. Claeys: Regarding Respondent Selection (December 4, 2006) (''Respondent Selection Memo'').[2]

On December 6 and 8, 2006, respondents submitted comments on our Respondent Selection Memo, in which they argued that the Department should select an additional mandatory respondent. On December 20, 2006, we responded to respondents' comments, stating that we would not deviate from our original decision to investigate four mandatory respondents in the instant investigation. *See* Memorandum from Program Manager Eric B. Greynolds, through Office Director Melissa Skinner, to Deputy Assistant Secretary Stephen J. Claeys: Regarding Response to Comments from Interested Parties Regarding Respondent Selection (December 20, 2006) (''Second Respondent Selection Memorandum'').

On December 14, 2006, we issued our initial questionnaire to the Government of Korea (''the GOK'') and requested that the GOK forward the relevant sections of the initial questionnaire to the mandatory respondents.

On December 14, 2006, petitioner submitted a new subsidy allegation. On January 3, 2007, we declined to initiate

[1] A public version of this and all public Department memoranda is on file in the Central Records Unit (''CRU''), room B–099 in the main building of the Commerce Department.

[2] A public version of this memorandum is available in the CRU.

on petitioner's new subsidy allegation. *See* Memorandum from the Team through Program Manager Eric B. Greynolds, to Office Director Melissa Skinner: Regarding New Subsidy Allegation (January 3, 2007).

On January 26, 2007, the GOK and respondents submitted their responses to our initial questionnaire. Also on January 26, 2007, Hankuk Paper Mfg. Co., Ltd. (''Hankuk'') submitted a voluntary response to the Department's December 14, 2006, initial questionnaire. Because Hankuk was not selected as a mandatory respondent, we have not considered the company's questionnaire response in reaching this preliminary determination and have not calculated a company-specific CVD rate for Hankuk.

On February 2, 2007, EN Paper, Kyesung,[3] and the GOK submitted their responses to the company-specific allegations. Between February 23 and March 12, 2007, we issued supplemental questionnaires to the GOK and respondents. Between March 5 and 16, 2007, the GOK and respondents submitted responses to our supplemental questionnaires.

On March 8, 2007, petitioner submitted pre-preliminary comments on a number of issues, which we have considered in reaching this preliminary determination. In particular, petitioner argues that, despite instructions from the Department to report all loan data, respondents failed to report any of their short-term loans. Petitioner discusses that in the initial questionnaire, referring to petitioner's allegations that members of the pulp and paper industry received a disproportionate share of loans from the Korea Development Bank (''KDB'') and other GOK-owned entities and that the GOK directed credit to the pulp and paper industry through its control of lending practices in Korea, the Department specifically requested the respondents to answer the items in the Standard Questions and Loan Benchmark and Loan Guarantee Appendices. Petitioner further claims that the unreported short-term loans were provided by the GOK for financing the importation of raw materials as well as the export of finished goods. Petitioner further claims that the Bank of Korea (''BOK'') administers the trade financing under the Aggregate Credit Ceiling Loan program.

Respondents submitted rebuttal comments to petitioner's pre-preliminary comments on March 13 and 20, 2007. Respondents state that they did not report short-term loan data because petitioner did not make an allegation concerning short-term lending and the Department neither initiated on nor asked about short-term loans in the initial questionnaire. They claim that the Department's Initiation Checklist makes clear that the investigation on loans from the KDB and other GOK-owned entities and the GOK's direction of credit to the pulp and paper industry is limited to the allegation of subsidized long-term loans. *See* Initiation Checklist at 7–9, 16–18.

We agree with respondents that the Department's examination of KDB lending and the GOK's direction of credit, in Korea CVD proceedings, has focused on long-term lending. However, we find that additional information regarding the respondents' short-term lending is required to fully analyze the GOK's provision of these loans. For more discussion of the short-term loan program, *see* the section ''Program For Which More Information Is Required,'' below.

On March 23, 2007, petitioner submitted additional pre-preliminary comments. Respondents submitted a response to petitioner's additional comments on March 27, 2007. On March 26, 2007, petitioner submitted a request, pursuant to section 705(a)(1) of the Act to align the final determination in this investigation with the companion antidumping investigations. We will address this request in a separate **Federal Register** notice.

Scope of the Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not-more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms ''wood free'' or ''art'' paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (''Preamble'')), in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On December 18, 2006, respondents in the antidumping duty investigation of CFS from Indonesia submitted timely scope comments on the administrative record of that investigation. On January 12, 2007, the Department requested that the respondents file these comments on the administrative records of all the CFS investigations. *See* Memorandum from Alice Gibbons to the File (January 12, 2007). On January 12, 2007, respondents re-filed these comments on the administrative record of all the CFS investigations. On January 19, 2007, petitioner filed a response to these comments.

The respondents requested that the Department exclude from its investigations cast-coated free sheet paper. The Department analyzed this request, together with the comments from petitioner, and determined that it is not appropriate to exclude cast-coated free sheet paper from the scope of these investigations. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration: Regarding Request to Exclude Cast-Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper (March 22, 2007).[4]

Injury Test

Because Korea is a ''Subsidies Agreement Country'' within the

[3] Kyesung's affiliated company, Namhan Paper Co., Ltd., submitted the company's response on February 2, 2007. *See* ''Cross-Ownership'' section, below, for more information on Namhan Paper Co., Ltd.

[4] A copy of this memorandum is available in the CRU.

meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On December 29, 2006, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Indonesia, or Korea of subject merchandise. *See Coated Free Sheet Paper from China, Indonesia, and Korea*, Investigation Nos. 701–TA–444–446 (Preliminary) and 731–TA–1107–1109 (Preliminary), 71 FR 78464 (December 29, 2006).

Period of Investigation

The period of investigation (''the POI'') for which we are measuring subsidies is January 1, 2005, through December 31, 2005, which corresponds to the most recently completed fiscal year for all of the respondents. *See* 19 CFR 351.204(b)(2).

Cross-Ownership

In the instant investigation, we are examining cross-owned companies within the meaning of section 771(33) of the Act, whose relationship may be sufficient to warrant treatment as a single company with a single, combined CVD rate. In the CVD questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns five percent or more of the other company, or where companies prepare consolidated financial statements. The Department has also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, where such companies produce the subject merchandise or where such companies have engaged in certain financial transactions with the company producing the subject merchandise, the affiliated parties are required to respond to the Department's questionnaire.

In its questionnaire response, Kyesung identified Namhan Paper Co., Ltd. (''Namhan'') and Poongman Paper Co., Ltd. (''Poongman'') as its affiliated companies that produce and sell subject merchandise. Namhan and Poongman merged during the POI. Therefore, Namhan submitted a questionnaire response covering the POI that contained data for Namhan and Poongman before and after the merger (as one company). Similarly, in its questionnaire response, Moorim identified Moorim SP as its affiliate that produces and sells subject merchandise. Moorim SP submitted a questionnaire response to the Department.

For the countervailable subsidy benefits enjoyed by Kyesung and Namhan/Poongman and Moorim and Moorim SP, we attributed those benefits in accordance with 19 CFR 351.525(b)(6)(ii), which states that if two (or more) corporations with cross-ownership produce the subject merchandise, the Department will attribute the subsidies received by either or both companies to the products produced by both companies. Therefore, we have preliminarily calculated a single CVD *ad valorem* rate for Kyesung and Moorim, respectively, by dividing the combined subsidy benefits for the cross-owned companies by the companies' consolidated total sales, or consolidated total export sales, as appropriate.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rate

A. Benchmark for Long-Term Loans Issued Through 2005

Pursuant to 19 CFR 351.524(d)(3)(i), the Department will use, when available, the company-specific cost of long-term, fixed rate loans (excluding loans deemed to be countervailable subsidies) as a discount rate for allocating non-recurring benefits over time. Similarly, pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is defined as one that, when compared to the loan being examined, has similarities in the structure of the loan (*e.g.*, fixed interest rate vs. variable interest rate), the maturity of the loan (*e.g.*, short-term vs. long-term), and the currency in which the loan is denominated.

During the POI, EN Paper (formerly known as Shinho Paper), Hansol, Kyesung, and Moorim had outstanding long-term won-denominated and foreign-currency denominated loans from the KDB and other government-owned financial institutions. For this preliminary determination, we are using the following benchmarks to calculate the subsidies attributable to respondents' countervailable long-term loans obtained in the years 1993 through 2005:

(1) For countervailable, foreign-currency denominated loans for creditworthy companies, we used, where available, the company-specific interest rates on the companies' comparable commercial, foreign currency loans. Where no such benchmark instruments were available, consistent with 19 CFR 351.505(a)(3)(ii) as well as our methodology in prior Korea CVD cases, we relied on the prime lending rates as reported by the IMF's *International Financial Statistics Yearbook* (''*IMF Yearbook*''). *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (''*DRAMS Investigation*''), and accompanying Issues and Decision Memorandum at ''Discount Rates and Benchmark Loans'' (''*DRAMS Investigation Memorandum*'').

(2) For countervailable, won-denominated long-term loans, we used, where available, the company-specific interest rates on the companies' comparable commercial, won-denominated loans. If such loans were not available, we used the company-specific corporate bond rate (for commercial debt preliminarily found not to be countervailable) on the companies' won-denominated public and private bonds. *See* 19 CFR 351.505(a)(3)(iii). Where company-specific rates were not available, we used the national average of the yields on three-year, won-denominated corporate bonds, as reported by the Bank of Korea (''BOK''). This approach is consistent with the Department's past practice. *See DRAMS Investigation Memorandum*, at ''Discount Rates and Benchmark Loans.''

(3) For countervailable, won-denominated commercial debt issued by the KDB, we used, where available, the company-specific corporate bond rate on the companies' won-denominated public and private bonds. *See* 19 CFR 351.505(a)(3)(iii). Where company-specific rates were not available, we used the national average of the yields on three-year, won-denominated corporate bonds, as reported by the BOK.

Further, in accordance with 19 CFR 351.505(a)(2), our benchmarks take into consideration the structure of the government-provided loans. For fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued. For variable-rate loans outstanding during the POI, pursuant to 19 CFR 351.505(a)(5)(i), our preference is to use the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such benchmark

instruments were unavailable, we used interest rates from loans issued during the POI as our benchmark, as such rates better reflect a variable interest rate that would be in effect during the POI. This approach is in accordance with the Department's practice in cases with similar facts. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum, at Comment 8; *see also* 19 CFR 351.505(a)(5)(ii).

In addition, because we preliminarily determined that Poongman was uncreditworthy in 2004, in accordance with 19 CFR 351.524(d)(3)(ii) (*see* ''Creditworthiness'' section, below), we have calculated for Poongman a long-term uncreditworthy benchmark and discount rate for 2004. According to 19 CFR 351.505(a)(3)(iii), in order to calculate these rates, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt. For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998).

B. Benchmark Discount Rates

Certain programs examined in this investigation require the allocation of benefits over time. Thus, we have employed the allocation methodology described under 19 CFR 351.524(d). Pursuant to 19 CFR 351.524(d)(3)(i), we based our discount rate upon data for the year in which the government agreed to provide the subsidy. Under 19 CFR 351.524(d)(3)(i)(A), our preference is to use the cost of long-term, fixed-rate loans of the firm in question. Thus, where available, we used company-specific long-term loan benchmark of corporate bond rates on public and private bonds. Where those benchmarks are unavailable, pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average of the yields on three-year corporate bonds, as reported by the BOK.

C. Benchmarks for Short-Term Financing

The benefit calculation for the Export and Import Credit Financing from the Export-Import Bank of Korea requires the application of a won-denominated, short-term interest rate benchmark. Absent a company-specific interest rate, we used as our benchmark the lending rate for won-denominated loans for the POI, as reported in the *IMF Yearbook.* This approach is in accordance with 19 CFR 351.505(a)(3)(ii) and the Department's practice. See, *e.g.*, *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413, 53419 (September 11, 2006) (unchanged at the final results, *see Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 119 (January 3, 2007)).

D. Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (''AUL'') of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (''IRS'') 1977 Class Life Asset Depreciation Range System (''IRS tables''), as updated by the U.S. Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(ii). For assets used to manufacture products such as CFS paper, the IRS tables prescribe an AUL of 13 years.

In their questionnaire responses, each respondent company stated that it would not attempt to rebut the regulatory presumption by meeting the criteria set forth in 19 CFR 351.524(d)(2)(iii). Thus, for respondents, we will use the IRS AUL of 13 years to allocate any non-recurring subsidies for purposes of this preliminary determination.

Further, for non-recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

E. Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department normally examines the following four types of information: (1) The receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position.

With respect to item number one above, pursuant to 19 CFR 351.505(a)(4)(ii), in the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee (either explicit or implicit), will normally constitute dispositive evidence that the firm is not uncreditworthy. However, according to the preamble to the Department's CVD regulations, in situations, for instance, where a company has taken out a single commercial bank loan for a relatively small amount, where a loan has unusual aspects, or where we consider a commercial loan to be covered by an implicit government guarantee, we may not view the commercial loan(s) in question to be dispositive of a firm's creditworthiness. *See Preamble*, at 65367.

In the *Initiation Notice*, we indicated that we would investigate Shinho Paper's creditworthiness for the period 1998 through 2005, and Poongman's creditworthiness for 2004. As discussed in the March 29, 2007, memorandum entitled ''Shinho Paper's Equityworthiness and Creditworthiness,'' we preliminarily determined Shinho Paper to be creditworthy each year from 1998 through 2005 (a copy of this memorandum is available in the CRU). Regarding Poongman, we preliminarily determine Poongman to be uncreditworthy in 2004. *See* Memorandum to the File Regarding Poongman's Creditworthiness (March 29, 2007), which is available in the

CRU. Therefore, pursuant to 19 CFR 351.505(a)(3)(iii), we derived an ''uncreditworthy'' benchmark interest rate and used it to calculate the benefit that Poongman received from debt that was forgiven in 2004. For information on Poongman, *see* the ''Poongman's Restructuring'' section below.

F. Equityworthiness

Section 771(5)(E)(i) of the Act and 19 CFR 351.507 state that, in the case of a government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors. According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price for similar, newly issued equity. If so, the Department will consider an equity infusion to be inconsistent with the usual investment practice of private investors if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same, or similar, newly issued shares. *See* 19 CFR 351.507(a)(2)(i).

If actual private investor prices are not available, then, pursuant to 19 CFR 351.507(a)(3)(i), the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. In making the equityworthiness determination, pursuant to 19 CFR 351.507(a)(4), the Department will normally determine that a firm is equityworthy if, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable time. To do so, the Department normally examines the following factors: (1) Objective analyses of the future financial prospects of the recipient firm; (2) current and past indicators of the firm's financial health; (3) rates of return on equity in the three years prior to the government equity infusion; and (4) equity investment in the firm by private investors.

Section 351.507(a)(4)(ii) of the Department's regulations further stipulates that the Department will ''normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion.'' Absent an analysis containing information typically examined by potential private investors considering an equity investment, the Department will normally determine that the equity infusion provides a countervailable benefit. This is because, before making a significant equity infusion, it is the usual investment practice of private investors to evaluate the potential risk versus the expected return, using the most objective criteria and information available to the investor.

In the *Initiation Notice*, we indicated that we would investigate Shinho Paper's equityworthiness for the period 1998 through 2005, and Poongman's equityworthiness for 2004. As discussed in the March 29, 2007, memorandum entitled ''Shinho Paper's Equityworthiness and Creditworthiness'' (which is on file in the CRU), we preliminarily determine that Shinho Paper was equityworthy each year from 1998 through 2005. For information on Poongman, *see* the ''Poongman's Restructuring'' section, below.

I. Programs Preliminarily Determined To Be Countervailable

A. Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions

Petitioner alleges that lending by the KDB to the Korean paper sector was a financial contribution, which provided a benefit and was specific to the paper sector. Petitioner also argues that in addition to the KDB, the Industrial Bank of Korea, National Agricultural Cooperative Federation, the National Federation of Fisheries, and the Export-Import Bank be treated as governmental authorities, consistent with our approach in *DRAMS Investigation. See* Petition for the Imposition of Countervailing Duties from Petitioners to the Department at 15 (October 31, 2006) (''Petition''). Petitioner alleges that GOK lending by these various government entities was specific to the paper industry. In its allegation, petitioner suggests that the Department adopt a methodology under which the amount of the paper sector's share of KDB loans is compared to the paper sector's contribution to the total manufacturing output in Korea. According to petitioner, where this analysis shows that the amount of the paper sector's loans from the KDB exceeds that sector's share of Korean manufacturing output, the Department should find that the paper sector received a disproportionate share of KDB loans, *i.e.*, which is therefore specific under section 771(5A)(D)(iii) of the Act. *See* Petition, at 17–18.

As explained above, the Department preliminarily agrees that KDB and other GOK lending institutions provide a financial contribution to the Korea paper sector under section 771(5)(D)(i) of the Act. We also preliminarily determine that KDB lending to the paper sector was specific in accordance with section 771(5A)(D)(iii)(III) of the Act because the paper sector received a disproportionate share of KDB loans between 1999 and 2005 when compared to that sector's contribution to the overall Korean Gross Domestic Product (''GDP'').[5] *See* Memorandum to the File Regarding Analysis of Korea Paper Sector's share of KDB Lending (March 29, 2007) (''KDB Memorandum''). While the record is not adequately developed regarding loans provided to the paper sector by other GOK lending institutions, there is no reason to believe that the lending patterns of these other government lending institutions would be different than the lending pattern of the KDB, the country's leading supplier of long-term funds to domestic corporations over the period.

With regard to KDB's lending to the paper sector in the years 1993 through 1998, we do not have on the record KDB-specific lending data for these years. The GOK reported that the KDB no loner maintains lending data for newly issued loans for this period either in electronic or paper form. *See* GOK's questionnaire response at 26 (January 26, 2007) and at 16 (March 6, 2007). However, for the years 1993 through 1998, we have on the record data on the total lending to the paper sector, encompassing loans from the KDB, other GOK financial institutions, and commercial banks. *See* GOK's questionnaire response at page 20 and Exhibits 6 and 7 (January 26, 2007). We, therefore, examined the paper sector's share of total lending to the paper sector's share of GDP in each of those years. We find that the record indicates that the paper sector received a disproportionate share of total lending in each year 1993 through 1998 when compared to the sector's contribution to the overall Korean GDP, and that this can serve as a reasonable proxy for the KDB-specific lending data. Given the finding that the paper sector received a

[5] In reporting economic activity that contributes to the Korean GDP, the BOK does not report a category particular just to the paper sector. The paper sector's contribution to GDP is contained within the category ''wood, paper, publishing, and printing.'' Therefore, to conduct our GDP analysis, we are using this broad category. To the extent that we could, we combined the lending data for ''wood, paper, publishing, and printing'' to achieve an ''apples-to-apples'' comparison between share of GDP and share of loans for this sector. See KDB Memorandum, for more discussion.

disproportionate share of KDB loans in each year 1999 through 2005, and the lending trend identified for the paper sector 1993 through 1998, we also preliminarily determine that the paper sector received a disproportionate share of KDB loans between 1993 and 1998, and that this lending was specific in accordance with section 771(5A)(D)(iii)(III) of the Act.

The comparison between KDB lending received by the paper sector and the paper sector's contribution to the GDP of Korea is consistent with the Department's approach in *Plate in Coils. See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530 (March 31, 1999) (''*Plate in Coils*''); *see also* Memorandum from David Mueller to Holly A. Kuga: Regarding Analysis Concerning Direction of Credit, Subject: Countervailing Duty Investigation (March 4, 1998).[6]

In accordance with 19 CFR 351.505(c)(2) and (4), for each respondent, we calculated the benefit for each fixed- and variable-rate loan received from the KDB and other GOK lending institutions, as well as commercial debt issued by KDB where relevant, to be the difference between the actual amount of interest paid on the government loan during the POI and the amount of interest that would have been paid during the POI at the benchmark interest rate. We conducted our benefit calculations using the benchmark interest rates described in the ''Subsidies Valuation Information'' section, above. For foreign currency-denominated loans, we converted the benefits into Korean won using the appropriate exchange rate. For each company, we then summed the benefits from the long-term fixed-rate and variable-rate won-denominated loans, and commercial debt issued by KDB where relevant, and divided that amount by each company's total sales values for the POI. We preliminarily determine the net countervailable subsidy rates to be, for: Hansol 1.01 percent *ad valorem*, Kyesung 0.01 percent *ad valorem*, and Moorim 0.02 percent *ad valorem.*

B. Poongman's Restructuring

Petitioner alleges that Poongman, a CFS-producing affiliate of Kyesung, received countervailable benefits from the GOK through extensions of debt maturities in 2002 and 2004, and a debt-for-equity swap in 2004. *See* Petition, at 67–69. Petitioner states that the KDB, owned/controlled by the GOK, was the main participant in the debt-for-equity swap. Petitioner further alleges that Poongman was unequityworthy and uncreditworthy in 2004. They base their allegation of Poongman's unequityworthiness and uncreditworthiness on its financial statements and its creditors' assessments. Therefore, petitioner argues that the GOK conferred a benefit upon Poongman, within the meaning of sections 771(5)(E)(i) and (ii) of the Act, in the form of a government equity infusion and a loan. Petitioner further alleges that the debt-for-equity swap and the extensions of debt maturities constitute government financial contributions within the meaning of section 771(5)(D)(i) of the Act. In addition, petitioner alleges that this program is specific under section 771(5A)(D)(iii) of the Act, as this transaction was limited to Poongman. Pursuant to the Corporate Restructuring Promotion Act (''CRPA''), Korea's statutory framework for debt restructurings, Poongman's creditors performed a biannual credit assessment of the company in 2001.[7] As a result of this assessment, Poongman received a 'B' rating, which allowed it to go through self-restructuring, rather than through the formal CRPA process. *See* GOK's questionnaire response at pages 2 and 19 (February 2, 2007). Pursuant to the self-restructuring, in 2002, Poongman was granted an extension on the debt maturities for some of its KDB loans that were coming due. No other creditors besides the KDB granted the extensions during this period. As discussed further below, the interest owed as a result of this extension was forgiven and resulted in the provision of a countervailable subsidy.

Following another credit assessment in 2002, the KDB classified Poongman as a credit risk company and demanded it perform self-restructuring in accordance with Article 10.3 of the CRPA. *See id.* at Exhibit K–1; *see also* GOK's questionnaire response at page 16 (March 16, 2007). As a result, Poongman engaged the services of a management consulting company to provide a financial analysis. The record facts further indicate that the management consulting company provided a report based on commercial considerations which served as the basis for the restructuring of Poongman and its merger with Namhan. *See* Namhan's questionnaire response at Exhibit L–20 (February 2, 2007) and Exhibit L–44 (March 13, 2007).

In June 2004, Poongman's restructuring package was agreed to by Poongman's creditors and Namhan. This package included an agreement that Poongman would merge with Namhan, Poongman's creditors would swap Poongman's debt in exchange for shares in Namhan, and Poongman's creditors would extend Poongman's remaining debt maturities. Subsequently, Poongman's board of directors approved the restructuring package on June 8, 2004, and the debt-for-equity swap was made. Due to volatile market conditions, and not due to any changes to the terms of the merger, the merger did not take effect until July 31, 2005, when Poongman's stocks were swapped for Namhan's stocks.

In a past review involving a Korean corporate restructuring, the Department found that in a debt-for-equity swap that was conditioned on a merger of a non-equityworthy company (Kangwon) with an equityworthy company (Inchon), the creditors of the non-equityworthy company were effectively exchanging their debt for equity in the equityworthy company. In that case, Kangwon merged into Inchon, with Inchon being the post-merger company. *See Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (''*Stainless Steel*''), and accompanying Issues and Decision Memorandum at Comment 3. In *Stainless Steel*, the Department found that the terms of the merger and the debt-for-equity swap were part of the same agreement and that the legal requirements for the agreement had been fulfilled before the debt-for-equity swap took place. *Id.* Moreover, there was no allegation that Inchon was not equityworthy, and the Department found that the record evidence regarding Inchon's financial status provided no reason to question its equityworthiness. *Id.* Consequently, the Department concluded that the equityworthiness of Kangwon, the non-equityworthy company, was not relevant to the determination of whether a benefit was conferred. *Id.*

In this case, we find that the debt-to-equity swap was agreed to by Poongman's creditors on the condition that the merger with Namhan would occur, and that the share issuance price would be the market price. Moreover, we find that the terms of the merger and

[6] A copy of this public document has been placed on the record of this review.

[7] The CRPA was enacted in September 2001, to help stabilize the financial and corporate sectors recovering from the 1997 financial crisis by allowing for corporate restructurings with more transparency and promptness. Its intent is to give greater responsibility to the creditors in resolving the fate of non-performing debt in the market by implementing a corporate risk rating system and conducting regular credit risk assessments on companies receiving 50 billion won or more in credit.

the swap were part of the same agreement that was approved by Poongman's board of directors. Based on record evidence, and consistent with *Stainless Steel*, we preliminarily find that, because the swap and the extension of debt maturities took place on the condition of Poongman's merger into Namhan, Poongman's creditors were effectively exchanging their debt for equity in Namhan, an equityworthy company.

In looking to the post-merger entity as the reference for analyzing equityworthiness and creditworthiness, the Department takes due consideration of the specific facts of the case. In the instant investigation, the record evidence shows Namhan to be a larger, financially more stable company relative to Poongman. In addition, petitioner has not alleged that Namhan was an unequityworthy or uncreditworthy company during the relevant time period. Thus, in accordance with section 771(5)(E)(i) of the Act, we find that the decision by Poongman's creditors to swap debt for equity in Namhan was not inconsistent with the usual practice of private investors and did not confer a benefit to Poongman. Therefore, we preliminarily find that the debt-for-equity swap and the debt maturity extensions that occurred in 2004, on condition of the merger with Namhan are not countervailable.

However, with regard to the forgiveness of interest owed as discussed earlier, we preliminarily find that this forgiveness of debt constitutes the provision of a financial contribution. In addition, we preliminarily find that it was specific to Poongman within the meaning of section 771(5A)(D)(iii) of the Act, in that it was limited to one company. As such, we preliminarily determine the net countervailable subsidy to be 0.49 percent ad valorem.

C. Export and Import Credit Financing From the Export-Import Bank of Korea (''KEXIM'')

The Department has previously determined that the GOK's short-term export financing program is countervailable. See *e.g., Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413, 53419 (September 11, 2006), (unchanged at the final results, *see Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 119 (January 3, 2007)); *see also Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176, 73180 (December 29, 1999). No new information from interested parties has been presented in this investigation to warrant a reconsideration of the countervailability of this program. Therefore, we preliminarily find that this program is countervailable.

We preliminarily determine that the program is specific, pursuant to section 771(5A)(B) of the Act, because receipt of the financing is contingent upon exporting. In addition, we preliminarily determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act. During the POI, Hansol was the only respondent that received export financing from the KEXIM.

Pursuant to 19 CFR 351.505(a)(1), to calculate the benefit under this program, we compared the amount of interest paid under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the ''Subsidies Valuation Information'' section. To calculate the net subsidy rate, we divided the benefit by the f.o.b. value of Hansol's total exports for 2005. On this basis, we preliminarily determine the net countervailable subsidy rate for Hansol to be 0.13 percent *ad valorem*.

D. Sale of Pulp for Less Than Adequate Remuneration

Donghae Pulp Company (''DP'') is the sole domestic producer/supplier of chemical pulp to the Korean pulp and paper industry. DP sells one type of chemical pulp to CFS producers, specifically bleached woodcraft pulp from the broadleaf trees. The key input into the production of CFS paper is chemical pulp, which respondents either import or purchase domestically from DP. During the POI, all respondents purchased chemical pulp directly from DP.[8]

DP was originally Daehan Chemical Pulp (''DCP''), established in January 1974, under the laws of the Republic of Korea, as a government-funded enterprise to manufacture and sell chemical pulp. DCP changed its name to DP in June 1977, and in 1987, the GOK sold its interest in DP to several companies that were end users of chemical pulp. Since June 1989, the shares of DP have been listed on the Korea Stock Exchange. In April 1998, DP declared bankruptcy and applied to the court for company reorganization. Soon thereafter, DP began operating under court receivership.[9] In September 1999, as part of the reorganization, the shares of some companies were retired without compensation.[10] In November 1999, the shares of the remaining shareholders were consolidated and the creditors swapped their debt for equity shares in DP. As a result of this debt-to-equity conversion, KDB became DP's largest shareholder. Officials from the KDB are directors on DP's board of directors.

Respondents argue that, since DP is in court receivership, the GOK does not control DP or direct it to sell chemical pulp to Korean CFS producers for less than adequate remuneration. In support of their argument, respondents discuss that in an earlier Korean CVD administrative review, the Department found that because Sammi Steel Co., Ltd. (''Sammi'') was in court receivership, Inchon Iron & Steel Co., Ltd., although a major shareholder, was not able to control Sammi's assets. *See Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum at Comment 3 (''*Sheet and Strip 2003*'').

However, contrary to respondents'' argument concerning *Sheet and Strip 2003*, the facts of this instant investigation in which we are examining DP are distinct from the facts that we examined with regard to Sammi's court receivership. Specifically, in *Sheet and Strip 2003*, we examined Sammi's court receivership in the context of cross-ownership and the attribution of benefits, whereas, in this instant investigation, we are examining whether DP should be considered a GOK entity for purposes of examining whether a countervailable benefit is being provided. *Id.*

In order to assess whether an entity such as DP should be regarded as the government for purposes of a CVD proceeding, the Department considers the following factors to be relevant: (1) The government's ownership; (2) the government's presence on the entity's board of directors; (3) the government's control over the entity's activities; (4)

[8] DP sells chemical pulp directly to end-users. There are no distributors of chemical pulp in Korea.

[9] During the POI, DP remained in court receivership.

[10] Specifically, as part of DP's reorganization, the shares of Kyesung, Namhan, Poongman, Moorim, Moorim SP, and Hankuk Paper Co., Ltd. were retired without any compensation.

the entity's pursuit of governmental policies or interests; and (5) whether the entity is created by statute. *See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992); *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands*, 52 FR 3301, 3302, 3310 (February 3, 1987); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 30642–30643 (June 8, 1999) (''*Sheet and Strip 1999*'').

We preliminarily find DP to be a government authority under section 771(5)(B)(i) of the Act. DP was established by the GOK in 1974 to address the government's interest in establishing a domestic manufacturer and supplier of chemical pulp to the paper industry. DP is majority-owned by the KDB, a government-owned financial institution that also has presence on DP's board of directors. We do not believe that DP's court receivership status overrides the factors considered by the Department, which are outlined above.

Further, this finding that DP is a government authority is consistent with prior determinations by the Department. For example, the Department determined that the actions of Pohang Iron and Steel Company, Ltd. (''POSCO'') should be considered as actions of the GOK because POSCO was a government-owned company. At that time, the GOK was POSCO's largest shareholder. *See id.*, at 30642–30643.

Further, we preliminarily find that DP's provision of chemical pulp constitutes a financial contribution because it is the provision of a good as defined in section 771(5)(D)(iii) of the Act. We also preliminarily find that the provision of chemical pulp is specific in accordance with section 771(5A)(D)(iii)(I) of the Act because it is limited to the pulp and paper industry.

To determine whether there is a benefit from the provision of a good, the Act specifies that the Department must examine whether the good was provided for less than adequate remuneration. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good shall be determined in relation to prevailing market conditions for the good being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. Section 351.511 of the Department's regulations sets forth, in order of preference, the benchmarks that we will examine in determining the adequacy of remuneration. As discussed under 351.511(a)(2)(i), the first preference is to compare the government price to a market-determined price resulting from actual transactions within the country, including imports. In this case, as DP is the only domestic supplier of chemical pulp, there is no domestic price that can serve as a benchmark price. However, the respondents imported chemical pulp comparable, in terms of quality and quantity, to that purchased from DP during the POI.

To calculate the benefit under this program, for each respondent, we compared the monthly delivered weighted-average price, after all discounts, paid to DP for chemical pulp to the calculated monthly delivered weighted-average import price paid to foreign suppliers of chemical pulp. We determined the monthly price difference and then multiplied the difference by the quantity of chemical pulp purchased from DP in each respective month of the POI. We next summed the price savings realized by each company and divided that amount by each company's total sales value for the POI. On this basis, we preliminarily determine the net countervailable subsidy from this program for the respondents to be: 0.08 percent *ad valorem* for EN Paper, 0.62 percent *ad valorem* for Hansol, 0.09 percent *ad valorem* for Kyesung, and 0.02 percent *ad valorem* for Moorim.

E. Sales of Pulp From Raw Material Reserve for Less Than Adequate Remuneration

The Korean Public Procurement Service (''PPS''),[11] established in January 1949, is a government procurement agency that stockpiles certain raw materials (*e.g.*, aluminum, copper, and nickel), basic necessities (*e.g.*, salt), and industrial use materials (*e.g.*, chemical pulp and natural rubber) using government funds. PPS facilitates the short- and long-term supply of goods and seeks to stabilize consumer prices, pursuant to the Government Procurement Act.

Each year the PPS formulates a storage plan in accordance with the economic policies of the GOK. The release of stored items is carried out in accordance with the yearly plan. The GOK reported that prices for released items are determined based on the cost and market price at home and abroad and that in certain circumstances could be released for a price lower than the purchase price. The PPS publically announces the stockpile release sales via its website and sells directly to end users. During the POI, PPS sold chemical pulp, some of which was purchased by Moorim SP.

We preliminarily find that PPS's provision of chemical pulp constitutes a financial contribution because it is the provision of a good as defined in section 771(5)(D)(iii) of the Act. We also preliminarily find this provision of chemical pulp to be specific in accordance with section 771(5A)(D)(iii)(I) of the Act because it is limited to end users of pulp or entities associated with end users of pulp.

To determine whether there is a benefit from the provision of a good, the Act specifies that the Department must examine whether the good was provided for less than adequate remuneration. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good shall be determined in relation to prevailing market conditions for the good being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. Section 351.511 of the Department's regulations sets forth, in order of preference, the benchmarks that we will examine in determining the adequacy of remuneration. As discussed under 19 CFR 351.511(a)(2)(i), the first preference is to compare the government price to a market-determined price resulting from actual transactions within the country, including imports. As discussed above under ''Sale of Pulp for Less Than Adequate Remuneration,'' DP, a government-owned entity, is the only domestic producer of pulp. As such, there are no market-determined domestic prices for chemical pulp available to serve as a benchmark. Moorim SP, however, did have imports of chemical pulp during the POI.

To calculate the benefit under this program, we compared the price that Moorim SP paid to PPS for chemical pulp and the import price that Moorim paid to a foreign supplier for comparable chemical pulp. We determined the price differential and then multiplied that differential by the quantity of pulp purchased from PPS. We next divided the price savings by the company's total sales value for the POI. On this basis, we preliminarily determine the net countervailable

[11] The PPS is a subsidiary agency of the Ministry of Finance and Economy.

subsidy for Moorim to be less than 0.005 percent *ad valorem*.

F. Reduction in Taxes for Operating in Regional and National Industrial Complexes

Under Article 46 of the Industrial Cluster Development and Factory Establishment Act (''ICDFE Act''), a state or local government may provide tax exemptions as prescribed by the Restriction of Special Taxation Act. In accordance with this authority, Article 276 of the Local Tax Act provides that entities that acquire real estate in a designated industrial complex for the purpose of constructing new buildings or enlarging existing facilities are eligible for acquisition, registration, and property tax exemptions. Property taxes are reduced by either 50 or 100 percent for five years from the date the tax liability becomes effective. The 100 percent property tax exemption applies to land, buildings, or facilities located in industrial complexes outside of the Seoul metropolitan area. The GOK established the tax exemption program under Article 276 in December 1994, to provide incentives for companies to relocate from populated areas in the Seoul metropolitan region to industrial sites in less populated parts of the country. During the POI, Namhan received a property tax exemption under Article 276 for the enlargement of its manufacturing facility located in the Chongup Industrial Complex, which is designated under the ICDFE Act.

In prior Korea cases, the Department has determined that local tax exemptions provide countervailable subsidies. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 68 FR 13267 (March 19, 2003), and accompanying Issues and Decision Memorandum at ''Inchon's Local Tax Exemption;'' and *Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002), and accompanying Issues and Decision Memorandum at ''Local Tax Exemption on Land Outside of Metropolitan Area.'' No new information from interested parties has been presented in this investigation to warrant a reconsideration of the countervailability of this program. Consistent with those prior determinations, in the instant investigation, the Department preliminarily determines that the property tax exemption that Namhan received is regionally specific under section 771(5A)(D)(iv) of the Act, as being limited to an enterprise or industry located within a designated geographical region. We preliminarily determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act, in the form of revenue foregone. A benefit is conferred in the form of a tax exemption.

To calculate the benefit, we divided Namhan's property tax exemption by the company's total sales value for 2005. On this basis, we preliminarily determine the net countervailable subsidy under this program to be less than 0.005 percent *ad valorem*.

II. Programs Preliminarily Determined To Not Provide Countervailable Benefits During the POI

A. Duty Drawback on Non-Physically Incorporated Items and Excess Loss Rates

The Korean duty drawback system is administered by the Customs Policy Division of the Ministry of Finance and Economy (''MOFE''). The Act on Special Cases Concerning the Refundment of Customs Duties, Etc., Levied on Raw Materials for Export (''Act on Customs Duties'') governs the duty drawback program. Under the Korean duty drawback system, for a company to receive duty drawback the imported material must be physically incorporated into merchandise that is exported within two years from the time the input material is imported. There is no import duty on chemical pulp, the most important raw material used to produce CFS paper. Therefore, CFS producers are not eligible to claim duty drawback on imports of chemical pulp. CFS producers, however, can seek duty drawback for import duties paid on other materials used in the production of CFS paper, *e.g.*, clay, latex, starch, pigment, and talcum. Each material has its own single import duty rate.

The GOK states that under the duty drawback system only import duties can be refunded; no other import fees (*e.g.*, value added tax, customs brokerage, unloading charges, etc.) are eligible for drawback. To seek a drawback of import duties, the company must file with its local Customs office an application, import permits, export permits, and a statement of accounts for the required amount (see below for a discussion of this statement). A company can seek a refund of duties through either a company-specific method or fixed amount refund method (see below for a discussion of the two duty drawback methods). If the documentation is in order, the Customs office refunds the applicable duty amount.

Under section 351.519(a)(1)(i) of the Department's regulations, in the case of drawback of import charges, a benefit exists to the extent that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowance for waste. Section 351.519(a)(4)(i) states that the entire amount of such remission or drawback will confer a benefit, unless the Department determines that the government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.

The GOK submitted information on the system that Korean Customs has in place to monitor which inputs are consumed in the production of the exported products and in what amounts. As noted, there are two duty drawback methods used in Korea: (i) The company-specific method, and (ii) the fixed amount refund method. Under the company-specific method, a company's duty drawback is based upon its ''statement of accounts for the required amount.'' This statement, which contains a formula specific to each company, demonstrates the amounts of import duty paid on imports and the amount of imports used to produce the exported product.[12]

The Customs Services' Examination Department, which is located in the five local Customs offices, examines the reasonableness and accuracy of the required quantity reported in the company's statement. The GOK reported that this process is an examination of the documents submitted because there is no issue regarding the usage rate for the imported raw materials. The GOK explained that all of the imported inputs for which the respondents claimed and received duty drawback are consumed in the production process (*i.e.*, clay, latex, starch, pigment, and talcum) and, therefore, there is no loss rate regarding the usage of these inputs in the claims

[12] Specifically, the duty drawback amount is calculated according to the following two-step formula:

(1) Required Quantity = Export Quantity * Required Per Unit Quantity. The ''required per unit quantity'' is determined by each company's production experience. This usage rate is determined based on the company's prior fiscal year experience. The GOK reported that if the usage rate changes from one year to the next, the company must repot its revised usage rate.

(2) Duty Drawback Amount = Total Import Duty Paid * Required Quantity/Total Import Quantity.

for duty drawback. The GOK also reported that the company-specific formula is subject to verification by the local Customs authority if, for example, the ratio calculated by the company is higher than the ratio calculated by other companies in the same industry for the same product. During the POI, EN Paper, Hansol, Moorim Paper, Moorim SP, and Namhan used the company-specific method.

Under the fixed amount refund method, the Korea Customs Service sets a fixed amount refund rate by harmonized schedule (''HS'') code number of items for export.[13] This fixed refund amount is calculated on the basis of the average refund amount of duties or the average paid tax amount on the raw materials for export, in accordance with Article 16 (simplified fixed amount refund) of the Act on Customs Duties. The GOK reported that Korean Customs reviews the fixed amount of refund annually based on the prior year's experience. Specifically, Korean Customs calculates and determines the fixed duty refund rates each year based on its company-specific duty drawback application database. To that end, Korean Customs collects all duty drawback applications for the prior 12 months and calculates the per-unit duty drawback amount by each HS code. Korean Customs then selects the duty drawback applications for which the per-unit duty drawback amount is less than the average calculated in order to prevent the fixed amount refund from exceeding the company-specific methods. Korean Customs recalculates an average duty drawback amount based on these below-average applications. Korean Customs then determines and announces the per-unit fixed amount refund after rounding upwards. The GOK provided the calculation performed to set the fixed amount of duty refund for the subject merchandise.[14] *See* GOK's questionnaire response at Exhibit E–7 (March 16, 2007). During the POI, Kyesung and Poongman used the fixed amount refund method.

Each respondent submitted to the Department documentation demonstrating a sample calculation of duty drawback, which was applied for during the POI. Based on that information, there is no evidence, at this time, to suggest that the duty drawback program provided to the respondent companies a refund of import duties on materials that were not physically incorporated into exported products or excessive refund amounts. Therefore, we preliminarily determine that respondents did not receive, under the duty drawback program, countervailable benefits during the POI. However, at verification we will further examine each company's duty drawback applications and refunded amounts to ensure that a countervailable benefit was not conferred under the program. In addition, we will further examine the system at verification to determine whether it adequately meets the standards for non-countervailability set forth in 19 CFR 351.519(a)(4).

B. Cleaner Production Development Project [15]

The Cleaner Production Development Project (''CPDP'') of the Korea National Cleaner Production Center (''KNCPC'') is a research and development (''R&D'') program. The GOK reported that the government and companies make cash and in-kind contributions to a research institution and then share the results of the project. The CPDP was established in 1995, under the Act on the Promotion of the Conversion into Environment-Friendly Industrial Structure and its Enforcement Decree. The KNCPC, with the support of the Ministry of Commerce, Industry and Energy (''MOCIE''), finances and manages the cleaner production technology development projects that seek to prevent or reduce the generation of waste during product designing, manufacture, delivery, use, and disposal. Specifically, MOCIE decides which projects will be approved and the level of the GOK's contribution to the project, according to criteria specified in the Guidelines for the CPDP Operation. The GOK's monetary contribution depends on the type of project (general or common), the entity in charge (company, research institution, or university), and whether the project is a collaboration of companies and research institutions or a project being conducted by a single entity. The GOK states that the purpose of this collaboration is to allow for the sharing of the results of the R&D project.

The GOK reported that a diverse grouping of industries has participated in the CPDP and received R&D funds from the GOK, including paper companies. Specifically, Namhan participated with another company and a research institution in a project. Namhan reported that the GOK approved the R&D funding for the project prior to the POI.

We preliminarily determine that this funding is a non-recurring grant under 19 CFR 351.524(c)(2)(ii) because receipt of the assistance is not automatic, requiring the express approval of the GOK. Therefore, in accordance with 19 CFR 351.524(b)(2), we have applied the ''0.5 percent expense test.'' [16] The calculation demonstrates that the total funding amount approved (*i.e.*, GOK's total contribution to the project) is less than 0.5 percent of Namham's 2003 total sales. As such, we have expensed the benefit in the year of receipt, 2003. Therefore, because the CPDP did not confer a benefit to Namhan during the POI, we preliminarily find that we need not conduct a specificity analysis of this program.

III. Programs Preliminarily Determined To Not Be Countervailable

A. Direction of Credit to the Pulp and Paper Sector

Petitioner alleges that the GOK directed credit to the pulp and paper sector using various means. *See Initiation Notice.* Petitioner cites prior countervailing duty cases where the Department has found direction of credit to the steel [17] and

[13] The Korean Customs Service calculates a fixed refund rate when it is necessary to simplify the refund procedure for customs duties on certain export items having an extraordinary production process (*e.g.*, when two or more products are produced simultaneously using one raw material or export or when the exported goods are produced by a small and medium enterprise).

[14] The fixed amount of duty refunded per 10,000 KRW of FOB export value is 70 (which is the per-unit duty refund) for subject merchandise. The HS code is 4810.19–1000.

[15] In its allegation concerning the ''Funding for Technology Development and Recycling Program,'' petitioner alleged that the GOK provides support to the pulp and paper industry for clean technology development and enhancement of used-paper recycling systems. *See* Initiation Checklist at ''Funding for Technology Development and Recycling Program.'' Also, in its allegation, petitioner alleged a connection between the IBF and the CPDP. The GOK reported, however, that the IBF is a loan program and the CPDP is an R&D support program. We preliminarily find no relationship between the IBF and CPDP and, therefore, are treating them as two separate programs.

[16] for more information, *see* ''Allocation Period,'' above.

[17] *See Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea*, 65 FR 41051, (July 3, 2000) (''*S-Beams*'') (from 1985 through 1991); *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530 (March 31, 1999) (''*Steel Plate in Coils*'') (from 1992 through 1997); *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 67 FR 1964, (January 15, 2002) (''*Sheet and Strip*'') (for 1999); *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102, (October 3, 2002) (''*Cold Rolled*'') (for 2000); *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113, (January 14, 2004) (''*Sheet and Strip 2001 Review*'') (for 2001).

semiconductor [18] industries as well as to an individual semiconductor producer [19] to support its allegation that the GOK similarly directed credit to the paper sector because, petitioner argues, the paper sector was a strategic sector like steel and semiconductors. *See Initiation Notice*, at 40.

In prior determinations, the Department found that the GOK continued to control, directly and indirectly, the long-term lending practices of most sources of credit in Korea through 1998. *See Plate in Coils* and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176 (December 29, 1999) (''*CTL Plate*'') for our findings. Although we determined that the GOK directed the provision of loans by Korean banks in *Plate in Coils* and *Sheet and Strip*, we concluded that loans from Korean branches of foreign banks (*i.e.*, branches of U.S. and foreign-owned banks operating in Korea) did not confer countervailable subsidies. This determination was based upon our finding that credit from branches of foreign banks was not subject to the government's control and direction. Additionally, because these loans were not directed or controlled by the GOK, we used them as benchmarks to establish whether loans from domestic banks conferred a benefit upon respondents. In *S-Beams* and *CTL Plate*, the Department found that the GOK directed credit to ''strategic'' industries, such as steel, automobiles, and consumer electronics, throughout the 1970s, 1980s, and 1990s. In *S-Beams*, we found that, after the removal of the *de jure* preferences for ''strategic'' industries in 1985, the GOK continued to direct a disproportionate amount of lending to steel sector by examining the percentage of loans received by the steel sector in proportion to the steel sector's contribution to GDP. In *DRAMS Investigation*, we determined that the GOK continued to direct credit through 1998 to the semiconductor sector because it was a strategic sector.

The Department has also addressed GOK direction of credit in the years subsequent to 1998. The GOK argued in the *DRAMS Investigation* that the post-1997 financial reforms instituted following the Korean financial crisis led to the liberalization of the Korean financial sector, resulting in the GOK not directing credit provided by domestic and government-owned banks since 1998. The GOK placed new information on the record during the *DRAMS Investigation* to support its claim that the GOK did not direct credit between 1999 and June 30, 2002. In *DRAMS Investigation*, the Department distinguished between banks that are themselves government authorities within the meaning of section 771(5)(B) of the Act and commercial banks that are not considered to be government authorities. In *CTL Plate* and *S-Beams*, we found that, although changes had been made to the legislation regulating government-controlled specialized banks, such as the KDB, in the aftermath of the financial crisis, the respondents did not provide any evidence to demonstrate that the KDB has discontinued its practice of selectively making loans to the steel sector. Record evidence from those investigations indicate that the KDB and other specialized banks, such as the Industrial Bank of Korea, continue to be government authorities within the meaning of section 771(5)(B) of the Act. Hence, the financial contributions they made fall within section 771(5)(B)(i) of the Act. As for the commercial banks in which the GOK owned a majority or minority stake, the Department determined that these entities are not GOK authorities within the meaning of section 771(5)(B) of the Act. These banks act as commercial banks, and temporary GOK ownership of the banks due to the financial crisis is not, by itself, indicative that these banks are GOK authorities.

Direction of Credit Specific to the Pulp and Paper Sector

A significant amount of evidence has been placed on the record by petitioner to support its allegation. In addition to the evidence contained in the petition filed on October 31, 2006, the Department sought and received additional information on direction of credit from petitioner. **See** Submissions on behalf of NewPage on November 6 and 9, 2006. Petitioner alleges that ''directed lending to the Korean coated free sheet producers was specific because the GOK targeted the Korean paper industry as an industry selected for export growth and competitiveness * * * within the meaning of section 771(5A)(D)(iii)(I–IV).'' *See* Petition, at 43. Under section 771 (5A)(D)(iii)(I–IV) of the Act, a subsidy is de facto specific where (1) the actual recipients, either on an enterprise or industry basis are limited in number; (2) a recipient, on an enterprise or industry level, is a predominant user of the subsidy; (3) a recipient, on an enterprise of industry level, receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority provides the subsidy involves discretion which indicates that the recipient industry or enterprise is favored over others.

Petitioner cites to various news articles, GOK/KDB publications and KDB's status as a government lender to support its direction of credit allegation. *See* Petition, at 39–43. In *S-Beams*, the Department found that direction of credit was specific to the steel industry because the Korea steel sector received a disproportionate amount of directed credit. *See Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000), and accompanying Issues and Decision Memorandum, at ''Direction of Credit,'' section (POI 1998). In the *DRAMS Investigation*, the Department found direction of credit specific to Hynix and the Hyundai Group companies from 1999 through mid-2002. See DRAMS Investigation Memorandum, at ''Comment 2: Specificity Relating to Direction of Credit.'' In the first administrative review of DRAMS, the Department continued to find direction of credit specific to Hynix through 2003. *See* DRAMS First Review Memorandum. In the second administrative review of DRAMS, based on record facts particular to Hynix, the Department found that the GOK no longer directed credit to Hynix in 2004. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 72 FR 7015 (February 14, 2007), and accompanying Issues and Decision Memorandum at ''GOK Entrustment or Direction of Debt Reductions,'' section.

In this investigation, the Department is analyzing whether the GOK directed credit to the paper sector during the relevant time periods as it had done earlier to the steel and semiconductor sectors. We preliminarily determine that there was no GOK direction of credit specific to the paper industry that would provide a benefit during the POI. As noted above, the Department has found that the GOK exerted broad control of lending in Korea through 1998 and that this resulted in credit being directed specifically to such ''strategic'' sectors as the steel and semiconductor industries. However, although the paper industry was an important part of the Korean economy,

[18] See DRAMS Investigation Memorandum (through 1998).

[19] *See* DRAMS Investigation Memorandum, at 14–15 (through June 30, 2002); and Issues and Decision Memorandum for the *Final Results in the First Administrative Review of the Countervailing Duty Order on Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 71 FR 14174 (March 21, 2006) (''DRAMS First Review Memorandum'') (through 2003).

we find that the record evidence in the instant investigation is not sufficient to support a conclusion that the paper industry was likewise a ''strategic'' sector to which, consequently, credit was specifically directed by the GOK through its wide control of lending.

For the period subsequent to 1998, we examined the paper sector using the two-part test articulated in the *DRAMS Investigation, i.e.*, whether the GOK had a governmental policy favoring that sector and, whether record evidence establishes a pattern of practices by the GOK to act upon that policy to entrust or direct creditors to provide financial contributions to the paper sector. In evaluating the record in this investigation, we do not find that the evidence supports a finding that a GOK policy existed favoring the paper sector during the relevant period. There are no government statements stating that the paper sector is a critical or strategic economic sector of the Korean economy. There are also no statements by Korean officials claiming any paper company was ''too big to fail.'' Nor do we find sufficient evidence to support a finding that the GOK acted on any policy to entrust or direct the paper sector's creditors to make financial contributions to the paper sector. Consequently, we preliminarily determine that there was no government entrustment or direction of private creditors, and no direction of credit, specific to the paper sector that is comparable to the earlier direction of credit to the steel and semiconductor sectors.

B. Restructuring of Shinho Paper

As outlined in the *Initiation Notice* and the Initiation Checklist, the Department is examining the various forms of financial assistance provided to Shinho Paper through restructuring of Shinho Paper from 1998 to 2005. This financial assistance included debt-to-equity swaps, conversions of convertible bonds to equity, the extension of debt maturities, reductions of interest obligations, and new loans. Because Shinho Paper received assistance directly from GOK-owned public lending institutions, we preliminarily determine that these institutions provided Shinho Paper financial contributions.

EN Paper reported that its predecessor company, Shinho Paper, was a member of the Shinho Group, a conglomerate of 28 companies that were engaged in the manufacture of paper, steel pipes, petrochemicals, electronics, and machinery, as well as financing, transportation, and construction. In late 1997, during Korea's financial crisis, the Shinho Group began experiencing financial difficulties and applied for emergency loans from its creditor banks. On February 23, 1998, the Shinho Group and Korea First Bank (''KFB''), the main creditor bank of the Shinho Group, entered into an agreement, undertaking to reduce the Shinho's Group's debt-to-equity ratios by mergers or disposition/liquidation of member companies or other assets. On July 9, 1998, the Shinho Group applied to the KFB for a ''corporate workout'' program pursuant to the Corporate Restructuring Agreement (''CRA''). On July 14, 1998, a Creditors Council was formed for the purpose of overseeing the restructuring of the Shinho Group. On July 16, 1998, the Creditors Council held its first meeting and composed three Creditors Councils—one for Shinho Paper, one for Shinho Petrochemical Co., Ltd., and one for Dongyang Steel Pipe Ltd. On July 17, 1998, Samil Accounting Corporation and PricewaterhouseCoopers were appointed to conduct separate ''workout'' plans for these three core companies.

On September 17, 1998, Samil Accounting Corporation and PricewaterhouseCoopers submitted the ''workout'' plan for Shinho Paper. On October 24, 1998, the Creditors Council approved a restructuring plan that was based on that evaluation. On December 11, 1998, the KFB and the Shinho Group entered into an Agreement of Corporate Restructuring to implement the plan.

The KFB proposed a second restructuring plan for Shinho Paper to the Creditors Council on November 2, 1999. Santong Accounting Corporation was hired to conduct an evaluation of the company, and on January 14, 2000, a second ''workout'' plan was submitted to the Creditors Council. After some revisions, the committee approved the plan on March 4, 2000.

On September 15, 2001, Korea's Corporate Restructuring Promotion Act came into effect. Younghwa Accounting Corporation was then appointed to evaluate the financial condition of Shinho Paper and the progress it was making under its ''workout'' plan. On January 3, 2002, the accounting firm submitted its review to the Creditors Council. The Creditors Council approved the plan in early 2002.

EN Paper reported that, as of December 21, 2002, Shinho Paper faced de-listing from the Korea Stock Exchange because its stock price had fallen below the required minimum level. As a result, on June 11, 2003, Shinho Paper conducted a reverse stock conversion to reduce the number of shares and increase the price per remaining share. On November 3, 2002, the Creditors Council decided to sell the shares of Shinho Paper and appointed KDB-Lone Star as the financial advisor to evaluate the value of the company and conduct the sale.

In April 2004, Aram Financial Service Inc. was selected as the winner of the bidding process, and on November 15, 2004, a Stock Purchase Agreement for Shinho Paper was signed. Thereafter, Shinho Paper secured a new large syndicated loan and a new credit ceiling for letters of credit. EN Paper reported that the funds from this new syndicated loan were used to repay outstanding loans in full, and that, with the takeover by Aram Financial Service Inc. and the repayment of its outstanding loans, Shinho Paper graduated from the restructuring plan in December 2004.

Financial Contribution

As discussed above, we preliminarily determine there was not direction of credit to the paper industry during these periods. *See* the Direction of Credit to the Pulp and Paper Industry section, above. We also preliminarily determine that information on the record does not support a finding that the GOK entrusted or directed other creditor banks to participate in financial restructuring plans, which involved providing credit and other financial assistance to Shinho Paper, in order to assist Shinho Paper through its financial difficulties. We reach this preliminary determination on the basis of a two-part test.

First, we examined whether the GOK had in place a governmental policy to support Shinho Paper's financial restructuring and to prevent the company's failure. Among the evidence cited by petitioners was an article from the Korea Herald indicating that the GOK promoted mergers and acquisitions in seven ''overcrowded'' industries, including petrochemicals and steel. *See* Petitioner's submission of pre-preliminary comments, at 91 (March 8, 2007) (''Pre-Prelim Comments), and Petitioner's submission at Exhibit B–12 (November 6, 2007). Although these two industries are two of the ''core businesses'' of the Shinho Group for which ''workout'' plans were undertaken, there is no indication from the articles provided by petitioner that restructuring the Shinho Group or Shinho Paper was a policy goal. Additionally, petitioners argued that KFB, one of Shinho's lead creditors, was instructed to keep Shinho Bank from liquidation. Although the article provided by petitioners in support of this argument states that Shinho Paper is in the process of normalization through debt restructuring, it does not

provide evidence of the entrustment or direction. *See* Pre-Prelim Comments, at 91 and Exhibit 25. At this point in the investigation, the record does not support a finding that the GOK had a governmental policy in place with respect to either the Shinho Group or Shinho Paper.

We next examined whether the GOK engaged in a pattern of practices to entrust or direct Shinho Paper's creditors to provide financial contributions to Shinho Paper. In undertaking this examination, as we did in *DRAMs Investigation*, we considered whether there was evidence that the GOK influenced financial dealings through entrustment or direction of Shinho Paper's creditors. One of the many factors we considered in making this decision in *DRAMs Investigation* was whether the Creditors Council established to oversee and administer the bailouts was dominated by GOK-owned or -controlled lending institutions. We preliminarily do not find the same dominance here that we did in *DRAMs Investigation*. Therefore, we preliminarily determine that the record does not support a conclusion that the Creditors Councils established to oversee and administer the bailouts of Shinho Paper were dominated by GOK-owned or -controlled lending institutions.

Additionally, we preliminarily determine that the GOK did not engage in the various types of actions that we found indicative of entrustment or direction in *DRAMs Investigation.* For example, there is insufficient evidence that GOK officials attended meetings of Shinho's creditors, that the GOK coerced or threatened Shinho's creditors to participate in the restructurings, or that the GOK used Shinho's lead bank to effectuate a policy of bailing out Shinho, among other things. *See DRAMS Investigation Memorandum*, at Comment 1. Thus, the evidence on the record is insufficient to demonstrate the existence of a GOK policy or pattern of practices to entrust or direct creditors to provide financial assistance to Shinho Paper.

Benefit

a. Debt-to-Equity Swaps and Conversion of Convertible Bonds to Equity

Under the first Shinho Paper ''workout'' plan, the Creditors Council authorized for Shinho Paper debt-to-equity swaps and conversion of debt to convertible bonds. Under the second ''workout'' plan, the Creditors Council authorized for Shinho Paper additional debt-to-equity swaps and approved conversion of convertible bonds to equity. Under the third ''workout'' plan, the Creditors Council again authorized debt-for-equity swaps. EN Paper reported the total amount of debt, convertible bonds, and unpaid interest bonds that was swapped for equity.

To determine whether these conversions of debt and convertible bonds to equity conferred a benefit on Shinho Paper, we followed the methodology described in 19 CFR 351.507. According to 19 CFR 351.507, the first step in determining whether an equity investment decision is inconsistent with the usual investment practice of private investors is examining whether, at the time of the infusion, there was a market price paid by private investors for similar newly issued equity. Because private banks that participated in the restructuring converted debt to equity at the same time and terms as the GOK lending institutions, we preliminarily determine that there is evidence on the record that the price paid by the GOK lending institutions was a market price paid by private investors. *See* 19 CFR 351.507(a)(2). Consequently, we preliminary determine that the debt-to-equity swaps by the GOK lending institutions were conducted consistent with usual investment practice of private investors and thus do not provide a benefit to Shinho Paper. *See* 19 CFR 351.507(a).

We note that, as outlined in the Initiation Checklist, petitioner alleged Shinho Paper received additional debt forgiveness from reductions or eliminations of interest obligations and debt writeoffs which respondents explain are accounting adjustments pertaining to the numerous debt-for-equity swaps and conversions of convertible bonds to equity. As noted above, EN Paper reported that, in additional to unpaid principal, unpaid interest was also converted to equity. However, EN Paper also reported that the total amount of debt, convertible bonds, and unpaid interest that was converted to equity was less than the total amount approved for conversion by the Creditors Council. At verification, we will examine whether any unpaid interest was forgiven as a result of Shinho Paper's restructuring process and whether EN Paper provided a complete reporting of its debt and bond conversions. Accordingly, it is unnecessary to reach findings with regard to financial contribution or specificity.

b. Extension of Debt Maturities

As tenets of the ''workout'' plans, the Creditors Council approved reductions in interest rates for Shinho Paper's outstanding loans and bonds, and evidence on the record indicates that Shinho Paper also received such extensions of debt maturities. However, most of Shinho Paper's debt and bond obligations was either forgiven through the equity conversions described above or paid off prior to the POI with funds from the syndicated loan that Shinho Paper received in late 2004.

EN Paper reported GOK lending institution long-term capital leases outstanding during the POI which had been restructured as a result of decrees by the Creditors Council. For these long-term leases, we followed the methodology described at 19 CFR 351.505 to determine whether the amount a firm pays on a government-provided loan is less than the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market. As indicated in the Initiation Checklist, petitioners alleged that Shinho was uncreditworthy from 1998 to 2005. To determine whether use of an uncreditworthy benchmark interest rate was necessary, we examined whether there was evidence on the record indicating that Shinho Paper could not have obtained comparable long-term loans from conventional commercial sources. We preliminarily determine that, because the terms and rate structure decreed by the Creditors Council applied to long-term capital leases held by all of the lenders that participated in the restructuring, including lenders that are not GOK lending institutions, Shinho Paper was creditworthy during the year that the new loan structure was applied. *See* 19 CFR 351.505(a)(4)(ii).

The record evidence indicates that, upon the decree of the Creditors Council, both the government and commercial creditors received the same interest rate and structure for their long-term capital leases. Further, the record evidence does not indicate that the lending provided by the commercial creditors was accompanied by a government guarantee. Therefore, pursuant to 9 CFR 351.505(a), we preliminarily determine that the GOK lending institution capital leases outstanding during the POI do not provide a benefit to Shinho Paper. Accordingly, it is unnecessary to reach findings with regard to financial contribution or specificity.

c. New Loans

For the large syndicated loan received by Shinho Paper during 2004, which was used to repay Shinho's creditors, including GOK lending institutions, we followed the methodology described at

19 CFR 351.505 to determine whether the amount Shinho paid on the government-provided loans was less than the amount Shinho would otherwise have to pay on a comparable commercial loan that Shinho could actually obtain on the market. The record evidence indicates that all lenders, *i.e.*, both the government and commercial creditors, participated in the syndicated loan on the same terms, such as the interest rate and structure of the loan. Further, the record evidence does not indicate that the lending provided by the commercial creditors was accompanied by a government guarantee. Consequently, we preliminarily find that the participation of commercial creditors in the syndicated loan provides sufficient indication that Shinho received the loan on commercial terms. Therefore, we preliminarily determine that the contributions provided by the GOK lending institutions in the syndicated loan do not provide a benefit to Shinho Paper. Accordingly, it is unnecessary to reach findings with regard to financial contribution or specificity.

IV. Programs for Which More Information Is Required

A. Industrial Base Fund [20]

The Industrial Base Fund (''IBF''), established in 1986,[21] provides policy loans pursuant to the: (1) Promotion of Small and Medium Enterprises and Encouragement of Purchase of their Products Act, (2) Industrial Development Act, and (3) Guidelines for IBF Operation. The purpose of the IBF is to contribute to strengthening the competitiveness and productivity of national industries through the development of a strong industrial base in Korea. IBF funding is provided to companies that expand their facilities and make investments in projects as provided in the IBF Plan. MOCIE manages and supervises the operation of the IBF.

The IBF consists of eight separate parts,[22] one of which, the Promotion of Industrial Parts and Material, provided loans to Namhan. No other respondent received loans from the IBF. The GOK reported that the goal of the Promotion of Industrial Parts and Material is to provide long-term loans to companies in order to support the enhancement of the capacity of the facility, productivity, factory automation, and product development. Namhan received loans for the purchase of equipment applicable to both subject and non-subject merchandise.

The GOK reported that, to apply for a loan, a company must submit a business plan application, which requests information on the company and the investment project. The GOK provided a copy of a blank application with some English translation. *See* GOK questionnaire response at Exhibit I–4 (January 26, 2007). Petitioner submitted to the Department their translation of the ''effects of investment'' section of the business plan application. *See* Pre-Prelim Comments, at Exhibit 128. Petitioner states that the complete translation of the ''effects of investment'' section of the application includes a request for information on the project's ''export effects'' and ''saleable effect of import substitution.'' *See id.* at page 81 and Exhibit 128. Petitioner, therefore, argues that the IBF program is an export subsidy under section 771(5A)(B) of the Act. We note that the IBF program could also be considered an import substitution subsidy under section 771(5A)(C) of the Act.

The Department was able to verify independently that the respondent did not provide a complete translation of this section of the application and that petitioner's translation is accurate with respect to the request for information on exports and import substitution in the ''effects of investment'' section of the application. *See* Memorandum to the File Regarding the IBF (March 29, 2007).[23]

While the application form may request such information, we find that the record is not adequately developed with information on how the GOK uses that information in its decision-making and whether the GOK, either in whole or in part, approves IBF loans based on a project's ''export effects'' and ''saleable effect of import substitution.'' Therefore, we will be seeking more information about the IBF program from the GOK and Namhan. However, we note that the burden is on the respondents to demonstrate that approval to receive benefits was made solely under non-export-related criteria. Therefore, the application materials themselves may be dispositive, although we will seek further information before making such a determination. *See Preamble*, 63 FR 65381.

B. Short-Term Financing Under the Aggregate Credit Ceiling Loan

As discussed in the ''Background'' section, petitioner, in its pre-preliminary comments, claims that respondents have received a significant amount of short-term lending, which was provided by the GOK for financing the importation of raw materials as well as the export of finished goods. Petitioner further claims that the BOK administers the trade financing under the Aggregate Credit Ceiling Loan (''ACCL'') program. Because the Department did not initiate on the ACCL program, there is limited information on the record of this investigation concerning respondents' use of the program and short-term loans outstanding during the POI. Therefore, we find that additional information regarding the respondents' short-term lending is required to fully analyzed the GOK's provision of these loans. Therefore, we will issue soon after this preliminary determination a supplemental questionnaire to respondent companies and the GOK concerning the ACCL and short-term lending during the POI.

V. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the producers/exporters of CFS paper did not apply for or receive benefits during the POI under the programs listed below:

A. Export Industry Facility Loans [24]
B. Tax Programs under Restriction of Special Taxation Act (''RSTA'')
  1. RSTA Article 71.
  2. RSTA Article 60.
  3. RSTA Article 63–2.

For purposes of this preliminary determination, we have relied on the GOK and respondents' responses to preliminarily determine non-use of these programs. During the course of verification, the Department will examine whether these programs were,

[20] In its allegation concerning the ''Funding for Technology Development and Recycling Program,'' petitioner alleged that the GOK provides support to pulp and paper producers through the Industrial Base Fund. *See* Initiation Checklist at ''Funding for Technology Development and Recycling Program.''

[21] The IBF was originally named the ''Manufacturing Industry Development Fund.'' The name of the fund was changed in 1999, because the Manufacturing Industry Development Act was amended to become the Industrial Development Act.

[22] IBF program consists of the following eight parts: (1) Promotion of Industrial Parts and Material; (2) Rationalization of Logistics; (3) Establishment of Environment-Friendly Industrial Base; (4) Development of Intellectual Industry; (5) Activation of Industrial Complex; (6) Development of Regional Industry; (7) Cooperation among Large, Medium, and Small Enterprises; and (8) Establishment of Information System.

[23] A copy of this memorandum is available in CRU.

[24] In the *Final Affirmation Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, the Department found that the GOk terminated the Export Industry Facility Loan program in 1994 (64 FR 30636,, 30662 (June 8, 1999), at Comment 19). However, this long-term loan program can provide residual benefits.

in fact, used by respondents during the POI.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for EN Paper, Hansol, Kyesung, and Moorim. The ''All Others'' rate is Hansol's CVD subsidy rate, because all other company rates are below *de minimis*. Pursuant to 705(c)(5)(A)(i) of the Act, we do not include *de minimis* subsidy rates in the ''All Others'' calculation. The rates are summarized below:

Producer/Exporter	Subsidy rate
EN Paper	0.08 *ad valorem.*
Hansol	1.76 *ad valorem.*
Kyesung (and its affiliate Namhan).	0.59 *ad valorem.*
Moorim (and its affiliate Moorim SP).	0.04 *ad valorem.*
All Others Rate	1.76 *ad valorem.*

In accordance with section 703(d)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of the subject merchandise from Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Notification of Parties

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, interested parties may submit case briefs within 50 days of the date of publication of the preliminary determination in accordance with 19 CFR 351.309(c)(i). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. *See* 19 CFR 351.309(d).

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: March 29, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–6500 Filed 4–6–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee (ETAC); Notice of Open Meeting; Addition to the Agenda

As stated in the notice published in the **Federal Register** on March 9, 2007 (72 FR 10709), a meeting of the Exporters' Textile Advisory Committee will be held on Thursday, April 12, 2007 from 1:00-4:00 at the Ronald Reagan Building, Trade Information Center, 1300 Pennsylvania Avenue, NW, Washington, DC, 20004, Training Room A.

Addition to the Agenda

There has been a change to the agenda. Mr. Dan Tannebaum, OFAC, U.S. Treasury will be briefing the ETAC Committee on Textile and Apparel Exporter Responsibilities in Complying with the Office of Foreign Asset Control (OFAC) Requirements Relating to Specially Designated Nationals: What Exporters Need to Know About their Customers and Suppliers.

The ETAC is a national advisory committee that advises Department of Commerce officials on the identification of export barriers, and on market expansion activities. With the elimination of textile quotas under the WTO agreement on textiles and clothing, the Administration is committed to encouraging U.S. textile and apparel firms to export and remain competitive in the global market.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Rachel Alarid at (202) 482-5154.

Dated: April 4, 2007.

R. Matthew Priest,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E7–6637 Filed 4–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Transformation Advisory Group Meeting of the U.S. Joint Forces Command

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The Transformation Advisory Group (TAG) will meet in closed session on 6–8 June 2007. The establishment date was already published in the **Federal Register** on 28 May 2003, in accordance with 41 CFR 102–3.150.

The mission of the TAG is to provide timely advice on scientific, technical and policy-related issues to the Commander, U.S. Joint Forces Command as he develops and executes the DOD transformation strategy. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated 17 April 1995, as amended March 2003.

Access to the information must be strictly limited to personnel having the requisite clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the TAG meetings could cause serious damage to our national defense. The meeting will be closed for security reasons, pursuant to 5 U.S.C. 552, Exemption(b)1, Protection of National Security, and Exemption(b)3 regarding information protected under the Homeland Security Act of 2002.

In accordance with Section 10(d) of the Federal Advisory Committee Act and 41 CFR 102–3.155 this meeting will be closed.

DATES: 6–8 June 2007.

Location: United States Joint Forces Command, 1562 Mitscher Avenue Suite 200, Norfolk, VA 23551–2488.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy R. Van Dame, Designated Federal Officer, (757) 836–5365.

SUPPLEMENTARY INFORMATION: Mr. Floyd March, Joint Staff, (703) 697–0610.

Dated: April 3, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–1729 Filed 4–6–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of Federal Advisory Committee; Sunshine Act Meeting

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Board of Regents of the Uniformed Services University of the Health Sciences (hereafter referred to as the Board of Regents).

The Board of Regents, pursuant to 10 U.S.C. 2113, is a non-discretionary Federal advisory committee established to assist the Secretary of Defense in an advisory capacity in carrying out the Secretary's responsibility to conduct the business of the Uniformed Services University of the Health Sciences.

While 10 U.S.C. 2113(a) does not provide precise objectives and scope for the Board of Regents' assistance to the Secretary of Defense, past practice has been for the Board of Regents to assist in the areas of advice on academic and administrative matters that are critical to the full accreditation and successful operation of the University. Specific DoD expectations are outlined in DoD Instruction 5105.45 and in bylaws and policies developed by the Board of Regents.

Pursuant to 10 U.S.C. 2113(a), the Board of Regents is composed of: (a) Nine persons in the fields of health and health education who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate; (b) the Secretary of Defense, or his designee, who shall be an ex officio member; (c) the surgeons general of the uniformed services, who shall be ex officio members; and (d) the Dean of the University, who shall be a nonvoting ex officio member.

The terms of the office for those members appointed by the President pursuant to 10 U.S.C. 2113(b) shall be six years except that: (a) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; (b) the terms of office of the members first taking office shall expire, as designated by the President at the time of the appointment; and (c) any member whose term of office has expired shall continue to serve until his successor is appointed.

The President shall designate one appointed member of the Board of Regents to serve as Chair. Members of the Board of Regents who are not full-time or permanent part-time Federal employees shall serve as Special Government Employees under the authority of 5 U.S.C. 3109, and, pursuant to 10 U.S.C. 2113(e), shall receive compensation of no more than $100 per day, as determined by the Secretary of Defense, in addition to travel expenses and per diem while serving away from their place of residence.

The Board of Regents shall meet at the call of the Designated Federal Officer, in consultation with the Chair and the President of the University. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or Alternate Designated Federal Officer shall attend all Board of Regents' meetings and subcommittee meetings.

The Board of Regents is authorized to establish subcommittees and workgroups, as necessary and consistent with its mission. Board of Regents subcommittees and workgroups shall operate under the provisions of 5 U.S.C., Appendix, as amended, the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and other appropriate Federal regulations.

Board of Regents subcommittees and workgroups shall not work independently of the Board of Regents and shall report all their recommendations and advice to the Board of Regents for full deliberation and discussion. Board of Regents subcommittees and workgroups have no authority to make decisions on behalf of the Board of Regents and may not report directly to the Department of Defense or any Federal officers or employees who are not Board of regents members.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Regents about its mission and functions. Written statements should be submitted to the advisory committee's Designated Federal Officer for consideration by the membership of the Board of Regents. The advisory committee's Designated Federal Officer contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

FOR FURTHER INFORMATION CONTACT: Frank Wilson, DoD Committee Management Officer, 703–601–2554.

Dated: April 4, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1753 Filed 4–5–07; 11:51 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice; correction.

SUMMARY: The notice of an open meeting scheduled for April 25, 2007 published in the **Federal Register** on March 13, 2007 (72 FR 11337) has a new meeting location. The meeting will now be held in Room B318, Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Shaun T. Wurzbach, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–1740 Filed 4–6–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. provisional patent application filed January 15, 2007 entitled ''Identification of Small Molecule Inhibitors of Filovirus Replication,'' to Functional Genetics, with its principal place of business at 708 Quince Orchard Rd., Gaithersburg, MD 20878.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**.)

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–1743 Filed 4–6–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement/Report for the Sun Valley Environmental Restoration Project, Los Angeles County, CA

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DOD

ACTION: Notice of intent.

SUMMARY: The U.S. Corps of Engineers (Corps) intends to prepare an Environmental Impact Statement/ Environmental impact Report (EIS/EIR) for the Sun Valley Environmental Restoration Plan. The study area is located in the City of Los Angeles, in the San Fernando Valley portion of Los Angeles County, CA. The study area is comprised of 4.4 square miles of urban/ industrial areas.

The proposed Study will be conducted under the Authority for the Los Angeles County Drainage area (LACDA), Flood Control Project, Los Angeles County, CA. Which was initially authorized by Senate Resolution, approved June 25, 1969, reading in part:

''Resolved by the Committee on Public Works of the United States Senate, that the Board of Engineers for Rivers and Harbors, created under Section 3 of the Rivers and Harbors Act, approved June 13, 1902, be, and is hereby requested to review the report to the Chief of Engineers on the Los Angeles and San Gabriel Rivers and Ballona Creek, California, Published a House Document Numbered 838, Seventy-sixth Congress, and other pertinent reports, with a view to determining whether any modifications contained therein are advisable at the present time, in the resources in the Los Angeles County Drainage Area.''

DATES: Submit comments on or before May 9, 2007.

ADDRESSES: Mail comments to Mr. Ronald Lockmann, U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, Army Corps of Engineers, Los Angeles District, CESPL–PD–RN, 915 Wilshire Blvd., Los Angeles, CA 90017.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Lockmann, Phone (213) 452–3847; Fax (213) 452–4204 or E-mail: *RonaldF.Lockmann@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This NOI is published to announce the Corps' intent to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR0 for the proposed environmental restoration project on a sub basin of the LACDA system and vicinity, City of Los Angeles, Los Angeles County, CA. This plan attempts to reclaim sustainable native ecosystems on this site. The Tujunga Wash Reconnaissance Study (of which the Sun Valley Watershed was a part), dated September 2003, concluded ''although a detailed feasibility-level study of the complexity of the watershed would be an important first step, there do exist * * * opportunities for future environmental restoration studies. Essentially, conceptual alternatives would consist of a number of potential combinations of restoration sites operating in conjunction with one another * * * Total land area of alternative sites combined would be several hundred acres.''

Sites would likely include one or more of the three major gravel extraction pits within the watershed, including the Sheldon Pit, the Boulevard Pit, and the Strathern Pit. The primary purpose, working in conjunction with the Local sponsor, Los Angeles County Department of Public Works, would be to facilitate ecosystem restoration through re-establishment of native riparian, upland vegetation, creating constructed wetlands where feasible. Implementation of the proposed project would increase habitat quality of several degraded sites, and provide opportunity for wildlife species use and promote recreational opportunity. In addition, the proposed project includes water conservation, construction infiltration basins, and storm drains.

Scoping Process. to initiate preparation of the EIS/EIR, the Corps will conduct a public scoping meeting. The public meeting would be conducted during the month of April 2007. Date, time and location of the public scoping meeting will be announced by means of letter, public announcements, news release or announced in the local news paper in the Sun Valley area. This scoping meeting will be held to solicit public input on significant environmental issues associated with restoring and expanding the native habitat and provide technical water conservation and recreational opportunities.

The EIS/EIR will address potential impacts associated with the proposed action. Resource categories that will be analyzed are: land use, physical environment, geology, biological, agricultural, air quality, water quality, groundwater, recreational usage, esthetics, cultural, transportation/ communications, hazardous waste material, socioeconomic and safety. the public, as well as Federal, State and local agencies are encouraged to participate in the scoping process by attending the scoping meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis.

Individuals and agencies may offer information pertinent or data relevant to the proposed study and provide comments by mailing the information within thirty (30) days to Mr. Ronald Lockmann. Requests to be placed on the mailing list for announcements and the draft EIS also should be sent to Mr. Lockmann.

Brenda S. Bowen

Army Federal Register Liaison Officer.

[FR Doc. 07–1744 Filed 4–6–07; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Coyote Dam Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with Section 204 of the 1950 Flood Control Act (Pub. L. 516, 81st Congress, 2nd Session), as recommended by the Chief of Engineers in House Document Number 585, 81st Congress, 2nd Session, the Coyote Dam (also known as the ''Lake Mendocino Project''), Ukiah, CA, is authorized to be raised 36 feet to a total storage capacity of 199,000 acre-feet (ac-ft) when the need for additional water supply arises. Since construction of Coyote Dam, increased development of Mendocino County and the accelerated rate of sedimentation in Lake Mendocino have resulted in the need for additional water supply. The additional storage capacity achieved by raising the dam would address future demands on water supply and also increase flood damage reduction functions. This is a notice of intent to prepare a joint environmental Impact Statement/Environmental Impact Report (EIS/EIR), and to consider all reasonable alternatives, evaluate potential impacts of the proposed action, and identify appropriate mitigation measures. The U.S. Army Corps of Engineers (Corps) is the lead agency for this project under the National Environmental Policy Act (NEPA), and the Mendocino County Inland Water and Power Commission (IWPC) is the lead agency and local sponsor under the California environmental quality Act (CEQA).

DATES: A public scoping meeting will be held on April 26, 2007 from 7 p.m. to 9 p.m.

ADDRESSES: The scoping meeting will be held at the Ukiah Valley Conference Center, Cabernet Room 1, 200 South School Street, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action can be answered by Karen Mason at (415) 503–6851, *Karen.P.Mason@usace.army.mil;* Susan Ma at (415) 503–6838, *Susan.Ma@usace.army.mil;* or by Chris Eng at (415) 503–6868, *Christopher.K.Eng@usace.army.mil,* U.S. Army Corps of Engineers, San Francisco District, 1455 Market Street, 15th Floor, San Francisco, CA 94103. Questions and comments can also be faxed to (415) 503–6692.

SUPPLEMENTARY INFORMATION: Coyote Dam is located on the East Fork of the Russian River, Ukiah, CA, and is part of a system that provides water to Mendocino, Sonoma, and Marin counties. The Congressional authorization for construction of Coyote Dam included provisions for increase in water storage capacity by raising the dam an additional 36 feet, thereby increasing the total storage capacity from 122,500 ac-ft to 199,000 ac-ft. The dam was designed to be built in two stages: the initial stage was completed in 1959, and the second stage would be built when water storage capacity became inadequate. The growth of Mendocino County has contributed to an expanded need for water in order to meet future demands. In addition, the accelerated rate of sedimentation in Lake Mendocino further impacts the storage capacity of the dam by encroaching on the water supply pool. The goal of the project is to provide increased water storage capacity and increased flood damage reduction benefits to the area. the local sponsor for the project is the Mendocino County Inland Water and Power Commission (IWPC), a Joint Powers Authority representing the County of Mendocino, the City of Ukiah, Mendocino County Russian River Flood Control and Water Conservation Improvement District, Redwood Valley County Water District, and the Potter Valley Irrigation District.

1. *Proposed Action*. Based on the need for additional water supply and flood damage reduction benefits, it is determined that increased water storage capacity at Coyote Dam should be evaluated.

2. *Project Alternatives*. The following are some of the alternatives that will be evaluated in the EIS/EIR:

a. *Raise the dam*. Following the original plans of the authorized project, the dam would be raised 36 feet to an elevation of 820 feet, increasing the storage capacity from 122,400 ac-ft to 199,000 ac-ft. Some provisions were made on various features of the existing dam to accommodate the future height increase.

b. *Increase seasonal water supply storage elevation*. Utilizing the existing dam and reservoir area, the water surface elevation of the flood control pool would be raised from 748.0 to 761.8 for seasonal use between April 1 and October 15. This would provide an additional 25,700 ac-ft of storage. Although the Corps has authority over the flood control pool, the Mendocino County IWPC must demonstrate that the extra storage capacity is needed for current demands and would not result in an excess storage of water, which would unnecessarily flood recreational areas and access roads situated at elevation 750.

c. *Dredging*. Of the original 122,400 ac-ft storage capacity, 4,400 ac-ft was allocated for sedimentation, but the capacity of Lake Mendocino has since decreased to 116,470 ac-ft. The rate of sedimentation is higher than the estimate provided by the original sediment study. This alternative would increase storage capacity by dredging sediment from the reservoir. Dredging is not expected to affect current reservoir operations.

3. *Scoping Process*. The Corps is seeking participation of all interested federal, state, and local agencies, Native American groups, and other concerned private organizations or individuals through this public notice. The public scoping meeting will be held in Ukiah, CA (see **DATES**). Any changes to the date, time, or location will be published in the newspaper or provided by mail to those requesting information. The purpose of the meeting is to solicit comments and questions regarding the potential impacts, environmental issues, and alternatives associated with the proposed action. Public participation will help to define the scope of the environmental analysis in the EIS/EIR; identify other significant issues; provide other relevant information; and recommend mitigation measures. The public comment period closes on May 10, 2007.

4. *Availability of EIS*. The public will have an additional opportunity to comment on project alternatives once the draft EIS/EIR is released.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–1742 Filed 4–6–07; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of Western Wake Regional Wastewater Management Facilities, Regional Wastewater Pumping, Conveyance, Treatment, and Discharge Facilities To Serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as the Wake County Portion of Research Triangle Park (Service Area), NC

AGENCY: Department of the Army, U.S. Army Corps of the Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Division has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act, from Western Wake Partners to construct Western Wake Regional Wastewater Management Facilities. This project will be a regional wastewater pumping, conveyance, treatment, and discharge project to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as the Wake County portion of Research Triangle Park (service area), NC.

The project is being proposed by the Western Wake Partners to provide wastewater service for planned growth and development in the project service area and to comply with two regulatory mandates. One regulatory mandate has been issued by the North Carolina Environmental Management Commission (EMC), and the second regulatory mandate has been issued by the North Carolina Department of Environment and Natural Resources (NC DENR). In accordance with the two regulatory mandates, the proposed Project must be operational and discharging effluent to the Cape Fear River Basin by January 1, 2011.

DATES: A public scoping meeting for the DEIS will be held at 6 p.m. at the Town of Apex Town Hall, April 19, 2007. Written comments will be received until April 30, 2007.

ADDRESSES: Copies of comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. *ATTN:* File Number SAW–200520159–1, P.O. Box 1890, Wilmington, NC 28402–1890.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Henry Wicker, Regulatory Division, *telephone:* (910) 251–4930.

SUPPLEMENTARY INFORMATION: The proposed project consists of regional wastewater pumping, conveyance, treatment, and discharge facilities to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as the Wake County portion of Research Triangle Park (service area), NC. The purpose of the project is to provide wastewater service for planned growth and development in the project service area and to comply with two regulatory mandates. One regulatory mandate has been issued by the North Carolina Environmental Management Commission (EMC), and the second regulatory mandate has been issued by the North Carolina Department of Environment and Natural Resources (NC DENR). In accordance with the two regulatory mandates, the proposed Project must be operational and discharging effluent to the Cape January 1, 2011.

Regulatory Mandate No. 1—Interbasin Transfer: The Towns of Apex, Cary, and Morrisville, as well as Research Triangle Park (RTP) South, obtain their drinking water from Jordan Lake in the Cape Fear River Basis and discharge treated effluent to locations in the Neuse River Basin. Obtaining water from one basin and discharging it to another river basin is referred to as an interbasin transfer (IBT), which requires a permit from the EMC. In July 2001, the EMC granted the Towns of Apex, Cary, and Morrisville, as well as Wake County (on behalf of RTP South), an IBT certificate to withdraw water from the Cape Fear River Basin and discharge the water to the Neuse River Basin. However, as a condition of approval, the IBT certificate issued by the EMC requires the local governments to return reclaimed water to the Cape Fear River Basin by January 1, 2011. As a result, the local governments have initiated activities to plan, permit, design, and construct wastewater transmission, treatment, and disposal facilities in order to comply with the terms and conditions of the IBT certificate issued by the EMC. The facilities that will be described and evaluated in the environmental impact statement (DEIS) are needed to comply with the IBT certificate terms and conditions.

Regulatory Mandate No. 2—Nutrient Enrichment for Harris Lake: The Town of Holly Springs currently has a wastewater treatment plant (WWTP) that discharges to Utley Creek, which is a tributary to Harris Lake in the Cape Fear River Basin. Representatives from NCDENR have directed the Town of Holly Springs to remove the Town's wastewater discharge from Utley Creek due to nutrient enrichment issues in Utley Creek and downstream in Harris Lake. In addition, NCDENR has encouraged Holly Springs to participate with Apex, Cary and Morrisville on a regional wastewater management program that will allow Holly Springs to remove the Town's discharge from Utley Creek by January 1, 2011. Thus, Holly Springs is participating with Apex, Cary and Morrisville in the planning, permitting, design and construction of regional effluent disposal facilities in order to comply with the mandate issued by NCDENR to remove its discharge from Utley Creek. The regional effluent disposal facilities that will be described and evaluated in the DEIS are needed to comply with the NCDENR mandate.

The proposed project will need to be reviewed to address a number of issues which includes an alternative analyses, direct environmental impacts, secondary and cumulative environmental impacts, environmental justice concerns, endangered species, and potential project costs.

Alternative Analysis: The purpose of the alternative analyses is to present a discussion of the environmental impacts associated with a reasonable number of alternatives. The proposed Project and a reasonable number of alternatives will be evaluated and compared in the DEIS. The factors to be considered will be similar for each of the alternatives. Impacts are expected to differ primarily in the degree to which specific factors may be affected.

The alternative analysis will evaluate alternative wastewater management options. Presently eight wastewater management options have been identified to be evaluated in the DEIS. *These eight wastewater management alternatives include the following:*

(1) No Action;

(2) Regional System with Cape Fear River Discharge;

(3) Regional System with Jordan Lake Discharge;

(4) Independent Systems;

(5) Purchasing Capacity from Other Systems;

(6) Optimum Operation of Existing Facilities;

(7) Regional Land Application System;

(8) Water Reuse System.

Alternative Discharge Locations: Four alternative discharge locations have been identified to be evaluated in the DEIS. These four alternative discharge locations include the following:

(1) Cape Fear River below Buckhorn Dam;

(2) New Hope Arm of Jordan Lake (above Jordan Lake Dam and below US 64);

(3) Cape Fear River/Haw River above Buckhorn Dam;

(4) Harris Lake/Utley Creek.

Alternative Water Reclamation Facility Sites: Preliminary investigations identified 30 potential locations for the Water Reclamation Facility (WRF). The DEIS will analyze all 30 potential locations to identify the impacts and use the information to make an appropriate site selection.

Alternative Raw Wastewater Pumping and Conveyance; Alternative raw wastewater pump station sites and force main routes will be evaluated in the DEIS for the preferred WRF site and discharge location.

Alternative Effluent Pumping and Conveyance: The effluent pump station will be located at the WRF site; therefore, selection of an effluent pump station site is inherent in the WRF site selection process. Alternative effluent force main routes will be evaluated in the DEIS for the preferred WRF site and discharge location.

Alternative Outfall Configurations at Cape Fear River: The DEIS will include evaluation of two configuration for the outfall structure. The alternatives to be evaluated include (a) bank discharge structure, and (b) instream diffuser.

Direct Environmental Impacts: The DEIS will identify and discuss the direct impacts of the proposed Project and feasible alternatives on topography, floodplains, soils, land use, wetlands, prime farmlands, public lands, historic and archaeological resources, air quality, noise, water resources, forest resources, shellfish and fish, wildlife and natural vegetation, the introduction of toxic substances, shore erosion and accretion, energy needs, safety, food and fiber production, mineral needs, and property ownership. Geographic Information System (GIS) data and mapping will be used to evaluate direct environmental impacts of the proposed Project and alternatives.

Secondary and Cumulative Environmental Impacts: The Western Wake Partners have developed Secondary and Cumulative Impacts Master Mitigation Plans to address secondary and cumulative impacts that are expected to result from the Western Wake Regional Wastewater Management Facilities project as well as other infrastructure projects that will be implemented in the Partners' jurisdictions in the future. Additional secondary and cumulative impacts will be addressed in the DEIS as recommended by the United States Army Corps of Engineers (USACE). GIS data and mapping will be used to evaluate and quantify secondary and cumulative impacts of the proposed Project to stream and wetland resources.

Environmental Justice: In accordance with Executive Order 12898, the DEIS will include an evaluation of the proposed Project's impact on minority and low-income populations. US Census Bureau data and GIS mapping will be used to determine the existence of all minority and low-income populations in the Projects service area and in the affected area for the preferred WRF site.

Endangered Species: A biological assessment will be included as an appendix to the document for the preferred alternative in accordance with the Endangered Species Act.

Project Costs: Project costs will be evaluated based on a 20 year present-worth costs and Phase 1 capital costs. 20-year present-worth costs allow for a direct comparison of long-term cost-effectiveness, and Phase 1 capital costs allow for a direct comparison of short-term capital requirements which have an immediate impact on sewer rates, fees, and charges. Mitigation costs for direct impacts to streams and wetlands will be estimated based on the Ecosystem Enhancement Program's schedule of fees.

NEPA/SEPA Preparation and Permitting: Because the proposed Western Wake Regional Wastewater Management Facilities Project requires approvals from federal and state agencies under both the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA), a joint Federal and State Environmental Document will be prepared. The US Army Corps of Engineers will serve as the lead agency for the Federal process.

Based on the size and complexity of the proposed Project, the applicant has been encouraged by US Army Corps of Engineers and NCDENR staff to identify and address the environmental impacts of the proposed Project through the DEIS process. Within the DEIS, the applicant will conduct a thorough environmental review, including an evaluation of reasonable, feasible, and financially responsible alternatives. After review of the DEIS and final EIS, a Record of Decision (ROD) will be issued for the EIS document. The ROD will document the completion of the EIS and serve as a basis for further permitting decisions by federal and state agencies.

Scoping Process: A public scoping meeting (see **DATES**) will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the DEIS. Participation in the public meeting by federal, state, and local agencies and other interested organizations and persons is encouraged. The Corps will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife coordination Act. Additionally, the DEIS will assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act. The corps will work closely with the NC DENR to ensure the process complies with all State Environmental Policy Act (SEPA) requirements. It is the Corps and NCDENR's intentions to consolidate both NEPA and SEPA processes to eliminate duplications.

Availability of the DEIS: The DEIS is expected to be published and circulated sometime in early 2008, and a public hearing will be held after the publication of the DEIS.

Patrick E. Tilque,

LTC U.S. Army, Deputy District Commander.

[FR Doc. 07–1741 Filed 4–6–07; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 8, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each

proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 3, 2007.

Angela C. Arrington,

IC Clearance Official Regulatory Information Management Services Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: An Investigation of the Impact of a Traits-Based Writing Model on Student Achievement.

Frequency: Semi-Annually; three times per year.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 3,392.

Burden Hours: 7,072.

Abstract: This study is designed to test the effectiveness of an analytical trait-based model for teaching and assessing student writing, called 6+1 Trait(r) Writing, by examining its impact on the writing achievement of 5th graders. The model is designed to improve student writing through an integrated approach to teaching and assessing writing skills, and it incorporates ten instructional strategies to develop the specific traits of writing.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3299. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–6617 Filed 4–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 3, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of the Chief Information Officer

Type of Review: Extension.

Title: Education Resource Organizations Directory (EROD).

Frequency: On Occasion; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,088.

Burden Hours: 677.

Abstract: The Education Resource Organizations Directory (EROD) is an electronic directory of educational resource organizations and services available at the State, regional, and national level. The goal of this directory is to help individuals and organizations identify and contact organizational sources of information and assistance on a broad range of education-related topics. Users of the directory include diverse groups such as teachers, librarians, students, researchers, and parents.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3274. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–6618 Filed 4–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2006–WAV–0147]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Department of Energy (DOE) Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures to Mitsubishi Electric, and Modification of a 2004 Waiver Granted to Mitsubishi Electric From the Same DOE Test Procedures (Case No. CAC–012)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Today's notice publishes a Decision and Order (Case No. CAC–012) granting a Waiver to Mitsubishi Electric and Electronics USA, Inc. (''MEUS'') from the existing Department of Energy (DOE) residential and commercial package air conditioner and heat pump test procedures for specified R410A CITY MULTI products. MEUS shall be required to test and rate the R410A CITY MULTI VRFZ products according to the alternate test procedure set forth in this notice. DOE is also amending the waiver granted to MEUS for its R22 CITY MULTI products in August 2004 to explicitly prohibit MEUS from making energy efficiency representations regarding these products unless such representations are consistent with the alternate test procedure.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611, E-mail: *Michael.Raymond@ee.doe.gov;* or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; E-mail: *Francine.Pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Title 10, Code of Federal Regulations Parts 430.27(l) and 431.401(f)(4), notice is hereby given of the issuance of a Decision and Order granting MEUS a Waiver from the applicable Department of Energy residential and commercial package air conditioner and heat pump test procedures for its R410A CITY MULTI Variable Refrigerant Flow Zoning (''VRFZ'') products, subject to a condition requiring MEUS to test and rate its R410A CITY MULTI products pursuant to the alternate test procedure described in this notice. Today's decision requires that any representations concerning the energy efficiency of these products are made consistent with the provisions and restrictions in the alternate test procedure.

The waiver granted for MEUS's R22 CITY MULTI VRFZ products on August 27, 2004, is hereby amended to prohibit MEUS from making energy efficiency representations regarding its R22 CITY MULTI products unless such representations are made consistent with the provisions set forth in the alternate test procedure described in this notice.

Issued in Washington, DC, on April 2, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Mitsubishi Electric and Electronics USA, Inc. (''MEUS'') (Case No. CAC–012).

Background

Title III of the Energy Policy and Conservation Act (''EPCA'') sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part C of Title III (42 U.S.C. 6311–6317) provides for an energy efficiency program entitled ''Certain Industrial Equipment,'' which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today's notice involves residential products under Part B, and commercial equipment under Part C. Both parts specifically provide for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, both parts generally authorize the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3), 6314(a)(2))

The test procedure for residential central air conditioning and heat pump products is contained in 10 CFR Part 430, Subpart B, Appendix M. For commercial package air conditioning and heating equipment, EPCA provides that the test procedures shall be those generally accepted industry testing or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (''ARI'') or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) This section also provides for the Secretary of Energy to amend the test procedure for a product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B))

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 210/240–2003 for commercial package air conditioning and heating equipment with capacities <65,000 Btu/h and ARI Standard 340/360–2004 for commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. The[MR1] capacities of MEUS's CITY MULTI VRFZ products fall in the ranges covered by ARI Standard 340/360–2004 and the DOE test procedure for residential products referred to above.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products. These provisions are set forth in 10 CFR 430.27. The waiver provisions for commercial equipment are substantively identical to those for covered consumer products and are found at 10 CFR 431.401.

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy (''Assistant Secretary'') to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design

characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1), 10 CFR 431.401(a)(1).

The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27 (l), 10 CFR 431.401 (f)(4). Petitioners are to include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii), 10 CFR 431.401(b)(1)(iii). Waivers generally remain in effect until final test procedure amendments resolving the problem that is the subject of the waiver become effective.

The waiver process also allows the Assistant Secretary to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(a)(2), 10 CFR 431.401(a)(2). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h), 10 CFR 431.401(e)(4).

On November 7, 2005, MEUS filed an Application for Interim Waiver and Petition for Waiver from the test procedures applicable to the R410A models of its CITY MULTI VRFZ line of residential and commercial package air conditioning and heating equipment. MEUS's petition requested a waiver from both the residential and commercial test procedures. In particular, MEUS requested a waiver from the residential test procedures contained in 10 CFR Part 430, subpart B, Appendix M, and a waiver from the commercial test procedures contained in ARI Standard 210/240–2003 and in ARI Standard 340/360–2000.[1] MEUS seeks a waiver from the applicable test procedures because the design characteristics of the R410A systems prevent testing according to the currently prescribed test procedures.

On March 24, 2006, DOE published MEUS's Petition for Waiver and granted the Application for Interim Waiver.[2] DOE also published for comment an alternate test procedure for MEUS. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such waivers that previously have been granted.[3] DOE solicited comments, data, and information respecting the petition and the proposed alternate test procedure.

DOE received written comments from seven companies—Rheem Heating and Cooling, Lennox International Inc., Daikin AC (Americas), Inc, Samsung and Quietside, Sanyo Fisher Company, United Mechanical and MEUS—in response to the March 24th Notice. Only one commenter expressed opposition to the MEUS petition.[4] Additionally, most of the commenters responded favorably to DOE's proposed alternate test procedure.[5] Commenters generally agreed that an alternate test procedure is necessary while a final test procedure for these types of products is being developed.[6]

Assertions and Determinations

MEUS's Petition for Waiver

DOE previously granted MEUS a waiver from test procedures in 2004 for similar CITY MULTI VRFZ models which use R22 as a refrigerant.[7] Given product adjustments to accommodate the new R410A refrigerant, MEUS requested a waiver from the test procedures for its new CITY MULTI models. The MEUS petition requested that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. MEUS did not include an alternate test procedure in its petition and noted that it knows of no test procedure that could evaluate its products in a representative manner. However, MEUS is actively working with ARI to develop test procedures that accurately reflect the operation and energy consumption of these types of units.

MEUS's petition presented several arguments in support of its claim. MEUS stated that the design characteristics of the R410A CITY MULTI VRFZ systems prevent testing according to the currently prescribed test procedures for the same reasons that its R22 models were previously granted a waiver. The R410A CITY MULTI systems, like the R22 models, can connect more indoor units than the test laboratories can physically test at one time. Because of the inability to test products with so many indoor units, testing laboratories will not be able to test many of the R410A system combinations. Furthermore, MEUS asserted that the current DOE test procedures do not provide direction for determining what combinations of outdoor and indoor units should be tested in the circumstance where a multitude of different combinations are possible. Also, the test procedures provide no mechanism for sampling component combinations. In addition, MEUS asserted that it is not practical to test all of the potentially available combinations of indoor and outdoor units, which could number in the billions.

MEUS stated that the R410A CITY MULTI system is designed to be flexible, with numerous combinations possible. According to MEUS, each of the 108,000 Btu/h rated outdoor units is designed to be connected with up to 18 indoor units, while each of the 234,000 Btu/h rated outdoor units can be configured with up to 32 indoor units. MEUS offers 58 different indoor models that can be used in the different combinations. Given the above, MEUS asserts the current test procedures cannot practically be applied to the CITY MULTI VRFZ systems.

MEUS claims that many of the benefits of its systems' characteristics, including variable refrigerant control and distribution, zoning diversity, part-load operation and simultaneous

[1] In its petition, MEUS also requested a waiver from ARI Standard 210/240–2003. Based on a review of the products listed by MEUS in its petition, DOE has determined that none of the products have the combined features (i.e., 3-phase power and rated capacity less than 65,000 Btu/h) that would require a waiver from ARI Standard 210/240–2003.

[2] *Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–012)*, 71 FR 14858 (March 24, 2006) (hereinafter, March 24th Notice). On April 11, 2006, MEUS submitted a Corrected Petition for Waiver of Test Procedure and Application for Interim Waiver (''Corrected Petition'') to DOE. The Corrected Petition noted five minor errors in the list of model numbers for which the waiver and the interim waiver had been requested. MEUS requested that the interim waiver granted apply to the corrected list of model numbers, and that DOE use the corrected list of model numbers in any future actions regarding the Petition for Test Procedure Waiver. In a letter dated June 1, 2006, DOE granted MEUS's request.

[3] March 24th Notice, 71 FR 14861.

[4] The only commenter that objected to MEUS's Petition was Lennox International Inc.

[5] See Comments submitted by Sanyo Fisher Company, Samsung and Quietside, United Mechanical, Daikin AC (Americas), Inc., and Rheem Heating and Cooling.

[6] See Comments submitted by MEUS, Sanyo Fisher Company, Samsung and Quietside, Daikin AC (Americas), Inc., and Rheem Heating and Cooling.

[7] *Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure to Mitsubishi Electric (Case No. CAC–008)*, 69 FR 52660, at 52662 (Aug. 27, 2004) (hereinafter, ''2004 Waiver'').

heating and cooling, are not credited under the current test procedures. For residential systems, there are some deficiencies in the current DOE test methods and calculation algorithms when applied to multi-split systems. With regard to commercial systems, MEUS asserts that the current test procedure for the energy efficiency ratio (''EER'') does not capture the energy savings of VRFZ products. The same issue was raised by MEUS in its petition for waiver for its R22 CITY MULTI products. As DOE stated in the waiver granted in August 2004, ''while this assertion is true, it is irrelevant because the full load EER energy efficiency descriptor is one mandated by EPCA for these products (42 U.S.C. 6313(a)(1)(c)), and the relevant energy performance is the peak load efficiency, not the seasonal energy savings.'' [8] A waiver can only be granted if a test procedure does not fairly represent the peak load energy consumption characteristics which EER measures. Therefore, the basis for this waiver, as was the case for the 2004 Waiver, is the problem of being physically unable to test most of the complete systems in a laboratory, the regulatory requirement to test the highest-sales-volume combination, and the lack of a method for predicting the performance of untested combinations.

Lennox International Inc. argued that waivers for VRFZ systems should not be granted because the existing DOE test procedures are available to rate these systems. DOE agrees that the existing test procedures can be used, but only after clarifications are made and deficiencies are addressed.

In August 2004, DOE granted a Petition for Waiver to MEUS relating to its R22 CITY MULTI VRFZ products, finding that ''the basic model contains one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.'' [9] MEUS's November 2005 Petition for Waiver for its R410A CITY MULTI VRFZ products presents virtually the same issues, and thus we find that waiver of the test procedures is appropriate. To enable MEUS to make energy efficiency representations for the specified CITY MULTI products, DOE adopts the alternate test procedure described below.

DOE's Alternate Test Procedure

As explained in DOE's March 24th Notice, manufacturers face restrictions with respect to making representations about the energy consumption and energy consumption costs of products covered by EPCA. (42 U.S.C. 6293(c), 42 U.S.C. 6314(d)). The ability of a manufacturer to make representations about the energy efficiency of its products is important, for instance, to determine compliance with state and local energy codes and regulatory requirements. Energy efficiency representations also provide valuable consumer purchasing information. Therefore, to provide a basis from which manufacturers covered by a test procedure waiver for VRFZ products can make valid energy efficiency representations, DOE proposed an alternate test procedure for MEUS in the March 24th Notice.

The alternate test procedure has two basic components. First, it permits MEUS to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to five indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure. Second, it permits MEUS to represent the energy efficiency for a non-tested combination in two ways. MEUS may represent the energy efficiency of a non-tested combination: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or, if method (1) Is not available, (2) at the efficiency level of the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit. DOE believes that allowing MEUS to make energy efficiency representations for non-tested combinations as described above is reasonable because the outdoor unit is the principal efficiency driver. The current test procedure tends to rate these products conservatively. This is because the current test procedure does not account for the product's simultaneous heating and cooling capability, which is more efficient than requiring all zones to be either heated or cooled. Further, the multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, can use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. Additionally, the current test procedure for commercial equipment requires full load testing, which disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Therefore, as explained in the March 24th Notice, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.[10]

The alternate test procedure applies to both residential and commercial multi-split products. However, some provisions are specific to residential or commercial products. Section (A) of the alternate test procedure has different provisions for residential and commercial products. Section (B), which defines the combinations of indoor and outdoor units to test, and section (C), which sets forth the requirements for making representations, are the same for both residential and commercial products.

Section (A) distinguishes between residential and commercial products for two reasons. First, 10 CFR part 430.24, used for residential products, already has requirements for selecting split-system combinations based on the highest sales volume. Part 431 of 10 CFR, which applies to commercial products, has no comparable requirements. Section (A) modifies the residential and commercial CFR requirements so that both residential and commercial products can use the same definition of a ''tested combination,'' which definition is set forth in section (B). Second, section (A) requires several test procedure revisions to determine the SEER and HSPF for the tested combination of residential products. No test procedure revisions are introduced for commercial products. [P3] The changes for residential products relate to: (1) The requirement that all indoor units operate during all tests, (2) the restriction on using only one indoor test room, (3) the selection of the modulation levels (maximum, minimum, and a specified intermediate speed) used when testing, and (4) the algorithm for estimating performance over the intermediate speed operating range. These changes are proposed in a July 20, 2006, DOE notice of proposed rulemaking. 71 FR 41320. For today's Decision and Order, the July 20, 2006, proposed changes to test procedure sections 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2 constitute mandatory elements of the alternate test procedure. These changes allow indoor units to cycle off, allow the manufacturer to specify the compressor

[8] 69 FR 52662 (Aug. 27, 2004).

[9] *Ibid.*

[10] 71 FR 14862 (March 24, 2006).

speed used during certain tests, and introduce a new algorithm for estimating power consumption.

With regard to the laboratory testing of both residential and commercial products, some of the difficulties are avoided by the requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test lab must be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test lab connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

DOE stated that if it specified an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. Most of the comments received by DOE favored the proposed alternate test procedure. Commenters generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed.[11]

Sanyo and Daikin raised concerns regarding DOE's proposal to allow manufacturers to represent the energy efficiency of non-tested combinations at the DOE-prescribed minimum efficiency level for the product class. They suggested that allowing such ratings without testing the product may allow low efficiency products to be installed even though equipment that meets or exceeds the minimum requirements is available.[12] DOE believes these commenters misread the proposed alternate test procedure. As explained in the March 24th Notice, the alternate test procedure adopts a conservative approach for rating VRFZ products based on the tested results of a simple system configuration. In the proposed alternate test procedure, DOE would allow manufacturers to make efficiency representations for non-tested combinations at the DOE-prescribed minimum efficiency level for the product class only if the tested combination with the same outdoor unit met or exceeded the minimum efficiency level. 71 FR 14862, March 24, 2006. DOE is eliminating this option because, as explained below, there is no need for it.

Rheem suggested that third party testing, or on-site witness testing, is the preferred method to verify system performance.[13] Additionally, Rheem requested that, in order to provide fair and equitable test methods and ratings to the consumer, the heating test points and laboratory operating conditions remain consistent.[14] DOE's alternate test procedure would specify certain parameters for the testing of VRFZ products, but would otherwise retain the existing test procedure protocols on issues such as where products are tested, test points, and laboratory operating conditions. Thus, in these respects, VRFZ systems would be tested as other products are tested under the existing test procedures.

Lennox suggested that DOE bar sales of non-tested combinations with an evaporator capacity of less than 95% of the nominal outdoor unit capacity unless an approved ARM (alternative rating method) simulation is available to demonstrate conformance to the minimum efficiency requirement.[15] No data was provided to justify this proposed indoor-to-outdoor sizing limitation and so DOE is inclined not to impose such a regulatory limitation on VRFZ configurations at this time. Moreover, DOE expects the development of an alternative rating method that is applicable to multi-split systems like the MEUS CITY MULTI products will follow, and not precede, the work by ARI members to develop a multi-split test procedure.

Based on the discussion above, DOE believes that the testing problems described above do prevent testing of the R410A CITY MULTI basic model according to the test procedures prescribed in 10 CFR Part 430, Subpart B, Appendix M, and[P9] ARI Standard 340/360–2000. After reviewing and considering all of the comments submitted regarding the proposed alternate test procedure, DOE believes that the proposed alternate test procedure, with the clarifications discussed above, should be adopted. DOE will also consider applying the same alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps.

MEUS Waiver for R22 Products

In the previous paragraph, DOE stated its intention to consider applying the alternate test procedure to similar waivers. Such a similar waiver was granted to MEUS for its R22 CITY MULTI VRFZ products on August 27, 2004 (the ''2004 Waiver'', see footnote 7). As discussed previously, the R22 products are quite similar to the R410A products that are the subject of this waiver. Therefore, today's notice amends the 2004 Waiver to prohibit MEUS from making energy efficiency representations regarding its R22 CITY MULTI products unless such representations are made consistent with the provisions of the alternate test procedure.

DOE consulted with the Federal Trade Commission (''FTC'') concerning the MEUS petition. The FTC did not have any objections to the issuance of the waiver to MEUS. Thus, DOE is granting MEUS's petition.

Conclusion

After careful consideration of all the material that was submitted by MEUS, the comments received, the review by NIST, and consultation with the FTC, it is ordered that:

(1) The ''Petition for Waiver'' filed by Mitsubishi Electric and Electronics USA, Inc. (MEUS) (Case No. CAC–012) is hereby granted as set forth in the paragraphs below.

(2) MEUS shall not be required to test or rate its R410A CITY MULTI Variable Refrigerant Flow Zoning (''VRFZ'') products listed below on the basis of the currently applicable test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in Paragraph (3):[16]

CITY MULTI Variable Refrigerant Flow Zoning System R–2 Series Outdoor Equipment:

- PURY–P72TGMU–*, 72,000 Btu/h 208/230–3–60 split-system variable-speed heat pump.

[11] *See* Comments submitted by Sanyo Fisher Company (Sanyo, No. 7), Samsung and Quietside (Samsung, No. 8), Daikin AC (Americas), Inc. (Daikin, No. 3), and Rheem Heating and Cooling (Rheem, No. 5).

[12] *See* Comments submitted by Sanyo Fisher Company, (Sanyo, No.7 at page 1) and Daikin AC (Americas), Inc., (Daikin, No. 3 at pages 1–2).

[13] *See* Comments submitted by Rheem Heating and Cooling, (Rheem, No. 5 at page 2).

[14] *See* Comments submitted by Rheem Heating and Cooling, (Rheem, No. 5 at page 2).

[15] *See* Comments submitted by Lennox International Inc., (Lennox, No. 6 at page 2).

[16] The * denotes engineering differences in the models.

• PURY–P96TGMU–*, 96,000 Btu/h 208/230–3–60 split–system variable-speed heat pump.

• PURY–P108TGMU–*, 108,000 Btu/h 208/230–3–60 split-system variable-speed heat pump.

• PURY–P126TGMU–*, 126,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PURY–P144TGMU–*, 144,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PURY–P168TGMU–*, 168,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PURY–P192TGMU–*, 192,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PURY–P204TGMU–*, 204,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PURY–P216TGMU–*, 216,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PURY–P234TGMU–*, 234,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

CITY MULTI Variable Refrigerant Flow Zoning System Y-Series Outdoor Equipment:

• PUHY–P72TGMU–*, 72,000 Btu/h 208/230–3–60 split-system variable-speed heat pump.

• PUHY–P96TGMU–*, 96,000 Btu/h 208/230–3–60 split-system variable-speed heat pump.

• PUHY–P108TGMU–*, 108,000 Btu/h 208/230–3–60 split-system variable-speed heat pump.

• PUHY–P126TGMU–*, 126,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PUHY–P144TGMU–*, 144,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PUHY–P168TGMU–*, 168,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PUHY–P192TGMU–*, 192,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

• PUHY–P204TGMU–*, 204,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump

• PUHY–P216TGMU–*, 216,000 Btu/h, 208/230–3–60 split–system variable-speed heat pump.

• PUHY–P234TGMU–*, 234,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump.

CITY MULTI Variable Refrigerant Flow Zoning System S-Series Outdoor Equipment:

• PUMY–P48NHMU–*, 48,000 Btu/h, 208/230–1–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

• P*FY models, ranging from 6,000 to 96,000 Btu/h, 208/230–1–60 split-system variable-capacity air conditioner or heat pump.

• PCFY Series—Ceiling Suspended—PCFY–P12/18/24/30/36***–*.

• PDFY Series—Ceiling Concealed Ducted—PDFY–P06/08/12/15/18/24/30/36/48***–*.

• PEFY Series—Ceiling Concealed Ducted (Low Profile)—PEFY–P06/08/12***–*.

• PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—PEFY–P15/18/24/27/30/36/48/54/72/96***–*.

• PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—PEFY–P30/54/72/96***—*.

• PFFY Series—Floor Standing (Concealed)—PFFY–P06/08/12/15/18/24***–*.

• PFFY Series—Floor Standing (Exposed)—PFFY–P06/08/12/15/18/24***–*.

• PKFY Series—Wall-Mounted—PKFY–P06/08/12/18/24/30***–*.

• PLFY Series—4-Way Airflow Ceiling Cassette—PLFY–P12/18/24/30/36***–*.

• PMFY Series—1-Way Airflow Ceiling Cassette—PMFY–P06/08/12/15[MR12]***–*.

(3) Alternate test procedure.

(A) MEUS shall be required to test the products listed in Paragraph (2) above according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR Parts 430 and 431, except that:

(i) For products covered by 10 CFR Part 430 (consumer products), MEUS shall not be required to comply with: (1) The first sentence in 10 CFR 430.24(m)(2), which refers to ''that combination manufactured by the condensing unit manufacturer likely to have the highest volume of retail sales;'' and (2) the third sentence in 10 CFR 430(m)(2) and the provisions of 10 CFR 430(m)(2)(i) and (ii). Instead of testing the combinations likely to have the highest volume of retail sales, MEUS may test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. Additionally, instead of following the provisions of 10 CFR 430(m)(2)(i) and (ii) for every other system combination using the same outdoor unit as the tested combination, MEUS shall make representations concerning the R410A CITY MULTI products covered in this waiver according to the provisions of subparagraph (C) below.

(ii) For products covered by 10 CFR Part 430 (consumer products), MEUS shall be required to comply with 10 CFR 430 Appendix M as amended in accordance with designated changes that are listed in the July 20, 2006 **Federal Register** Notice. 71 FR 41320, July 20, 2006. These designated changes are with respect to the following test procedure sections: 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2.

(iii) For products covered by 10 CFR Part 431 (commercial products), MEUS shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, MEUS shall make representations concerning the R410A CITY MULTI products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between 2 and 5 indoor units.

(ii) The indoor units shall—

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95% and 105% of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50% of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure[MR15].

(C) Representations. MEUS may make representations about the energy efficiency of CITY MULTI VRFZ products, for compliance, marketing, or other purposes, only to the extent that such representations are made consistent with the provisions outlined below:

(i) For CITY MULTI VRFZ combinations tested in accordance with this alternate test procedure, MEUS may make representations based on these test results.

(ii) For CITY MULTI VRFZ combinations that are not tested, MEUS may make representations which are based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) The waiver granted for MEUS's R22 CITY MULTI VRFZ products on August 27, 2004 [17] is hereby amended to prohibit MEUS from making energy efficiency representations regarding its R22 CITY MULTI products unless such representations are made consistent with the provisions set forth in Paragraph (3) above.

(5) This waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the model series manufactured by MEUS and listed above.

(6) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on April 2, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–6608 Filed 4–6–07; 8:45 am]

BILLING CODE 6450–01–P

[17] 71 FR 14858 (March 24, 2006).

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Commercial Water Source Heat Pump Test Procedure [Case No. CAC–015]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: Today's notice publishes a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS). This Petition for Waiver (hereafter ''MEUS Petition'') requests a waiver of the Department of Energy (''DOE'') test procedures applicable to commercial package water source heat pumps. DOE is soliciting comments, data, and information with respect to the MEUS Petition. Today's notice also grants an Interim Waiver to MEUS, with an alternate test procedure, from the existing DOE test procedure applicable to commercial package water source heat pumps.

DATES: DOE will accept comments, data, and information regarding this Petition for Waiver until, but no later than May 9, 2007.

ADDRESSES: Please submit comments, identified by case number [CAC–015], by any of the following methods:

- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.
- *E-mail: Michael.raymond@ee.doe.gov*. Include either the case number [CAC–015], and/or ''MEUS Petition'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes). Any person submitting written comments must also send a copy of such comments to the petitioner. 10 CFR 431.401(d)(2). The name and address of the petitioner of today's notice is: William Rau, Senior Vice President and General Manager, HVAC Advanced Products Division, Mitsubishi Electric & Electronics USA, Inc., 4300 Lawrenceville-Suwanee Road, Suwanee, GA 30024.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to read the background documents relevant to this matter, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: this notice; public comments received; the Petition for Waiver and Application for Interim Waiver; prior Department rulemakings regarding commercial central air conditioners and heat pumps; the prior MEUS Petition for Waiver, DOE's notice of the prior MEUS Petition for Waiver and the DOE Decision and Order (D&O) regarding the prior MEUS Petition, which is being published today. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611; e-mail: *Michael.Raymond.ee.doe.gov*; or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority
II. Petition for Waiver
III. Application for Interim Waiver
IV. Alternate Test Procedure
V. Summary and Request for Comments

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a

variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part C of Title III (42 U.S.C. 6311–6317) provides for an energy efficiency program entitled ''Certain Industrial Equipment,'' which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today's notice involves commercial equipment under Part C. Part C provides for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, it generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

MEUS's petition requests a waiver from the commercial test procedures for water source models of its CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) heat pump product line, which are sold for commercial use.

For commercial package air conditioning and heating equipment, EPCA provides that the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) This section also provides for the Secretary of Energy to amend the test procedure for a product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B))

On October 21, 2004, DOE published a direct final rule adopting test procedures for commercial package air conditioning and heating equipment, effective December 20, 2004. 69 FR 61962, October 21, 2004. DOE adopted ISO Standard 13256–1, ''Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps'' for small commercial package water source heat pumps with capacities < 135,000 Btu/hr. 69 FR 61971. The capacities of MEUS's water source CITY MULTI VRFZ products sold for commercial use fall in the range from 65,000 to 135,000 Btu/hr, which is the range covered by the DOE test procedure, and ISO Standard 13256–1.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered commercial equipment. The waiver provisions for commercial equipment are found at 10 CFR 431.401, and are substantively identical to those for covered consumer products.

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy (hereafter ''Assistant Secretary'') to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(e)(4) and (f)(4). Petitioners are to include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

The waiver process also allows the Assistant Secretary to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 431.401(a)(2). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

II. Petition for Waiver

On October 30, 2006, MEUS filed an Application for Interim Waiver and a Petition for Waiver from the test procedures applicable to commercial package water source heat pumps. In particular, MEUS requested a waiver from ISO Standard 13256–1, the commercial test procedure incorporated by reference that is the DOE test procedure. DOE has previously granted a waiver and an interim waiver from the applicable air conditioner and heat pump test procedures for other models of MEUS's CITY MULTI products. On August 27, 2004, DOE granted a waiver from the commercial air conditioner and heat pump test procedures for MEUS's R22 CITY MULTI products, i.e., air-source CITY MULTI products using R22 as the refrigerant.[1] In March 2006, DOE granted MEUS's application for interim waiver and published MEUS's petition for waiver for its R410A CITY MULTI models, i.e., air-source CITY MULTI products using R410A as the refrigerant.[2]

The products covered by this petition represent the models of the CITY MULTI product line that use water, as opposed to air, as a heat source and heat sink.[3] MEUS claims that its water source models cannot be tested pursuant to the existing test procedure for the same reasons that its R22 models were previously granted a waiver by DOE. The only difference between the WR2 and WY products and the air source R22 and R410A products is the method of heat rejection. The WR2 and WY products have a heat source unit that uses water, instead of air, to reject heat. The indoor models, CITY MULTI Control Network, and system technology of the R22 and R410A products and the WR2 and WY models are identical. As a result, these products will face the same testing problems as MEUS's R22 and R410A CITY MULTI products.

MEUS's line of CITY MULTI VRFZ system products are complete, commercial zoning systems that use variable refrigerant control and distribution, zoning diversity, and system intelligence. The WR2 and WY systems have the capability of connecting a single heat source unit to up to 19 indoor units. This capability

[1] Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure to Mitsubishi Electric (Case No. CAC–008), 69 FR 52660 (Aug. 27, 2004).

[2] Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–012), 71 FR 14858 (Mar. 24, 2006). On August 8, 2006, DOE published a notice correcting five of the model numbers in the interim waiver granted to MEUS and listed in MEUS's petition for waiver. Energy Conservation Program for Consumer Products: Notice of Correction of Petition for Waiver and Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures, and Modification of Interim Waiver, 71 FR 45047 (Aug. 8, 2006).

[3] Like the current line of air source CITY MULTI products, the water-source WR2 and WY model lines use R410A as the refrigerant.

gives these systems millions of potential system combinations.[4]

The operating characteristics of a VRFZ system allow each indoor unit to have a different mode of operation (i.e., on/off/heat/cool/dry/auto/fan) and a different set temperature. In the WR2 and WY models, the variable speed compressor and the system controls direct refrigerant flow throughout the system to match the performance of the system to the load of the conditioned areas. The compressor is capable of reducing its operating capacity to as little as 16 percent of its rated capacity. Zone diversity enables these VRFZ systems to have a total connected indoor unit capacity of up to 150 percent of the capacity of the heat source unit.

The CITY MULTI VRFZ systems have variable frequency inverter driven scroll compressors, and, therefore, have nearly infinite steps of capacity. While other system compressors run at full load as their normal state, the CITY MULTI VRFZ systems run at part-load[MR7] as their normal state. The WR2 Series CITY MULTI products also offer consumers the option of simultaneous heating and cooling. These simultaneous heating and cooling systems achieve energy benefits by transferring heat recovered from one zone into another zone needing heat.

The MEUS petition requests that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. MEUS requested that DOE apply an alternate test procedure based on the DOE alternate test procedure specified in the Decision & Order concerning MEUS' R410A CITY MULTI VRFZ products.

III. Application for Interim Waiver

MEUS also requested an Interim Waiver to allow it to introduce its new water source products in the U.S. market while DOE evaluates the Petition for Waiver. An Interim Waiver may be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 431.401(e)(3).

MEUS's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic hardship MEUS will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. MEUS's water source CITY MULTI VRFZ products are similar to the MEUS products previously granted a waiver, MEUS's R22 CITY MULTI VRFZ products (the indoor units are the same in both lines). 69 FR 52660. The previous MEUS waiver was granted because MEUS's R22 products cannot be tested according to the prescribed test procedures, for two reasons: (1) Test laboratories cannot test products with so many indoor units (the WR2 and WY CITY MULTI VRFZ systems can connect an outdoor unit with up to 19 indoor units); and (2) there are too many possible combinations of indoor and outdoor units (MEUS offers 58 indoor unit models, allowing for well over 1,000,000 combinations for each outdoor unit), and it is impractical to test so many combinations. The same argument, with the same two reasons, applies equally to show that MEUS' water source CITY MULTI VRFZ products cannot be tested according to the prescribed test procedures. These identical testing problems make it likely that MEUS' Petition for Waiver will be granted. Therefore, MEUS's Application for an Interim Waiver from DOE test procedure for its new WR2 and WY water source CITY MULTI VRFZ systems is granted. The letter to MEUS granting the Interim Waiver specifies that MEUS must use the alternate test procedure proposed in today's Notice. Hence, it is ordered that:

The Application for Interim Waiver filed by MEUS is hereby granted for MEUS's new WR2 and WY water source CITY MULTI VRFZ central air conditioning heat pumps. For the below listed models:

(1) MEUS shall not be required to test or rate its water source CITY MULTI VRFZ products on the basis of the currently applicable test procedure, which incorporates by reference ISO 13256–1 (1998).

(2) MEUS shall be required to test and rate its water source CITY MULTI VFRZ products according to the alternate test procedure as set forth in section IV (3), ''Alternate test procedure.''

CITY MULTI Variable Refrigerant Flow Zoning System WR2-Series Heat Source Units:

- PQRY–P72TGMU–*, 72,000 Btu/h 208/230–3–60 split-system variable-speed heat pump
- PQRY–P96TGMU–*, 96,000 Btu/h 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System WY-Series Heat Source Units:

- PQHY–P72TGMU–*, 72,000 Btu/h 208/230–3–60 split-system variable-speed heat pump
- PQHY–P96TGMU–*, 96,000 Btu/h 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

- P*FY models, ranging from 6,000 to 96,000 Btu/h, 208/230–1–60 split-system variable-capacity heat pump.
  - PCFY Series—Ceiling Suspended—PCFY–P12/18/24/30/36***–*
  - PDFY Series—Ceiling Concealed Ducted—PDFY–P06/08/12/15/18/24/30/36/48***–*
  - PEFY Series—Ceiling Concealed Ducted (Low Profile)—PEFY–P06/08/12***–*
  - PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—PEFY–P15/18/24/27/30/36/48/54/72/96***–*
  - PEFY–F Series—Ceiling Concealed Ducted (100% Outside Air Ventilation Option)—PEFY–P 30/54/72/96***–*–*
  - PFFY Series—Floor Standing (Concealed)—PFFY–P06/08/12/15/18/24***–*
  - PFFY Series—Floor Standing (Exposed)—PFFY–P06/08/12/15/18/24***–*
  - PKFY Series—Wall-Mounted—PKFY–P06/08/12/18/24/30***–*
  - PLFY Series—4-Way Airflow Ceiling Cassette—PLFY–P12/18/24/30/36***–*
  - PMFY Series—1-Way Airflow Ceiling Cassette—PMFY–P06/08/12/15***–*

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. This Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day

[4] MEUS offers 58 indoor models in its WR2/WY CITY MULTI product line. The number of potential combinations of the 58 models in sets of up to 19 is an astronomical figure.

period, if necessary. 10 CFR 431.401(e)(4).

IV. Alternate Test Procedure

Consistent representations are important for manufacturers to make claims about the energy efficiency of their products. In response to MEUS's petition for waiver for the R410A products, today, DOE is also publishing an alternate test procedure to provide a basis upon which MEUS can test its equipment and make valid energy efficiency representations. DOE[MR9] will consider applying a similar alternate test procedure for MEUS's WR2 and WY products in order to allow MEUS to test and make energy efficiency representations regarding these comparable products.

As noted above, existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combination of indoor and outdoor units for some variable refrigerant zoning systems is impractical to test. Subsequent to the waiver that DOE granted for MEUS's R22 models, ARI developed a committee to discuss the issue and work on developing an appropriate test protocol for variable refrigerant zoning systems. However, to date, no additional test methodologies have been adopted by the committee or put forth to DOE.

DOE believes that an alternate test procedure is needed so that manufacturers can make representations for their products. DOE specified an alternate test procedure in the MEUS waiver for R410A CITY MULTI products, and is proposing to include the following similar waiver language in the final Decision and Order for the water source models:

''(1) The Petition for Waiver'' filed by Mitsubishi Electric and Electronics USA, Inc. (MEUS) is hereby granted as set forth in the paragraphs below.

(2) MEUS shall not be required to test or rate the water source WR2 and WY CITY MULTI Variable Refrigerant Flow Zoning System (VFRZ) products covered in this waiver on the basis of the currently applicable test procedure, but shall be required to test and rate its water source CITY MULTI VFRZ products covered in this waiver according to the alternate test procedure as set forth in paragraph (3).

(3) Alternate test procedure.

(A) MEUS shall be required to test its water source WR2 and WY CITY MULTI Variable Refrigerant Flow Zoning System (VFRZ) products according to those test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 431, except that:

(i) MEUS shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as[MR11] the tested combination, MEUS shall make representations concerning the WR2 and WY CITY MULTI products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between 2 and 5 indoor units.

(ii) The indoor units shall—

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95% and 105% of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50% of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) Representations. MEUS may make representations about the energy efficiency of CITY MULTI VRFZ products[MR15], for compliance, marketing, or other purposes, only to the extent that such representations are made consistent with the provisions outlined below:

(i) For CITY MULTI VRFZ combinations tested in accordance with the alternate test procedure, MEUS may make representations based on these test results.

(ii) For CITY MULTI VRFZ combinations that are not tested, MEUS may make representations which are based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Today's notice announces a MEUS Petition for Waiver and grants MEUS an Interim Waiver from the test procedures applicable to MEUS's WR2 and WY water source CITY MULTI heat pump units. DOE is publishing the MEUS Petition for Waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that DOE is considering including in the final Decision and Order. In this alternate test procedure, DOE proposes defining a ''tested combination'' which MEUS could test in lieu of testing all retail combinations of its water source VRFZ CITY MULTI products. Furthermore, should a manufacturer not be able to test all retail combinations, DOE proposes allowing manufacturers to rate waived products according to an alternate rating method approved by DOE, or to rate waived products the same as that for the specified tested combination.

DOE will also consider applying a similar alternate test procedure to other comparable petitions for waiver for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), and Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005).

DOE is interested in receiving comments on all aspects of this notice. Any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is cited above. 10 CFR 431.401(d)(2).

Issued in Washington, DC, on April 2, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

October 30, 2006.

The Honorable Alexander Karsner,
Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–0121.

Re: *Petition for Waiver of Test Procedures and Application for Interim Waiver for CITY MULTI VRFZ Water-Source Heat Pumps*

Dear Assistant Secretary Karsner:
Mitsubishi Electric & Electronics USA, Inc. (MEUS) respectfully submits this petition for waiver, and application for interim waiver, of the test procedures applicable to the WR2 and WY Series models of MEUS's CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) product line pursuant to the provisions of 10 CFR 431.401 (2006). The

WR2 and WY models are water-source products.

The Department of Energy (DOE or Department) has previously granted a waiver and an interim waiver from the applicable air conditioner and heat pump test procedures for other models of MEUS's CITY MULTI products. On August 27, 2004, DOE granted a waiver from the commercial air conditioner and heat pump test procedures for MEUS's R22 CITY MULTI products, i.e., air-source CITY MULTI products using R22 as the refrigerant.[5] In March 2006, the Department granted MEUS's application for interim waiver and published MEUS's petition for waiver for its R410A CITY MULTI models, i.e., air-source CITY MULTI products using R410A as the refrigerant.[6]

The products covered by this petition represent the models of the CITY MULTI product line that use water, as opposed to air, as a heat source and heat sink.[7] Like the CITY MULTI products covered by the earlier waiver, the products covered by this petition cannot be tested according to the prescribed test procedures, and, therefore, should be granted a waiver from the applicable test procedures. MEUS simultaneously requests an interim waiver covering these WR2 and WY CITY MULTI products.

I. Background

In the 2004 CITY MULTI Waiver, DOE found that the waiver should be granted because the CITY MULTI products have ''one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.''[8] MEUS's R22 products cannot be tested according to the prescribed test procedures for two reasons: (1) the test laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units (well over 1,000,000 combinations for each outdoor unit), and it is impractical to test so many combinations.[9] Pursuant to the 2004 CITY MULTI Waiver, MEUS is not required to test or rate its CITY MULTI Variable Refrigerant Flow Zoning system products listed on the basis of the currently applicable test procedures.[10] In granting MEUS's request for an interim waiver for the R410A CITY MULTI products, DOE concluded that the R410A ''systems will likely suffer the same testing problems that prompted the Department to grant MEUS the waiver for its R22 products.''[11]

MEUS's WR2 and WY products represent the models of the CITY MULTI product line that are water-source heat pumps. The only difference between the WR2 and WY products, on the one hand, and the R410A products is the method of heat rejection. The WR2 and WY products have a heat source unit that uses water, instead of air, to reject heat. The indoor models, CITY MULTI Control Network, and system technology of the R410A products and the WR2 and WY models are identical. As a result, these products will face the same testing problems as those suffered by MEUS's R22 and R410A CITY MULTI products.

II. WR2/WY Model Design Characteristics

MEUS's line of CITY MULTI VRFZ system products combines advanced technologies and are complete, commercial zoning systems that save energy through the effective use of variable refrigerant control and distribution, zoning diversity, and system intelligence. The WR2 and WY systems have the capability of connecting a single heat source unit to up to 19 indoor units. This capability gives these systems tremendous installation flexibility with millions of potential system combinations.[12]

The operating characteristics of a VRFZ system allow each indoor unit to have a different mode of operation (i.e., on/off/heat/cool/dry/auto/fan) and a different set temperature allowing great flexibility of operation. In the WR2 and WY models, the variable speed compressor and the system controls direct refrigerant flow throughout the system to precisely match the performance of the system to the load of the conditioned areas. The compressor is capable of reducing its operating capacity to as little as 16% of its rated capacity. Zone diversity enables these VRFZ systems to have a total connected indoor unit capacity of up to 150% of the capacity of the heat source unit.

The CITY MULTI VRFZ systems have variable frequency inverter driven scroll compressors, and, therefore, have nearly infinite steps of capacity. While other system compressors run at full load as their normal state, the CITY MULTI VRFZ systems run at part load as their normal state. The WR2 Series CITY MULTI products also offer consumers the option of simultaneous heating and cooling. These simultaneous heating and cooling systems achieve energy benefits by transferring heat recovered from one zone into another zone needing heat. Additionally, when the system switches between the heating and cooling modes, the direction of the cooling water flow remains the same; therefore, the compressor does not need to be shut down when switching modes.

MEUS's CITY MULTI VRFZ systems were designed to take into account the customers' specific needs for flexibility, variable conditioning, and operating energy savings. Since these products were first introduced in U.S. markets, the CITY MULTI systems have become an important part of MEUS sales. These systems have been well received in Asia, Europe, Latin America, and the United States because of their highly effective energy saving features. Through the use of highly advanced technology, the WR2 and WY CITY MULTI VRFZ systems offer cost-effective functionality and significant energy savings. The unique design and intelligence provided by the sophisticated direct digital control system allow the systems to use less energy than conventional systems to condition a given area, thus costing the customer less to operate.

Although these energy saving characteristics are not credited under current rules, they are precisely the types of technological innovations and applications that advance the Congressional intent of promoting energy savings. These CITY MULTI VRFZ systems represent a revolutionary advance in HVAC technology, well positioned to provide new and existing commercial buildings with effective use of energy and an operationally cost-effective source of heating and cooling. Additionally, with some of the innovative capabilities of the CITY MULTI Controls Network, the potential for energy management and energy savings are even greater. The CITY MULTI products' unique design characteristics are clearly consistent with U.S. government's efforts to encourage the availability of high performance products that consume less energy.

III. Test Procedures From Which Waiver Is Requested

MEUS's petition requests waiver from the applicable test procedures for its WR2 and WY CITY MULTI products. DOE's regulations provide the test procedures for small and large commercial package air conditioning and heating equipment.[13] Pursuant to 10 CFR 431.96, the test procedures applicable to small commercial packaged air conditioning and heating water-source heat pumps, with capacities between 65,000 and 135,000 Btu/h, are those included in ISO Standard 13256–1 (1998).[14] The capacities of MEUS's WR2 and WY CITY MULTI water-source products covered by this petition fall in that range. Therefore, MEUS requests waiver from ISO Standard

[5] Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure to Mitsubishi Electric (Case No. CAC–008), 69 FR 52660 (Aug. 27, 2004) (copy attached) (hereinafter, 2004 CITY MULTI Waiver).

[6] Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–012), 71 FR 14858 (Mar. 24, 2006) (hereinafter, R410A Interim Waiver). On August 8, 2006, DOE published a notice correcting five of the model numbers in the interim waiver granted to MEUS and listed in MEUS's petition for waiver. Energy Conservation Program for Consumer Products: Notice of Correction of Petition for Waiver and Interim Waiver of Mitsubishi Electric From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures, and Modification of Interim Waiver, 71 FR 45047 (Aug. 8, 2006). As of the date of this letter, MEUS's petition for waiver for its R410A CITY MULTI models is still pending before DOE.

[7] Like the current line of air source CITY MULTI products, the water-source WR2 and WY model lines also use R410A as the refrigerant.

[8] 2004 CITY MULTI Waiver at 52662. *See* also 10 CFR 431.201(a)(1) (2005).

[9] R410A Interim Waiver at 14860.

[10] 2004 CITY MULTI Waiver at 52662.

[11] R410A Interim Waiver at 14861. The R410A CITY MULTI products are substitutes for the R22 CITY MULTI products that use the R410A refrigerant instead of the R22 refrigerant.

[12] MEUS offers 58 indoor models in its WR2/WY CITY MULTI product line. The number of potential combinations of the 58 models in sets of up to 19 is an astronomical figure.

[13] 10 CFR 431.96 (*see* Tables 1 and 2).

[14] 10 CFR 431.96, Table 1.

13256–1 (1998), as incorporated by reference in DOE's regulations.[15]

IV. Basic Models for Which Waiver Is Requested

MEUS requests a waiver from the test procedures for the basic models consisting of combinations of the following products:[16]

CITY MULTI Variable Refrigerant Flow Zoning System WR2-Series Heat Source Units:

- PQRY–P72TGMU–*, 72,000 Btu/h 208/230–3–60 split-system variable-speed heat pump
- PQRY–P96TGMU–*, 96,000 Btu/h 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System WY-Series Heat Source Units:

- PQHY–P72TGMU–*, 72,000 Btu/h 208/230–3–60 split-system variable-speed heat pump
- PQHY–P96TGMU–*, 96,000 Btu/h 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

- P*FY models, ranging from 6,000 to 96,000 Btu/h, 208/230–1–60 split-system variable-capacity heat pump.
  - PCFY Series—Ceiling Suspended—PCFY–P12/18/24/30/36***–*
  - PDFY Series—Ceiling Concealed Ducted—PDFY–P06/08/12/15/18/24/30/36/48***–*
  - PEFY Series—Ceiling Concealed Ducted (Low Profile)—PEFY–P06/08/12***–*
  - PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—PEFY–P15/18/24/27/30/36/48/54/72/96***–*
  - PEFY–F Series—Ceiling Concealed Ducted (100% Outside Air Ventilation Option)—PEFY–P 30/54/72/96***–*–*
  - PFFY Series—Floor Standing (Concealed)—PFFY–P06/08/12/15/18/24***–*
  - PFFY Series—Floor Standing (Exposed)—PFFY–P06/08/12/15/18/24***–*
  - PKFY Series—Wall-Mounted—PKFY–P06/08/12/18/24/30***–*
  - PLFY Series—4-Way Airflow Ceiling Cassette—PLFY–P12/18/24/30/36***–*
  - PMFY Series—1-Way Airflow Ceiling Cassette—PMFY–P06/08/12/15***–*

V. Need for Waiver of Test Procedures

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for commercial equipment. These provisions are set forth in 10 CFR 431.401. The waiver provisions allow DOE to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data.[17]

In the 2004 CITY MULTI Waiver, DOE found that MEUS's CITY MULTI products contained ''one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.''[18] DOE granted MEUS's request for an interim waiver for the R410A CITY MULTI products because the R410A systems ''will likely suffer the same testing problems'' as the R22 products.[19] The WR2 and WY models of CITY MULTI products have the same operational characteristics as the R22 CITY MULTI products, which have already been granted a waiver, and the R410A CITY MULTI products, which have been granted an interim waiver, except that the WR2 and WY models are water-source heat pumps. Therefore, the same design characteristics that prevent testing of the basic R22 and R410A CITY MULTI models also prevent testing of the WR2 and WY CITY MULTI models. Thus, similar to the R22 and R410A models, the WR2 and WY systems can connect more indoor units than the test laboratories can physically test at one time. Additionally, it is not practical to test all of the potentially available combinations, of which there are more than one million. Therefore, the same design characteristics that prevent testing of the basic R22 and R410A CITY MULTI models also prevent testing of the WR2 and WY CITY MULTI models.

Specifically, in the 2004 CITY MULTI Waiver, DOE found that:

The current test procedures can be used to test all current commercial systems in the laboratory, but many VFRZ systems cannot be tested in the laboratory. Each VFRZ outdoor unit can be connected with up to sixteen separate indoor units in a zoned system. Existing test laboratories cannot test more than five indoor units at a time, and even that number is difficult.

A second difficulty is that MEUS offers 58 indoor unit models. Each of these indoor unit models is designed to be used with up to 15 other indoor units, which need not be the same models, in combination with a single outdoor unit. For each of the CITY MULTI VRFZ outdoor coils, there are well over 1,000,000 combinations of indoor coils that can be matched up in a system configuration, and it is highly impractical to test so many combinations.

There are therefore two major testing problems: (1) Test laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor units—only a small fraction of the combinations could be tested. These problems * * * support the * * * waiver criterion, that ''the basic model contains one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures. * * *''[20]

In granting an interim waiver for MEUS's R410A models, DOE stated that the R410A products ''are quite similar to * * * MEUS's R22 CITY MULTI VRFZ products,''[21] and that the R410A systems ''will likely suffer the same testing problems that prompted the Department to grant MEUS the waiver for its R22 products.''[22]

For the same reasons, the WR2 and WY models cannot be tested pursuant to the existing test procedures. Similar to the R22 and R410A models, the WR2 and WY systems can connect more indoor units than the test laboratories can physically test at one time. Each of the WR2 and WY indoor units is designed to be used with up to 18 other indoor units with each heat source unit. These connected indoor units need not be the same models—there are 58 different indoor models that can be combined in a multitude of different combinations to address customer needs. The testing laboratories will not physically be able to test many of the WR2 and WY system combinations because of the inability to test products with so many indoor units.

In addition, it is not practical to test all of the potentially available combinations. With the capability of potentially connecting a single heat source unit to up to 19 indoor units, the WR2 and WY units are designed to be combined in literally millions of different system configurations.[23] The test procedures provide no mechanism for sampling component combinations. Thus, the test procedures do not contemplate, and cannot practicably be applied to, the CITY MULTI VRFZ systems consisting of multiple assemblies that are intended to be used in a very large number of different combinations.

As shown above, the WR2 and WY products cannot be tested according to the prescribed test procedures. MEUS also believes that the requested waiver is supported on the grounds that the test procedures ''may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics * * * as to provide materially inaccurate comparative data.''[24] In particular, the benefits of variable refrigerant control and distribution, zoning

[15] While DOE's regulations do not provide specific definitions for water-source heat pumps and water-cooled air conditioners, pursuant to the definitions provided in ARI Standard 340/360—2000, Standard for Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment, and in ISO Standard 13256–1 (1998), Water-source heat pumps—testing and rating for performance—Part I: Water-to-air and brine-to-air heat pumps, MEUS believes that ISO Standard 13256–1 (1998) contains the test procedures applicable to its WR2 and WY CITY MULTI water-source heat pump products. Note, however, that the rationale for granting the requested test procedure waiver is identical regardless of whether the applicable test procedure is ISO Standard 13256–1 or ARI Standard 340/360.

[16] The * denotes engineering differences in the models.

[17] 10 CFR 431.401(a)(1).

[18] 2004 CITY MULTI Waiver at 52662.

[19] R410A Interim Waiver at 14861.

[20] ID. at 52661–61.

[21] R410A Interim Waiver at 14860.

[22] R410A Interim Waiver at 14861.

[23] Even for systems with 4 or fewer indoor units, which can technically be tested in the laboratories, there are far too many possible combinations to make testing practicable because there are 58 different indoor models that can be used in combination. For instance, selecting four indoor units from among 40 indoor model choices produces over one hundred thousand possible combinations.

[24] 10 CFR 431.201(a)(1) (2005).

diversity, part load operation and simultaneous heating and cooling, as described in Section II above, are not credited under the current test procedures.

In any case, it should be noted that these CITY MULTI products employ advanced technologies and their marketing will advance the Energy Policy and Conservation Act's (EPCA) goal of promoting energy efficiency. Testing procedures should not inhibit the commercial success of these products in the United States. Without a waiver of the test procedures, MEUS will be at a competitive disadvantage in the market. Consumers have come to expect the availability of the CITY MULTI products in the U.S. marketplace, and a significant number of engineers and contractors are currently requesting these new WR2 and WY units for their projects because of the great advantages they offer. Thus, MEUS respectfully requests that DOE grant a waiver from the applicable test procedures to the products listed in Section IV.[25] MEUS plans to introduce these units into the U.S. market early in the first quarter of 2007, and, therefore, requests that DOE act on this request in a timely fashion.

VI. Alternative Test Procedures

Currently, there are no test procedures known to MEUS that can accurately evaluate these products. However, in response to MEUS's petition for waiver for the R410A products, DOE proposed an alternate test procedure to provide a conservative basis from which manufacturers covered by a test procedure waiver for VRFZ products can test and make valid energy efficiency representations, for compliance, marketing, or other purposes, regarding these products.[26] MEUS requests that DOE apply a similar alternate test procedure for MEUS's WR2 and WY products in order to allow MEUS to test and make energy efficiency representations regarding these products.

Manufacturers face restrictions with respect to making representations about the energy consumption and energy consumption costs of products covered by EPCA.[27] As DOE acknowledged in the R410A Interim Waiver, ''consistent representations are important for manufacturers to make claims about the energy efficiency of their products.''[28] Manufacturers need the ability to make energy efficiency representations to determine compliance with state and local energy codes and regulatory requirements, and to provide consumers with valuable purchasing information. Therefore, MEUS respectfully requests that DOE apply the alternate test procedure described below.

The proposed alternate test procedure will permit MEUS to designate a ''tested combination'' for each model of heat source unit with parameters on the indoor units that can be used in the tested combination. This tested combination must be tested according to the applicable DOE test procedures. Additionally, the alternate test procedure will permit MEUS to represent the energy efficiency for a non-tested combination in three ways. MEUS may represent the energy efficiency of a non-tested combination: (1) at an energy efficiency level determined under a DOE-approved alternate rating method; (2) at the efficiency level of the tested combination utilizing the same heat source unit; or (3) at the DOE prescribed minimum efficiency level for the product class, assuming the tested combination meets or exceeds this minimum level.

Allowing MEUS to make energy efficiency representations for non-tested combinations that are consistent with any of the three methods described above is reasonable because the heat source unit is the principal efficiency driver. The alternate test procedure tends to rate these products very conservatively because it does not credit significant energy saving characteristics of these products. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, uses less energy than if the whole building must be cooled when cooling is required. Additionally, the test procedure requires full load testing, which disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Finally, the test procedure does not recognize the benefits of products capable of simultaneous heating and cooling, which is more efficient than requiring all zones to be either heated or cooled. Therefore, since the proposed alternate test procedure does not credit the savings from zoning, part-load operation, or simultaneous heating and cooling, it will provide a conservative basis for assessing the energy efficiency for such products.

MEUS requests that DOE apply the following proposed alternate test procedure, which is based on the one proposed in April 2006,[29] to MEUS's CITY MULTI WR2 and WY products:

Alternate Test Procedure

(A) MEUS shall be required to test the products listed above according to the test procedures provided for in 10 CFR 431.96, except that:

(i) MEUS may test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same heat source unit as the tested combination, MEUS shall make representations concerning the WR2 and WY CITY MULTI products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of a heat source unit that is matched with between 2 and 5 indoor units.

(ii) The indoor units shall—

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95% and 105% of the capacity of the heat source unit;

(c) Not, individually, have a capacity greater than 50% of the capacity of the heat source unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) Representations. MEUS may make representations about the energy efficiency of WR2 and WY CITY MULTI VRFZ products, for compliance, marketing, or other purposes, only to the extent that such representations are made consistent with the provisions outlined below:

(i) For WR2 and WY CITY MULTI VRFZ combinations tested in accordance with this paragraph, MEUS may make representations based on these test results.

(ii) For WR2 and WY CITY MULTI VRFZ combinations that are not tested, MEUS may make representations which are based on the testing results for the tested combination and which are consistent with any of the three following methods:

(a) Representation of non-tested combinations according to an Alternative Rating Method (''ARM'') approved by DOE.

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same heat source unit.

(c) Representation of non-tested combinations at the DOE prescribed minimum efficiency level for the product class if the tested combination using the same heat source unit meets or exceeds that level.

VII. Similar Products

To the best of our knowledge, water-source VRFZ products are also offered in the United States by Daikin U.S. Corporation. This manufacturer, however, has incorporated a different technology to achieve variable refrigerant flow.

VIII. Application for Interim Waiver

Pursuant to 10 CFR 431.401(a)(2), MEUS also submits an application for interim waiver of the applicable test procedures for the WR2 and WY CITY MULTI models listed above. DOE's regulations contain provisions allowing DOE to grant an interim waiver from the test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures.[30] As DOE has previously stated, ''an Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination for

[25] Pursuant to EPCA, MEUS will not make representations regarding the energy efficiency of the products covered by a waiver except as may be specifically authorized by DOE.

[26] R410A Interim Waiver at 14861–3.

[27] *See* 42 U.S.C. 6314(d); 42 U.S.C. 6293(c).

[28] R410A Interim Waiver at 14861.

[29] R410A Interim Waiver at 14861–3.

[30] 10 CFR 431.401(a)(2).

the Petition for Waiver.''[31] MEUS will experience economic hardship if the application for interim waiver is denied. Additionally, precedent indicates that DOE will likely grant MEUS's petition for waiver. Finally, it is in the public interest to grant an interim waiver. Therefore, MEUS respectfully requests DOE to grant the application for interim waiver.

MEUS plans to introduce the new WR2 and WY products into the U.S. market early in the first quarter of 2007. The procedure for granting a petition for waiver is a time-consuming process—DOE must publish the petition in the **Federal Register**, allow time for public comment, and then consider any comments before it makes a decision. Thus, the process typically takes a number of months. If an interim waiver is not granted, MEUS will suffer economic hardship because MEUS will be required to delay its introduction of these products to U.S. customers.

In addition, DOE will likely grant MEUS's petition for waiver. As described above, the design characteristics which prevented testing of the basic model of the products listed in the 2004 CITY MULTI Waiver and the R410A Interim Waiver are present for the new WR2 and WY models as well. The best evidence that DOE is likely to grant this waiver petition is the fact that it granted a similar petition in the 2004 CITY MULTI Waiver, and granted an interim waiver for the R410A products on the basis that ''it appears likely that the [R410A] Petition for Waiver will be granted.''[32] DOE also granted an interim waiver to Samsung Air Conditioning in 2005 stating that Samsung's petition would likely be granted because Samsung's products are quite similar to the MEUS's CITY MULTI products, for which DOE already granted a waiver.[33]

Finally, DOE's regulations state that the Assistant Secretary may grant an interim waiver if he determines that it would be desirable for public policy reasons to grant immediate relief pending a determination for the Petition for Waiver. In response to MEUS's Application for Interim Waiver for its R410A products, DOE stated that ''in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.''[34] MEUS's WR2 and WY CITY MULTI products are similar to the R22 and R410A CITY MULTI products, as well as the products for which Samsung Air Conditioning and Fujitsu General Limited were granted interim waivers,[35] and they will suffer the same testing obstacles as those products.

Therefore, since it is in the public interest to have similar products tested and rated on a comparable basis, DOE should grant MEUS's Application for Interim Waiver.

IX. Conclusion

MEUS seeks a waiver of the applicable test procedures for the products listed in Section IV above. Such a waiver is necessary because the basic WR2 and WY CITY MULTI models ''contain[] one or more design characteristics which * * * prevent testing of the basic model according to the prescribed test procedures.'' [36] MEUS respectfully asks the Department of Energy to grant a waiver from existing test standards until such time as an appropriate test procedure is developed and adopted for this class of products. MEUS expects to continue working with ARI and DOE to develop appropriate test procedures.

MEUS further requests DOE to grant its request for an interim waiver while its Petition for Waiver is pending.

If you have any questions or would like to discuss this request, please contact Paul Doppel, at (678) 376–2923, or Douglas Smith at (202) 298–1902. We greatly appreciate your attention to this matter.

Sincerely,

William Rau,

Senior Vice President and General Manager, HVAC Advanced Products Division, Mitsubishi Electric & Electronics USA, Inc., 4300 Lawrenceville-Suwanee Road, Suwanee, GA 30024.

Mitsubishi Electric
Mitsubishi Electric & Electronics USA, Inc.
HVAC Advanced Products Division 3400 Lawrenceville-Suwanee Road, Suwanee, GA 30024

CERTIFICATE

I hereby certify that I have this day served the foregoing Petition for Waiver and Application for Interim Waiver upon the following company known to Mitsubishi Electric & Electronics USA, Inc. to currently market systems in the United States which appear to be similar to the WR2 and WY CITY MULTI VRFZ system design. I have notified this manufacturer that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver.

Daikin AC (Americas), Inc.,
1645 Wallace Drive, Suite 110, Carrollton, TX 75006, Attn: Mike Bregenzer, VP and GM.

Dated this 30th day of October 2006.

William Rau,

Senior Vice President and General Manager, HVAC Advanced Products Division, Mitsubishi Electric & Electronics USA, Inc., 3400 Lawrenceville-Suwanee Road, Suwanee, GA 30024.

[FR Doc. E7–6628 Filed 4–6–07; 8:45 am]

BILLING CODE 6450–01–P

[31] Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Samsung Air Conditioning From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–009), 70 FR 9629, at 9630 (Feb. 28, 2005) (Samsung Interim Waiver). *See* 10 CFR 431.201(e)(3) (2005). *See* also R410A Interim Waiver at 14860.

[32] R410A Interim Waiver at 14860.

[33] Samsung Interim Waiver at 9630.

[34] R410A Interim Waiver at 14860. DOE made the same statement in the Samsung Interim Waiver, concluding that ''in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.'' 70 FR at 9630.

[35] Samsung Interim Waiver; Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of Fujitsu General Limited From the DOE Residential Air Conditioner and Heat Pump Test Procedures (Case No. CAC–010), 70 FR 5980 (Feb. 4, 2005).

[36] 10 CFR 431.201(a)(1) (2005).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC07–580–001, FERC Form 580]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 3, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from two entities in response to an earlier **Federal Register** notice of December 14, 2006 (71 FR 75238–75239) and has provided responses to the commenters in its submission to OMB. Copies of the submission were also submitted to the commenters.

DATES: Comments on the collection of information are due by May 7, 2007.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing

electronically do not need to make a paper filing. For paper filings an original and 14 copies, of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC07–580–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676. or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC 580 ''Interrogatory on Fuel and Energy Purchase Practices, Docket No. IN79–6''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0137.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of the Federal Power Act (FPA). The FPA was amended by the Public Utility Regulatory Policies Act (49 Stat.851; 16 U.S.C. 824d) to require the Commission to review ''not less frequently than every two (2) years * * * of practices * * * to ensure efficient use of resources (including economical purchase and use of fuel and electric energy) * * *'' The collection of this information is specifically required by Federal statue (FPA Section 205(f)) and thus the Commission lacks authority to allow waivers for the filing of this information. In addition, the Commission entertains requests for confidential treatment pursuant to 18 CFR 388.112 for the coal mine price data and coal rail transportation cost data submitted in response to questions 3(i) and 3(1.2), respectively, only when disclosure would violate the terms of a confidentiality clause of a rail transportation contract. No other requests for confidential treatment are considered. The information is used to: (1) Review as mandated by statute, fuel purchase and cost recovery practices to ensure efficient use of resources, including economical purchase and use of fuel and electric energy, under fuel adjustment clauses on file with the Commission; (2) evaluate fuel costs in individual rate filings; (3) to supplement periodic utility audits. The information has also been used by the Energy Information Administration under a Congressional mandate to study various aspects of coal, oil, and gas transportation rates.

5. *Respondent Description:* The respondent universe currently comprises 114 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 3,600 total hours, 114 respondents (average), 57 responses per respondent, and 63.16 hour per response (rounded off and average time)

7. *Estimated Cost Burden to respondents:* 3,600 hours/2080 hours per years × $122,137 per year = $211,391. The cost per respondent is equal to $1,854.

Statutory Authority: Statutory provisions of sections 205(a) and (e) of the Federal Power Act, 16 U.S.C. 824d.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6561 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–370–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

April 3, 2007.

Take notice that on March 28, 2007, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix to the filing, to become effective May 28, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6566 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–372–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 2007.

Take notice that on March 30, 2007, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2007:

Fourth Revised Sheet No. 13C
Fourth Revised Sheet No. 13D
Third Revised Sheet No. 13E

CIG states that copies of its filing have been served to all firm customers, interruptible customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6568 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–368–000]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

April 3, 2007.

Take notice that on March 30, 2007, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 282, to become effective May 1, 2007.

Cove Point states that the purpose of this filing is to modify General Terms and Conditions Section 28 of Cove Point's tariff to provide for the purchase of LNG or natural gas for operational purposes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6564 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–371–000]

East Tennessee Natural Gas Company; Notice of Cashout Report

April 3, 2007.

Take notice that on March 30, 2007, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing its annual cashout report for the November 2005 through October 2006 period in accordance with Rate Schedules LMS–MA, LMS–PA, and PAL.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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 April 11, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6567 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–369–000]

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Tariff Filing and Transportation Service Agreement

April 3, 2007.

Take notice that on March 30, 2007, Enbridge Offshore Pipelines (UTOS) LLC (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 165, to become effective April 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6565 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–85–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

April 3, 2007.

Take notice that on February 16, 2007, Equitrans, L.P. (Equitrans), 225 North Shore Drive, Pittsburgh, Pennsylvania 15212, filed in Docket No. CP07–85–000, a prior notice request pursuant to sections 157.205, 157.208, and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act to replace approximately 12.65 miles of Line No. H–152, located in Allegheny County, Pennsylvania, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Specifically, Equitrans proposes to replace approximately 12.65 noncontiguous miles of sixteen-inch diameter bare steel pipe with sixteen-inch diameter coated steel pipe, located in Allegheny County, Pennsylvania. Equitrans estimates the cost of construction to be $24,594,494. Equitrans states the replacement project is necessitated by the age and condition of the existing bare steel pipeline.

Any questions regarding the application should be directed to David K. Dewey, Vice President & General Counsel, Equitrans, L.P., 225 North Shore Drive, Pittsburgh, Pennsylvania 15212 at (412) 395–2566.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6559 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–374–000]

Hardy Storage Company, LLC; Notice of Tariff Filing and Non-Conforming Service Agreements

April 3, 2007.

Take notice that on March 30, 2007 Hardy Storage Company, LLC (Hardy) tendered for filing as part of its FERC

Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 2007:

First Revised Sheet No. 197.
Original Sheet No. 200.

Hardy also tendered for filing the following four non-conforming Service Agreements for consideration and approval:

(1) HSS Service Agreement between Hardy Storage Company, LLC and Baltimore Gas & Electric Company (Dated February 2, 2006);

(2) HSS Service Agreement between Hardy Storage Company, LLC and City of Charlottesville (Dated February 2, 2006);

(3) HSS Service Agreement between Hardy Storage Company, LLC and Piedmont Natural Gas Company (Dated February 2, 2006); and

(4) HSS Service Agreement between Hardy Storage Company, LLC and Washington Gas Light Company (Dated February 2, 2006).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6570 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–377–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 3, 2007.

Take notice that on March 30, 2007, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, One Hundredth Revised Sheet No. 9, to become effective March 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6573 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR07–11–000]

North American Electric Reliability Corporation; Notice of Filing

April 3, 2007.

Take notice that on March 26, 2007, The North American Electric Reliability Corporation filed a request for approval of the eight Regional Reliability Standards proposed by the Western Electricity Coordinating Council for the Western Interconnection, pursuant to section 215(d)(1) of the Federal Power Act and section 39.5 of the Commission's Regulations, 18 CFR 39.5. The Commission is seeking public comment on the proposed regional differences.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of comments 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 comments 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 April 17, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6576 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–064]

Northern Natural Gas Company; Notice of Negotiated Rates

April 3, 2007.

Take notice that on March 30, 2007, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on April 1, 2007:

48 Revised Sheet No. 66
40 Revised Sheet No. 66A
Ninth Revised Sheet No. 66B
First Revised Sheet No. 66B.01

Northern also requests to change the name of WPS Energy Services, Inc. to Integrys Energy Services, Inc. as a result of the company changing its name.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6574 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–367–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Tariff Filing

April 3, 2007.

Take notice that on March 30, 2007, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the sheets listed in Appendix A attached to the filing, effective May 1, 2007.

Panhandle states that this filing is made in accordance with Section 25.1 (Flow Through of CashOut Revenues in Excess of Costs) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6563 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–375–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 2007.

Take notice that on March 30, 2007 Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2007:

Seventh Revised Sheet No. 203.
Seventh Revised Sheet No. 211.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6571 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–376–000]

Transcontinental Gas Pipe Line Corporation; Notice of Authorization and Waiver

April 3, 2007.

Take notice that on March 30, 2007, Transcontinental Gas Pipe Line Corporation (Transco) seeks authorization from the Commission to use the posting and bid evaluation procedures in Section 43 of the General Terms & Conditions of its FERC Gas Tariff (GT&C) to sell certain excess top gas inventory. In conjunction with such sale, Transco requests that the Commission grant waiver of Section 43.5 of the GT&C in order for Transco to recognize the appropriate accounting from the sale in its gas inventory account.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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 April 11, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6572 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–033]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rate

April 3, 2007.

Take notice that on March 29, 2007, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing three executed service agreements between Transco and City of Monroe, North Carolina, Hess Corporation, and Greenville Utilities Commission and an executed amendment to service agreement between Transco and Progress Ventures, Inc. all of which pertain to negotiated rate agreements for firm transportation service under Transco's Momentum Expansion Project. The effective date of the agreements is April 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6575 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–366–000]

Vector Pipeline L.P.; Notice of Annual Fuel Use Report

April 3, 2007.

Take notice that on March 30, 2007, Vector Pipeline L.P. (Vector) tendered for filing an annual report of its monthly fuel use ratios for the period January 1, 2006 through December 31, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6562 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–373–000]

Wyoming Interstate Company, Ltd; Notice of Tariff Filing

April 3, 2007.

Take notice that on March 30, 2007, Wyoming Interstate Company, LTD (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Ninth Revised Sheet No. 64 to become effective May 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6569 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–52–000]

Louisiana Public Service Commission, Complainant, v. Entergy Corporation; Entergy Services, Inc.; Entergy Louisiana, LLC; Entergy Arkansas, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Gulf States, Inc., Respondents; Notice of Complaint

April 3, 2007.

Take notice that on April 3, 2007, Louisiana Public Service Commission tendered for filing, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Regulatory Energy Commission (Commission) and section 206 of the Federal Power Act, 16 U.S.C. 824e, seeks revisions to the Entergy System Agreement Service Schedule MSS–3 because that Service Schedule is unjust, unreasonable, unduly discriminatory and conflicts with principles established in prior decisions of the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 30, 2007.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6560 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 3, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–741–001.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits its second Revised Sheet 40 et al to implement the Offer of Settlement approved in the Settlement Order.

Filed Date: 3/30/2007.

Accession Number: 20070403–0097.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER06–185–008.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator submits a supplemental to its 12/29/06 filing pursuant to FERC's 4/7/06 Order.

Filed Date: 3/29/2007.

Accession Number: 20070402–0090.

Comment Date: 5 p.m. Eastern Time on Thursday, April 19, 2007.

Docket Numbers: ER07–274–001.

Applicants: Juice Energy, Inc.

Description: Juice Energy, Inc submits a notice of change in status pursuant to the requirements of Order 652.

Filed Date: 3/30/2007.

Accession Number: 20070403–0093.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–679–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits Substitute Sheet 207 et al to FERC Electric Tariff, Original Volume 6 pursuant to section 205 of the FPA.

Filed Date: 3/30/2007.

Accession Number: 20070402–0070.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–680–000.

Applicants: ISO New England Inc; New England Power Pool.

Description: ISO New England Inc et al jointly submit their Market Rule 1 and Billing Policy changes relating to Meter Data Errors.

Filed Date: 3/30/2007.

Accession Number: 20070403–0092.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–681–000.

Applicants: Electric Energy, Inc.

Description: Electric Energy, Inc submits modification 19 to a Power Contract dated 9/2/87 with the U.S. Dept of Energy designated as contract DE–AC05–760R01312 (Schedule FERC 10).

Filed Date: 3/30/2007.

Accession Number: 20070403–0032.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–682–000.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies submits amendments to the Entergy System Agreement to make adjustments to its compliance filing made on 12/18/06.

Filed Date: 3/30/2007.

Accession Number: 20070403–0089.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–683–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc, agent and on behalf of the Entergy Operating Companies submits an amendment to the Entergy System Agreement.

Filed Date: 3/30/2007.

Accession Number: 20070403–0091.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–684–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc, agent on behalf of the Entergy Operating Companies submits an amendment to one provision of Service Schedule MSS–3, Section 30.12, to the Entergy System Agreement.

Filed Date: 3/30/2007.

Accession Number: 20070403–0090.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–689–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Interconnection Service Agreement w/ Industrial Power Generating Company, LLC et al.

Filed Date: 3/30/2007.

Accession Number: 20070403–0215.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–690–000.

Applicants: LG&E Energy Marketing Inc.

Description: LG&E Energy Marketing, Inc submits limited amendments to its Tariff for Cost-Based Sales of Capacity and Energy.

Filed Date: 3/30/2007.

Accession Number: 20070403–0043.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 2007.

Docket Numbers: ER07–692–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation dba Progress Energy Florida, Inc submits a cost-based Power Sales Agreement with Seminole Electric Cooperative, Inc.

Filed Date: 3/30/2007.

Accession Number: 20070403–0216.

Comment Date: 5 p.m. Eastern Time on Friday, April 20, 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 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.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6584 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–81–000]

Petal Gas Storage, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Petal No. 3 Compressor Station Project and Request for Comments on Environmental Issues

April 3, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Petal No. 3 Compressor Station Project, involving construction and operation of facilities by Petal Gas Storage, L.L.C. (Petal) in Forrest County, Mississippi. The EA will be used by the Commission in its decision-making process to determine whether or not to authorize the project.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on May 3, 2007.

An effort is being made to send this notice to all individuals, organizations, Native American Tribes, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' was attached to the project notice provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Petal proposes to construct a new compressor station consisting of three 5,000-horsepower, electric-drive compressor units at its existing Petal Storage Facility in Forrest County, Mississippi. Petal would construct a new 60-foot by 200-foot building to house the proposed units and other appurtenant facilities. In addition, a 1,605-foot-long, 20-inch-diameter pipeline would be constructed in order to connect the proposed compressor station to Petal's existing gas storage operations.[1]

Petal currently has an estimated working storage capacity of 18 billion cubic feet of natural gas in four storage caverns. The Petal Storage Facility is capable of delivering natural gas into five interstate pipeline systems. The proposed addition of the Petal No. 3 Compressor Station would allow Petal to utilize the full storage capacity of the Petal Storage Facility.

The general location of Petal's proposed facilities is shown on the map attached as appendix 1.[2]

Land Requirements for Construction

Construction of the proposed Petal No. 3 Compressor Station Project would affect a total of about 21.1 acres of land. Following construction, about 12.1 acres of land would be allowed to revert to its previous conditions. Disturbance associated with aboveground facilities would comprise about 6.7 acres of permanently affected land. A new 1,485-foot-long access road would be constructed surrounding the compressor station building, permanently disturbing 0.5 acre of land.

A 75-foot-wide construction right-of-way is proposed for the associated pipeline. Petal would maintain a 50-foot-wide permanent right-of-way for operation and maintenance of the proposed facilities. Permanent disturbance of the pipeline would total about 1.8 acres. All land that would be affected by the proposed compressor station, pipeline, and access road is owned by Petal.

The EA Process

We are preparing the EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers and libraries in the project area, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful

[1] Petal's application in Docket No. CP07–81–000 was filed with the Commission under Section 7 of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Philis J. Posey, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1;
- Reference Docket No. CP07–81–000;
- Mail your comments so that they will be received in Washington, DC on or before May 3, 2007.

Please note that the Commission encourages electronic filing of comments. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (i.e., CP07–81–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ ferc.gov.* 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 rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–6558 Filed 4–6–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[GA–78–200703; FRL–8296–1]

Adequacy Status of the Atlanta Early Progress 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the Motor Vehicle Emissions Budgets (MVEBs) in the Atlanta Early Progress State Implementation Plan (SIP), submitted on January 16, 2007, by the Georgia Environmental Protection Division (GA EPD) of the Georgia Department of Natural Resources, are adequate for transportation conformity purposes. As a result of EPA's finding, the Atlanta area must use the MVEBs from the January 16, 2007, Atlanta Early Progress SIP for future conformity determinations for the 8-hour ozone standard.

DATES: These MVEBs are effective April 24, 2007.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Environmental Engineer, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Air Quality Modeling and Transportation Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Ms. Benjamin can also be reached by telephone at (404) 562–9040, or via electronic mail at *benjamin.lynorae@epa.gov.* The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.*

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 4 sent a letter to GA EPD on January 24, 2007, stating that the MVEBs in the Atlanta Early Progress SIP, submitted on January 16, 2007, are adequate. The Atlanta 8-hour ozone nonattainment area is comprised of the following twenty counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton. EPA's adequacy comment period ran from October 30, 2006, through November 29, 2006. During EPA's adequacy comment period no adverse comments were received. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/pastsips.htm.* The adequate MVEBs are provided in the following table:

ATLANTA 8-HOUR OZONE MVEBS

[Tons per day]

	2006
VOC	306.75
NO_X	172.27

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEBs are adequate for

transportation conformity purposes are outlined in 40 Code of Federal Regulations 93.118(e)(4). We have described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, '' Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds the MVEBs adequate, the Agency may later determine that the SIP itself is not approvable.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on EPA's Phase I rule implementing the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) (D.C. Cir. No. 04–1200). EPA is currently analyzing the decision in detail. EPA's adequacy finding on the MVEBs in the Early Progress SIP for the Atlanta 8-hour nonattainment area is not affected by the court's decision and does not address any other requirements that may be affected by the decision. EPA's adequacy finding determines only that the budgets are adequate for the specific purpose submitted, and provides no conclusions on what requirements may ultimately apply in the area as a result of the court decision.

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

Dated: March 29, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–6620 Filed 4–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2007–0263; FRL–8296–5]

Anaconda/Milgo; Miami, Dade County, Florida; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response concerning the Anaconda/Milgo Superfund Site located in Miami, Dade County, Florida.

DATES: The Agency will consider public comments on the settlement until May 9, 2007. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2007–0263 or Site name Anaconda/Milgo Superfund Site by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov.*
- Fax: 404/562–8842/Attn Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2007–0263. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 pm. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: March 26, 2007.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E7–6612 Filed 4–6–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Comission.

DATE & TIME: Thursday, April 12, 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Legislative Recommendations 2007.

Management and Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–1773 Filed 4–5–05; 2:28 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 2007.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Fox River Financial Corporation, Burlington, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Fox River State Bank, Burlington, Wisconsin.

Board of Governors of the Federal Reserve System, April 4, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–6603 Filed 4–6–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 062 3112]

Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 2, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Darden, Inc., File No. 062 3112,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Lucy Morris or Jonathan Kraden, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 3, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/04/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Darden Restaurants, Inc., GMRI, Inc., and Darden GC Corp. (collectively, ''respondents'' or ''Darden'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents, through subsidiaries, own and operate several restaurant chains, including Olive Garden Restaurant, Red Lobster Restaurant, Smokey Bones Restaurant, and Bahama Breeze Restaurant. Respondents advertise, sell, and distribute Darden Gift Cards through their restaurants and Web sites, and third parties. Darden Gift Cards are plastic, stored-value cards, similar in size and shape to credit or debit cards, often branded with one or more of Darden's restaurant logos. Darden Gift Cards typically can be used to purchase goods or services at any of Darden's restaurant locations. This matter concerns the respondents' alleged failure to disclose, or failure to disclose adequately, material terms and conditions of Darden Gift Cards.

The Commission's complaint alleges that, in the advertising and sale of Darden Gift Cards, respondents have represented, expressly or by implication, that a consumer can redeem a Darden Gift Card for goods or services of an equal value to the monetary amount placed on the card. Respondents have failed to disclose, or failed to disclose adequately, that, after a specified number of consecutive months of non-use (*i.e.*, 15 or 24 months), respondents deduct a $1.50 fee per month from the value of the Darden Gift Card until it is used again. The proposed complaint alleges that the failure to disclose adequately this material fact is a deceptive practice.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I.A. of the proposed order prohibits respondents from advertising or selling Darden Gift Cards without disclosing, clearly and prominently: (a) The existence of any expiration date or automatic fees, in all advertising, and (b) all material terms and conditions of any expiration date or automatic fee, at the point of sale and prior to purchase. The effect of this provision is to require respondents to alert consumers to potential fees and expiration dates during advertising, and to fully disclose all relevant details at the point of sale, before consumers purchase the gift cards.

Part I.B. of the proposed order prohibits respondents from advertising or selling Darden Gift Cards without disclosing, clearly and prominently the existence of any automatic fee or expiration date on the front of the gift card.

Part II of the proposed order prohibits respondents from making any misrepresentation about any material term or condition associated with the Darden Gift Card.

Part III.A. of the proposed order prohibits respondents from collecting or attempting to collect any dormancy fee on any Darden Gift Card activated prior to the date of issuance of the proposed order.

Part III.B. of the proposed order requires respondents, upon issuance of the order, to cause the amount of any fees assessed on a Darden Gift Card prior to the date of issuance of the order to be restored to the card.

Part III.C. of the proposed order requires respondents to provide notice to consumers of the automatic restoration of fees required by Section III.B. This notice must be clearly and prominently disclosed on respondents' websites, including *http://www.darden.com, http://www.dardenrestaurants.com, http://www.redlobster.com, http://www.olivegarden.com, http://www.smokeybones.com,* and *http://www.bahamabreeze.com.*

Part IV of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondents maintain accounting and sales records for Darden Gift Cards, copies of ads and promotional material that contain representations covered by the proposed order, complaints and refund requests relating to the Darden Gift Cards, and other materials that were relied upon by respondents in complying with the proposed order.

Part V of the proposed order requires respondents to distribute copies of the order to various principals, officers, directors, and managers of respondents as well as to the officers, directors, and managers of any third-party vendor who engages in conduct related to the proposed order.

Part VI of the proposed order requires respondents to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the proposed order requires respondents to file with the Commission one or more reports detailing compliance with the order.

Part VIII of the proposed order is a ''sunset'' provision, dictating the conditions under which the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in Federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify in any way its terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–6610 Filed 4–6–07; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–06AX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Risk Perception, Worry, and Use of Ovarian Cancer Screening Among Women At High, Elevated, and Average Risk of Ovarian Cancer—NEW—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Accounting for an estimated 22,220 cases and 16,210 deaths in 2005, ovarian cancer is the most frequent cause of death from gynecologic malignancy in the United States. In over 80 percent of patients, ovarian cancer presents at a late clinical stage, affording a five-year survival rate of only 28 percent. For cases where ovarian cancer is identified in Stage I, however, the five-year survival rate exceeds 90 percent.

Identifying a woman's risk of ovarian cancer plays a large role in determining the appropriateness of having her undergo screening. It is only for women with a strong family history of ovarian and/or breast cancer or women with a

hereditary genetic risk for ovarian cancer that the currently available screening modalities of CA 125 and transvaginal ultrasound are recommended.

Statements from the scientific and medical community regarding recommendations for ovarian cancer screening play only a partial role in a woman's decision to undergo screening exams. Numerous psychological and sociological factors can affect this decision as well, including a woman's knowledge, attitudes, beliefs, and experiences. For instance, a woman's experience of cancer within her family or experience with a friend who has had cancer may influence a woman's screening decisions.

The literature also notes that women with a family history of ovarian cancer report increased worry and high levels of perceived risk. A positive association has also been shown between screening behavior and family history. Recent studies indicate, however, that screening is not occurring in proportion to women's levels of risk. These findings underscore the need for a better understanding of how perceived risk of ovarian cancer may influence worry about cancer and ultimately screening behavior.

To address these issues, the Division of Cancer Prevention and Control (DCPC), at the National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, is conducting a study to examine the effects of family history of cancer, knowledge about ovarian cancer, worry and/or anxiety, and perceived risk of cancer on the likelihood of a woman undergoing screening for ovarian cancer. By also examining other psycho-social factors such as a woman's closeness to a relative or friend with cancer, coping style, cancer worry, use of other cancer screening tests, social support, and provider's recommendations, the study will elucidate the causal pathway leading from actual risk (as measured by family history) through perceived risk to intent to undergo screening and actual screening behavior.

The proposed study will consist of two tasks. In Task 1, a baseline survey will be administered through a computer-assisted telephone interview (CATI) program. Initially, an estimated 32,000 women will be screened to determine eligibility, and then approximately 2000 women will be asked a series of questions over a 35-minute time period. Questions will cover key variables related to ovarian cancer screening including coping, anxiety, perceived risk, worry, personal cancer history, family cancer history, closeness with family or friends who have had cancer, screening behavior, and knowledge of ovarian cancer.

In Task 2, a follow-up questionnaire will be administered, also using a CATI program, to approximately 1600 of the women included in the baseline questionnaire. Each of the women will be contacted one year after they complete the baseline survey. The researchers anticipate a 15 percent attrition of the sample between baseline and follow-up. In the follow-up, women will be asked a series of questions over a 15-minute time period. The purpose of this data collection effort is to determine if risk perception has changed and to ask about screening for ovarian cancer, since the baseline questionnaire was administered.

All data will be collected over a three-year time period. The total estimated annualized burden hours are 1,411. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Group	Type of respondents	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)
Eligibility Screener	Women 30 and older	10,667	1	5/60
Baseline Survey	Women 30 and older (high, elevated or average risk of ovarian cancer).	667	1	35/60
Follow-Up Survey	Women who completed the baseline survey	533	1	15/60

Dated: April 3, 2007.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–6583 Filed 4–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Arthritis and Disability: Biracial Cohort Study of Knee and Hip Osteoarthritis, Potential Extramural Project (PEP) 2007–R–06 and Evaluating Sustainable Delivery Systems for Arthritis Intervention Programs, PEP 2007–R–08

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned SEP.

Time and Date: 12 p.m.–4 p.m., May 14, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of ''Arthritis and Disability: Biracial Cohort Study of Knee and Hip Osteoarthritis,'' Potential Extramural Project (PEP) 2007–R–06 and ''Evaluating Sustainable Delivery Systems for Arthritis Intervention Programs,'' PEP 2007– R–08.

For Further Information Contact: Juliana Cyril, M.P.H., Ph.D., CDC, 1600 Clifton Road NE, Mailstop D–72, Atlanta, GA 30333, Telephone (404) 639–4639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 2, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–6582 Filed 4–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Pre-Knowledge of Early Hearing Detection and Intervention Program Process and Its Effect on Maternal Stress and Compliance With Follow-Up, Potential Extramural Project (PEP) 2007–R–07

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.–4 p.m., May 16, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of PEP 2007–R–07, ''Pre-Knowledge of Early Hearing Detection and Intervention Program Process and Its Effect on Maternal Stress and Compliance with Follow-Up.''

For Further Information Contact: Juliana Cyril, M.P.H., Ph.D., Associate Director for Policy and Peer Review, CDC, 1600 Clinton Road, NE., Mailstop D72, Atlanta, GA 30333, telephone 404–639–4639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 2, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–6588 Filed 4–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Epidemiological Studies of Epilepsy, Potential Extramural Project (PEP) 2007–R–05

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned SEP.

Time and Date: 12 p.m.–4 p.m., May 10, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of scientific merit of applications for ''Epidemiological Studies of Epilepsy,'' PEP 2007–R–05.

For Further Information Contact: Juliana Cyril, M.P.H., Ph.D., Associate Director for Policy and Peer Review, CDC, 1600 Clifton Road, NE., Mailstop D–72, Atlanta, GA 30333, Telephone (404) 639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 2, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–6589 Filed 4–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: NIOSH Education and Research Center, Program Announcement Number (PAR) 06–485

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Meeting of the aforementioned Special Emphasis Panel:

Time and Date: 10 a.m.–1 p.m., April 24, 2007 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Purpose: The work groups which were convened at specific sites listed below advised and made recommendations to the Disease, Disability, and Injury Prevention and Control SEP: NIOSH Education and Research Center, PAR 06–485. Specifically, the SEP makes recommendations regarding policies, strategies, and funding.

TIMES, DATES, AND PLACES OF THE WORK GROUP MEETINGS

8 a.m.–5 p.m.	November 13, 2006 (Closed)	Women's Faculty Club on the University of California Berkeley campus 510–642–4175.
8 a.m.–5 p.m.	November 28, 2006 (Closed)	University of Alabama at Birmingham, Administration Building Penthouse, 701 20th Street South, 14th floor, Conference Room 1, 205–934–0771.
8 a.m.–5 p.m.	December 11, 2006 (Closed)	Bloomberg School of Public Health, 615 N. Wolfe St, Baltimore, MD 21205.
8 a.m.–5 p.m.	December 14, 2006 (Closed)	College of Public Health 13201 Bruce B. Downs Blvd Tampa, FL 33612.
8 a.m.–5 p.m.	January 9, 2007 (Closed)	Fitzsimons Campus, Nighthorse Campbell Building. Room 304 Denver, CO.
8 a.m.–5 p.m.	January 16, 2007 (Closed)	Coffman Memorial Union 300 Washington Ave. SE Minneapolis, MN 55455.
8 a.m.–5 p.m.	February 13, 2007 (Closed)	University Park Marriott 480 Wakara Way Salt Lake City, UT 84108 801–584–3312.

Matters to be Discussed: The SEP meeting will include the review, discussion, and evaluation of research grant applications in response to ''NIOSH Education and Research Center,'' PAR 06–485.

For Further Information Contact: Dr. Charles N. Rafferty, Ph.D., B.S., Scientific Review Administrator, 1600 Clifton Road NE, MS E74, Atlanta, GA, 30333, telephone 404.498.2582.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for

both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2007.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–6591 Filed 4–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry; The Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and ATSDR announce the following meeting of the aforementioned committee:

Times and Dates: 8 a.m.–4:45 p.m., May 17, 2007. 8 a.m.–12 p.m., May 18, 2007.

Place: 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Secretary, Department of Health and Human Services (HHS), and by delegation, the Director, CDC, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC, and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters To Be Discussed: An update on NCEH/ATSDR's Office of the Director; an update on Science and Public Health and Reports; an update on the Health Department Subcommittee, the Community and Tribal Subcommittee, and the Program Peer Review Subcommittee (PPRS) Reports and Discussion; a presentation on CDC's Web site redesign and the NCEH/ATSDR Web site; an update on Climate Change Initiative; a presentation on the Office of Tribal Affairs' Expert Panel Report; an update on issues from the Board; a discussion on the Office of Management and Budget Performance Assessment and Review Techniques goals and objectives; an update on the National Exposure Report; an update on Preparedness and Emergency Response priorities and portfolio; and a discussion on BSC—PPRS Draft Peer Review Report on ATSDR Site-Specific Activities.

Agenda items are tentative and subject to change.

FOR FURTHER INFORMATION CONTACT: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, Georgia 30303; telephone 404/498–0003, fax 404/498–0622; E-mail: *smalcom@cdc.gov*. The deadline for notification of attendance is May 4, 2007.

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 NCEH/ATSDR.

Dated: April 2, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–6585 Filed 4–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1978N–0224 (formerly Docket No. 78N–0224); DESI 11853]

Trimethobenzamide Hydrochloride Suppositories; Withdrawal of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the resolution of issues concerning trimethobenzamide hydrochloride suppositories. This notice announces the withdrawal of approval of the new drug application (NDA) for Tigan (trimethobenzamide hydrochloride) Suppositories. The notice also declares that the marketing of unapproved trimethobenzamide hydrochloride suppository products is unlawful and subject to FDA regulatory action. FDA is taking these actions because trimethobenzamide hydrochloride suppositories lack substantial evidence of effectiveness.

ADDRESSES: Requests for an opinion on the applicability of this notice to a specific trimethobenzamide hydrochloride suppository product should be identified with Docket No. 1978N–0224 and reference number DESI 11853 and directed to the Office of Compliance, Division of New Drugs and Labeling Compliance (HFD–310), New Drugs and Labeling Team, Center for Drug Evaluation and Research, Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852.

DATE: Effective May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

As part of its Drug Efficacy Study Implementation (DESI) program, in a notice published in the **Federal Register** on February 24, 1971 (36 FR 3435) (the 1971 notice), FDA announced the following conclusions regarding certain drug products that contain trimethobenzamide hydrochloride: (1) The products were probably effective for nausea and vomiting due to radiation therapy or travel sickness and for emesis associated with operative procedures, labyrinthitis, or Meniere's syndrome; (2) they were lacking substantial evidence

of effectiveness for the treatment of nausea and vomiting due to infections, underlying disease processes, or drug administration; and (3) they were possibly effective for all other labeled indications. The 1971 notice listed three trimethobenzamide hydrochloride products: Tigan Solution for Injection (NDA 11–853), Tigan Capsules (NDA 11–854), and Tigan Suppositories (NDA 11–855). Roche Laboratories held the NDAs for these three products.

On January 9, 1979, we published a notice in the **Federal Register** (44 FR 2021) (the 1979 suppository notice) announcing that we were reclassifying trimethobenzamide hydrochloride suppositories to lacking substantial evidence of effectiveness and proposing to withdraw approval of the NDAs for trimethobenzamide hydrochloride suppositories. The 1979 suppository notice stated that NDA 17–529 for Tigan Suppositories, held by Beecham Laboratories (Beecham), had not been included in the 1971 notice, but was affected by the new notice. (In the same issue of the January 9, 1979, **Federal Register** (44 FR 2017) (the 1979 injection and capsule notice), we published a notice announcing that we were reclassifying trimethobenzamide hydrochloride injection and capsules to effective for certain indications and to lacking substantial evidence of effectiveness for their other (previously designated) less-than-effective indications. On December 24, 2002, we published the final evaluation for trimethobenzamide hydrochloride injection and capsules (67 FR 78476).)

In the 1979 suppository notice, we gave notice of an opportunity for a hearing to the holders of the NDAs for trimethobenzamide hydrochloride suppositories, and to all other interested persons, stating that we proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of the NDAs and all amendments and supplements thereto (44 FR 2021 at 2021 to 2022). We stated that the notice of an opportunity for a hearing encompassed all issues relating to the legal status of the drug products subject to the notice, including identical, related, or similar drug products as defined in § 310.6 (21 CFR 310.6) of our regulations. In accordance with section 505 of the act and parts 310 and 314 (21 CFR parts 310 and 314), we gave the holders of the NDAs and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named in the notice an opportunity for a hearing to show why approval of the NDAs involved should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of a named drug product and all identical, related, or similar drug products (44 FR 2021 at 2022).

The 1979 suppository notice stated that the failure of an applicant or any other person subject to the notice to file a timely written appearance and request for a hearing, as required by § 314.200, constituted an election by the person not to make use of the opportunity for a hearing and a waiver of any contentions concerning the legal status of any drug product subject to the notice. The notice further stated that any such drug product could not thereafter lawfully be marketed, and we would initiate appropriate regulatory action to remove such drug products from the market (44 FR 2021 at 2022).

In a letter dated January 30, 1979, Beecham requested a hearing on the proposed withdrawal of NDA 17–529 for Tigan Suppositories. In a letter dated March 5, 1979, Beecham submitted data in support of its request for a hearing. Beecham was the only party to request a hearing. On April 13, 1979, we published a notice in the **Federal Register** announcing that we were withdrawing the approval of NDA 11–8550 (the only other NDA named in the 1979 suppository notice), effective April 23, 1979 (44 FR 22199).

On November 12, 1999, King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620 (King), purchased from Roberts Pharmaceutical Corp. the NDAs for the Tigan products previously held by Beecham: NDA 17–529 (suppositories), NDA 17–530 (injection), and NDA 17–531 (capsules). We subsequently initiated discussions with King on bringing the Tigan products into compliance with the 1979 notices on trimethobenzamide hydrochloride drugs.

In an agreement that became effective on August 16, 2001 (the Agreement), FDA and King agreed to take several actions to resolve the matter of the compliance of Tigan products with the 1979 notices. Among other things, King agreed to withdraw the request for a hearing (originally submitted by Beecham) on matters related to NDAs 17–529 (Tigan Suppositories), 17–530 (Tigan Injection), and 17–531 (Tigan Capsules), and all amendments and supplements thereto, within 10 days of the effective date of the Agreement. In a letter dated August 24, 2001, King withdrew its request for a hearing on these matters in accordance with the Agreement. The issues relating to Tigan Capsules and Injection were resolved in 2001 and 2002, and on December 24, 2002, we published a notice in the **Federal Register** announcing our final evaluation of these products (67 FR 78476).

II. Resolution of Issues Concerning Tigan Suppositories

King notified us in a letter dated March 21, 2005, that it had decided not to pursue additional studies for Tigan Suppositories. In a letter dated August 19, 2005, we asked King, in accordance with the Agreement, to request the withdrawal of NDA 17–529 for Tigan Suppositories. In a letter dated September 6, 2005, King requested that we withdraw NDA 17–529.

As stated in section I of this document, King has withdrawn its request for a hearing on matters related to NDA 17–529. No party other than Beecham (a previous holder of NDA 17–529) submitted a request for a hearing in response to the 1979 suppository notice. Therefore, all other parties waived any possible contentions regarding the legal status of their trimethobenzamide hydrochloride suppository products.

III. Withdrawal of Approval of NDA 17–529 for Tigan Suppositories

As a result of the events described in section II of this document, we have concluded that Tigan Suppositories have not been shown to be effective. Therefore, we are withdrawing approval of the NDA for this product.

Under § 310.6, this notice applies to any drug product that is identical, related, or similar to Tigan Suppositories and is not the subject of an approved NDA. Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of New Drugs and Labeling Compliance (see **ADDRESSES**).

The Director of the Center for Drug Evaluation and Research, under section 505(e) of the act and under the authority delegated to him, finds that, on the basis of the information in this docket on Tigan Suppositories (NDA 17–529), evaluated together with the evidence available to FDA when the application for this product was approved, there is a lack of substantial evidence that this product has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, based on the foregoing finding, the approval of NDA 17–529, including all amendments and supplements thereto, is withdrawn effective May 9, 2007. Shipment in interstate commerce of Tigan Suppositories or any identical, related, or similar trimethobenzamide

hydrochloride suppository product that is not the subject of an approved NDA will then be unlawful.

We note that under enforcement policies regarding drugs marketed without required applications described in the agency's guidance entitled *Marketed Unapproved Drugs—Compliance Policy Guide*, it is a high priority for the agency to take enforcement action against those unapproved drug products that lack evidence of effectiveness. Firms should be aware that we intend to take enforcement action without further notice against any firm that manufactures or ships in interstate commerce any unapproved product covered by this notice after May 9, 2007. Firms that discontinue or have already discontinued manufacturing products covered by this notice may want to notify us that they are no longer manufacturing those products. A firm that wishes to notify us of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product, including its National Drug Code (NDC) number. The firm should send the letter to the Division of New Drugs and Labeling Compliance, New Drugs and Labeling Team (see **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the act (21 U.S.C. 360(j)) to reflect discontinuation of unapproved or otherwise discontinued products. We plan to rely on our existing records, the results of a subsequent inspection, or other available information when we evaluate whether to take enforcement action.

Dated: March 14, 2007.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. E7–6593 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products 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: Blood Products 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 April 26, 2007, from 2 p.m. to 6 p.m. and on April 27, 2007, from 8 a.m. to 3:30 p.m.

Location: Hilton Hotel, Washington, DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Donald W. Jehn or Pearline K. Muckelvene, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike (HFM–71), Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 26, 2007, the committee will hear an update on a summary of August 30 and 31, 2006, meeting of the Department of Health and Human Services Advisory Committee on Blood Safety and Availability. The committee will then discuss issues related to implementation of blood donor screening for infection with *Trypanosoma cruzi* and issues related to transmissibility of *Trypanosoma cruzi* in donors of human cells, tissue, and cellular and tissue-based products. On April 27, 2007, the committee will hear updates on summary of December 15, 2006, meeting of the Transmissible Spongiform Encephelopathies Advisory Committee, FDA's risk communication on plasma-derived Factor VIII and Factor XI, and summary of September 25 and 26, 2006, FDA Workshop on Molecular Methods in Immunohematology. The committee will then discuss transfusion related acute lung injury, and discuss issues related to implementation of blood donor screening for infection with West Nile Virus.

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 18, 2007. Oral presentations from the public will be scheduled between approximately 4:30 p.m. and 5 p.m. on April 26, 2007, and between approximately 10:45 a.m. and 11:15 a.m. on April 27, 2007. 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 10, 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 11, 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 Donald W. Jehn or Pearline K. Muckelvene 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: April 3, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–6594 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 4, 2007, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Scott Colburn, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville MD, 20850, 240–276–3707, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512520. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on the scientific and clinical issues raised by the addition of antimicrobial agents to personal protective equipment (PPE). The PPE to be discussed are surgical masks/respirators, medical gloves, and surgical/isolation gowns.

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 20, 2007. Oral presentations from the public will be scheduled for approximately 30 minutes during the morning deliberations and for approximately 30 minutes during the afternoon deliberations. 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 12, 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 13, 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 AnnMarie Williams, Committee Management Staff, at 301–827–7291 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: April 3, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–6645 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0121]

Use of Medication Guides to Distribute Drug Risk Information to Patients; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), is announcing a public hearing to obtain feedback on FDA's Medication Guide program, which provides for the distribution of FDA-approved written patient information for certain drug and biological products that pose serious and significant public health concerns. FDA is interested in obtaining public comment on ways to improve communication to patients who receive Medication Guides. The purpose of the public hearing is to solicit information and views from interested persons on specific issues associated with the development, distribution, comprehensibility, and accessibility of Medication Guides, which are required to convey risk information to patients.

Dates and Times: The public hearing will be held on June 12 and 13, 2007, from 8:30 a.m. to 4:30 p.m. on both days. Submit written or electronic notices of participation by 4:30 p.m. on May 12, 2007. Written and electronic comments will be accepted until July 12, 2007.

Location: The public hearing will be held at the National Transportation and Safety Board Boardroom and Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594 (Metro: L'Enfant Plaza Station on the Green, Yellow, Blue, and Orange Lines).

Addresses: Submit written or electronic notices of participation to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or on the Internet at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*. Submit written or electronic comments to *http://www.accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm* or to the Division of Dockets Management. Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov/ohrms/dockets* approximately 21 days after the hearing.

For Registration to Attend and/or to Participate in the Meeting: Seating at the meeting is limited. People interested in attending should register at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm* or submit a written request for registration to the Division of Dockets Management (see *Addresses*) by 4:30 p.m. on May 12, 2007. Registration is free and will be on a first-come, first-served basis.

If you wish to make an oral presentation during the open session of the meeting, you must state this intention on your notice of participation (see *Addresses*) and provide an abstract of your presentation by May 12, 2007. In the notice, submit your name, title, business affiliation, address, telephone and fax numbers, and e-mail address. FDA has identified questions and subject matter of special interest in section II of this document. You should also identify the subject matter and question number you wish to address in your presentation, and the approximate time requested for your presentation. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation. FDA may require joint presentations by persons with common interests. We will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. You must submit final electronic presentations, if any, to Mary Gross (see *Contacts*) by no later than June 6, 2007.

Contacts: Mary C. Gross, Safety Policy and Communication Staff (HFD–001), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane,

Rockville, MD 20857, 301–443–5421, e-mail: *mary.gross@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to ensuring that prescribers, patients, and their families have the information needed to support the safe and effective use of prescription medications. In the **Federal Register** of December 1, 1998 (63 FR 66378), FDA published its final rule entitled ''Prescription Drug Product Labeling; Medication Guide Requirements'' (effective June 1, 1999). The final rule included provisions that require the distribution of FDA-approved written patient information, Medication Guides, for certain prescription drug and biological products that pose a serious and significant public health concern (see part 208 (21 CFR part 208)). Medication Guides are intended to provide information that FDA has determined is necessary to patients' safe and effective use of drug products. Under § 208.24, manufacturers who ship drug products for which Medication Guides are required are responsible for ensuring that Medication Guides are provided in sufficient numbers to allow distributors, packers, or authorized dispensers to provide the guides to all patients who receive the drug product. Alternatively, manufacturers may provide the means for distributors, packers, or authorized dispensers to produce and provide Medication Guides to patients.

Section 208.24 also requires each authorized dispenser of a prescription drug for which a Medication Guide is required to provide the guide to the patient, or to the patient's agent, when the product is dispensed, unless exempt from this requirement under § 208.26. The failure to provide a Medication Guide when such a product is dispensed would cause the product to be misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the act) (see sections 502(a), 201(n), and 503(b)(2) of the act (21 U.S.C. 352(a), 321(n), and 353(b)(2)).

Consumers may receive prescription drug information through sources other than Medication Guides. For example, patient package inserts (PPIs) are FDA-approved patient information required to be dispensed with certain drugs such as estrogens (21 CFR 310.515) and oral contraceptives (21 CFR 310.501) to ensure the safe and effective use of these products. PPIs are considered part of the product labeling. Products with Medication Guides do not have PPIs; a required Medication Guide would replace an existing PPI for a product. Consumer medication information (CMI) is another source of prescription drug information. CMI, which is not FDA-approved, is a private sector initiative based on Public Law 104–180. This law sets specific distribution and quality goals and timeframes for the private sector distribution of written prescription drug information to consumers. The law requires that the Secretary of the Department of Health and Human Services evaluate the private sector progress toward meeting these goals, including that, by 2006, 95 percent of people receiving new prescriptions would receive useful written patient information with their prescriptions. For this public hearing, FDA is not soliciting comments on PPIs or the CMI initiative. Comments should be limited to the Medication Guide program, including the questions listed in section II of this document.

A list of drug products with Medication Guides is available on FDA's Web site at *http://www.fda.gov/cder/offices/ods/medication_guides.htm*.

II. Scope of Hearing

FDA is interested in obtaining public comment on ways to improve communication to patients consistent with the requirement that Medication Guides, FDA-approved patient information, be distributed for selected prescription drugs that pose a serious and significant public health concern. As stated in § 208.1, patient labeling in the form of a Medication Guide is required if one or more of the following circumstances exist:

1. The drug product is one for which patient labeling could help prevent serious adverse effects.
2. The drug product is one that has serious risk(s) (relative to benefits) of which patients should be made aware because information concerning the risk(s) could affect the patients' decision to use, or continue to use, the product.
3. The drug product is important to health and patient adherence to directions for use is crucial to the effectiveness of the drug.

The following questions are organized according to consumers, pharmacies/mail order pharmacies, manufacturers, information vendors/wholesalers, and academicians/researchers. Specifically, we are seeking input on the following issues:

Consumers

1. What is the best way for consumers to be informed about the serious risks of a drug product or other important prescribing information? Do Medication Guides have a unique or important role in educating consumers about these risks compared to other written medication information distributed at the pharmacy? Should the information be combined or simplified into fewer or one communication vehicle(s)?
2. How do consumers prefer to receive Medication Guide information (e.g., paper, e-mail, Internet)? When should they receive Medication Guide information (e.g., when prescribed, when dispensed, when they download it from a Web site or e-mail message)?
3. Are Medication Guides easy to read and understand? How can Medication Guides be improved? Do they serve as useful adjuncts to counseling by physicians or pharmacists?

Pharmacies/Mail Order Pharmacies

1. Currently, how are you informed that a Medication Guide is required to be distributed with a specific medication?
2. How do you receive Medication Guides from the manufacturers (e.g., in what format)? Should the way you receive these be changed? If so, how?
3. What are the challenges in complying with the Medication Guide regulation, maintaining an adequate supply of Medication Guides, and distributing Medication Guides to consumers? What changes should be made to the Medication Guide program to address these challenges?
4. What steps would you need to take to facilitate electronic distribution of Medication Guides (e.g., e-mailed to patients)?
5. Do you consider the Medication Guide to be a valuable tool in counseling patients about drugs with serious risks?
6. Do Medication Guides have a unique role compared to other communication vehicles that patients receive at the pharmacy? Should the information be combined or simplified into fewer communication vehicles?
7. What process improvements could be made to ensure that patients receive appropriate drug risk information at the pharmacy?
8. What are the advantages and disadvantages of having Medication Guides to cover a class of drugs versus Medication Guides for each individual product in a class?

Manufacturers

1. What steps do you take to ensure compliance with the Medication Guide requirements? What challenges do you encounter in complying with the requirement to distribute Medication Guides with the product to pharmacies and others? How do you ensure that pharmacies are receiving a sufficient supply of Medication Guides?
2. Have means other than paper, such as electronic files, been used to supply Medication Guides to pharmacies or

third-party vendors? If so, please describe your experience. If not, please explain why not.

3. How do you instruct pharmacies that Medication Guides must be dispensed with certain prescription drugs per § 208.24(d)?

4. Should standardized language and/or a uniform symbol on the container label be used for the required instruction to dispensers? If so, please propose standardized language and suggest a uniform symbol that might be appropriate.

5. What can be done by means of packaging, such as ''unit-of-use,'' to ensure that a Medication Guide is shipped with the drug product so that it is distributed with each prescription? What are the advantages and disadvantages of using unit-of-use packaging for any product that requires a Medication Guide?

6. What are the advantages and disadvantages of developing Medication Guides to cover a class of drugs rather than having a separate Medication Guide for each product in a class?

Information Vendors/Wholesalers

1. What challenges or issues regarding distribution of Medication Guides have you encountered? What changes should be made to the Medication Guide program to address these challenges?

2. What challenges do information vendors face when offering electronic versions of Medication Guides in the FDA-approved format? What ideas do you have regarding how Medication Guides could be integrated into other consumer information?

Academicians/Researchers

1. Please describe any research that is available regarding how often patients receive, read, and/or understand Medication Guides.

2. What research is available about Medication Guide comprehensibility and understandability for the diverse range of health literacy levels or special populations (e.g., elderly, adolescents, non-English speaking)? Please describe your recommendations as to how FDA should modify Medication Guides to more effectively inform a broader audience about drug risk information.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of the FDA is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner or his designee. The presiding officer will be accompanied by a panel of FDA employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written or electronic notice of participation with the Division of Dockets Management (see *Addresses*). To ensure timely handling, any outer envelope should be clearly marked with the docket number listed in brackets in the heading of this document along with the statement ''FDA Public Hearing: Use of Medication Guides to Distribute Drug Risk Information to Patients.'' Groups should submit two written copies. Requests to make a presentation should contain the potential presenter's name, address, telephone number, affiliation, if any, the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any, a brief summary of the presentation, and the approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant of the time allotted to the presenter and the approximate time that presenter's oral testimony is scheduled to begin. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the schedule will be placed on file in the Division of Dockets Management under the docket number listed in brackets in the heading of this document.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see *Contacts*).

To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this document acts as a waiver of these provisions as specified in § 15.30(h).

IV. Request for Comments

Interested persons may submit to the Division of Dockets Management (see *Addresses*) written or electronic notices of participation and comments for consideration at the hearing (see *Dates and Times*). To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open until July 12, 2007. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management (see *Addresses*). You should annotate and organize your comments to identify the specific questions to which they refer (see section II of this document). Two copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available 30 days after the hearing on the Internet at *http://www.fda.gov/ohrms/dockets*, and orders for copies of the transcript can be placed at the meeting or through the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, at a cost of 10 cents per page.

Dated: April 2, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–6506 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0118]

Draft Guidance for Industry on the Content and Format of the Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' This draft guidance is one of a series of guidance documents intended to assist applicants in drafting prescription drug labeling in which prescribing information is clear and accessible and complying with the new requirements in the final rule on the content and format of labeling for prescription drug and biological products (71 FR 3922, January 24, 2006). This draft guidance is intended to help applicants select information for inclusion in the ''Dosage and Administration'' section of labeling and to help them organize that information.

DATES: Submit written or electronic comments on the draft guidance by July 9, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Joseph P. Griffin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4204, Silver Spring, MD 20993–0002, 301–796–1077; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' The draft guidance provides recommendations on how to select information for inclusion in the ''Dosage and Administration'' section of labeling and how to organize information within the section. This draft guidance is one of a series guidances FDA is developing, or has developed, to assist applicants and reviewers with the format and content of certain sections of the labeling for prescription drugs. In the **Federal Register** of January 24, 2006 (71 FR 3998 and 3999), FDA issued final guidances on the format and content of the ''Adverse Reactions'' and ''Clinical Studies'' sections of labeling and draft guidances on implementing the new labeling requirements for prescription drugs and the format and content of the ''Warnings and Precautions,'' ''Contraindications,'' and ''Boxed Warning'' sections of labeling. The new labeling requirements (71 FR 3922) and these guidances are intended to make information in prescription drug labeling easier for health care practitioners to access, read, and use.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 201.57 have been approved under OMB control number 0910–0572.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm,* or *http://www.fda.gov/cber/guidelines.htm.*

Dated: March 30, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–6508 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0106]

Draft Guidance for Clinical Investigators, Sponsors, and Investigational Review Boards on Adverse Event Reporting—Improving Human Subject Protection; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Guidance for Clinical Investigators, Sponsors, and IRBs; Adverse Event Reporting—Improving Human Subject Protection.'' This guidance is intended to assist the research community in interpreting requirements for submitting reports of unanticipated problems, including certain adverse events reports, to the Institutional Review Board (IRB). FDA developed this draft guidance in response to concerns raised by the IRB community that increasingly large volumes of individual adverse event reports are inhibiting rather than enhancing IRBs' ability to adequately protect human subjects. The guidance provides recommendations to IRBs, sponsors, and investigators on improving the usefulness of the adverse event information submitted to IRBs.

DATES: Submit written or electronic comments on the draft guidance by June 8, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Critical Path Programs (HF–18), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit telephone requests to 800–835–4709 or 301–827–1800. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Terrie L. Crescenzi, Office of Critical Path Programs (HF–18), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7864.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for clinical investigators, sponsors, and IRBs entitled ''Guidance for Clinical Investigators, Sponsors, and IRBs; Adverse Event Reporting—Improving Human Subject Protection.'' Under the regulations in 21 CFR part 50 (Protection of Human Subjects), part 56 (21 CFR part 56) (Institutional Review Boards), part 312 (21 CFR part 312) (Investigational New Drug Application), and part 812 (21 CFR part 812) (Investigational Device Exemptions), an IRB must review and approve a clinical study before the study is initiated. Additionally, after an IRB's initial review and approval, an IRB must conduct continuing review of the study at intervals appropriate to the degree of risk presented by the study, at least annually. The primary purpose of both the initial review of a study and the periodic review of the conduct of the study is to assure the protection of the rights and welfare of human subjects. To assure the protection of the rights and welfare of human subjects during the conduct of a clinical study, an IRB must have information concerning unanticipated problems in the study and changes in the research activity. Such information may be important to the IRB's review. This draft guidance discusses adverse event reporting to IRBs by sponsors, and investigators, and emphasizes the greater value of well-analyzed adverse event data to an IRBs review. This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on adverse event reporting for the purpose of improving human subject protection. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 56 have been approved under OMB Control No. 0910–0130; the collections of information in part 312 have been approved under OMB Control No. 0910–0014; and the collections of information in part 812 have been approved under OMB Control No. 0910–0078.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: April 2, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–6595 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0117]

Draft Guidance for Industry on Orally Disintegrating Tablets; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Orally Disintegrating Tablets.'' The draft guidance provides pharmaceutical manufacturers of new and generic drug products with an agency perspective on the definition of an orally disintegrating tablet (ODT) and also provides recommendations to applicants who would like to designate a proposed product as an ODT.

DATES: Submit written or electronic comments on the draft guidance by June 8, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Frank O. Holcombe, Jr., Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9310.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Orally Disintegrating Tablets.'' The draft guidance provides pharmaceutical manufacturers of new and generic drug products with an agency perspective on the definition of an ODT and also provides recommendations to applicants who would like to designate proposed products as ODTs.

In an effort to develop drug products that are more convenient to use and to address potential issues of patient compliance for certain product indications and patient populations, pharmaceutical manufacturers have developed products that can be ingested simply by placing them on the tongue. The products are designed to disintegrate or dissolve rapidly on contact with saliva, thus eliminating the need for chewing the tablet, swallowing an intact tablet, or taking the tablet with water. This mode of administration was initially expected to be beneficial to pediatric and geriatric patients, to people with conditions related to impaired swallowing, and for treatment of patients when compliance may be difficult (e.g., for psychiatric disorders).

As firms started developing additional products using different technology and formulations, many of these later products exhibited wide variation in product characteristics from the initial products. Because this shift in product characteristics can affect a product's suitability for particular uses, the agency developed this guidance for industry.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on orally disintegrating tablets. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 30, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–6509 Filed 4–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Council on Graduate Medical Education (COGME).

Dates and Times: April 30, 2007, 8:30 a.m.– 5 p.m.; and May 1, 2007, 8:30 a.m.–2:30 p.m.

Place: Hilton Washington, DC/Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852–1699.

Status: The meeting will be open to the public.

Agenda: The agenda for April 30 in the morning will include: Welcome and opening comments from the Chair and Executive Secretary of COGME and senior management staff of the Health Resources and Services Administration.

On April 30, following the welcoming remarks from the COGME Chair, the Executive Secretary of COGME, and Agency senior management, there will be a review and discussion of the draft paper ''Enhancing GME Flexibility,'' by Barbara Chang, M.D., and other writing group members. After lunch there will be a review and discussion of the draft paper ''New Paradigms for Physician Training for Improving Access to Healthcare'' by Earl Reisdorff, M.D. and other writing group members. At 3 p.m. there will be a breakout of Council members into the two draft writing groups for further report revisions.

On May 1 there will be reports to the Council and further discussion on writing group activities and reports. The Council will conclude with a discussion of the timeframe and next steps for producing the Reports.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Jerald M. Katzoff, Executive Secretary, COGME, Division of Medicine and Dentistry, Bureau of Health Professions, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6785.

Dated: April 2, 2007.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E7–6597 Filed 4–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Reimbursement of Travel and Subsistence Expenses Toward Living Organ Donation Proposed Eligibility Guidelines

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Request for Public Comment.

SUMMARY: HRSA is soliciting comments on the proposed eligibility criteria for the *Reimbursement of Travel and Subsistence Expenses toward Living Organ Donations* Program. Eligibility criteria were proposed by the program grantee, the Regents of the University of Michigan, to HRSA. HRSA has determined that the proposed eligibility criteria constitute a proper interpretation of the authorizing statute's requirements, including determinations as to which individuals would otherwise be unable to meet the eligible expenses authorized under this Program. HRSA is soliciting public comment on the criteria outlined in this notice. HRSA will consider the comments in light of the authorizing statute and seek feedback from the Regents of the University of Michigan concerning the comments. HRSA will then approve final criteria. The final program eligibility criteria will be posted on the Reimbursement of Travel and Subsistence Expenses for Living Organ Donation Web site, *http://www.livingdonorassistance.org*.

DATES: Written comments must be submitted to the office in the address section below by mail or e-mail on or before May 24, 2007.

ADDRESSES: Please send all written comments to James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Room 12C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov*.

FOR FURTHER INFORMATION CONTACT: James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov*.

SUPPLEMENTARY INFORMATION: Congress has provided specific authority under

section 377 of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 274f, for providing reimbursement of travel and subsistence expenses for certain living organ donors, with preference for those for whom paying such expenses would create a financial hardship. On September 25, 2006, HRSA awarded a 4-year, $8,000,000, Cooperative Agreement to the Regents of the University of Michigan to establish this program.

The authorizing statute stipulates that the Secretary, in carrying out this program, shall give preference to those individuals that the Secretary determines are more likely to be otherwise unable to meet such expenses. HRSA asked the grantee to propose eligibility criteria to HRSA to satisfy this requirement.

The two main issues raised in developing the program eligibility criteria are:

(1) Which criteria should be used to identify potential living organ donors who may be unable to pay for travel and subsistence expenses associated with living organ donation? This issue is important because such donors are to receive priority under this program; and

(2) Which criteria should be established to assess the potential organ recipient's ability to pay the living donor's travel and subsistence expenses? This determination is significant because the authorizing statute provides that payments are not to be made if a donor's eligible expenses have been, or reasonably can be expected to be, paid by the organ recipient.

This program is intended for individuals with end stage organ failure for whom a transplant from a suitable living donor is a viable therapy. The purpose of this solicitation of comments is to obtain feedback from the public on the proposed eligibility criteria. These comments are important to assure that the needs and concerns of the general public, including its views as to the optimal means of carrying out the program's objectives, are addressed. After considering the comments, HRSA will approve final criteria, which will be posted on the Reimbursement of Travel and Subsistence Expenses for Living Organ Donation Web site, *http://www.livingdonorassistance.org.*

Proposed Eligibility Guidelines

The program's authorizing legislation explicitly states that funds ''will not be expended to pay the qualifying expenses of a donating individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses:

(1) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;

(2) By an entity that provides health services on a prepaid basis; or

(3) By the recipient of the organ.''

In implementing this authority, the proposed threshold of income eligibility for the recipient of the organ is 200% of the HHS Poverty Guidelines (described below). At any income above this measure, it can reasonably be expected that the recipient of the organ could pay for the donor's qualifying expenses. However, the transplant social worker or appropriate transplant center personnel involved in the potential transplant recipient's evaluation process can provide a written justification that notwithstanding the potential transplant recipient's income level, significant financial hardship is likely to be encountered by the potential transplant recipient of the organ for the payment of the donor's qualifying expenses in the course of the donation process. This justification will be given consideration by the program's Review Committee.

All live organ donors are eligible for reimbursement of qualifying expenses provided all the criteria for donor reimbursement are fulfilled. However, subject to availability of funds, preference will be given to donors who are more likely to be otherwise unable to meet the qualifying expenses, in the following proposed order of priority:

Preference Category 1: Donor income and recipient anticipated income each is ≤200% of the HHS Poverty Guidelines in their respective States of primary residence.

Preference Category 2: Donor income is ≤200% of the HHS Poverty Guidelines in the State of primary residence.

Preference Category 3: Recipient anticipated income is ≤200% of the HHS Poverty Guidelines in the State of primary residence.

Preference Category 4: Donors who can demonstrate that notwithstanding their income level, significant financial hardship is likely to be encountered for qualifying non-medical expenses in the course of the donation process.

Preference Category 5: Any live organ donor, notwithstanding income level or financial hardship, who meets the criteria for donor reimbursement.

Recipient anticipated income is the total income from all sources that the recipient is expected to receive in the year in which live donor organ transplantation will occur for the patient with previous existing organ failure or the subsequent calendar year after the year of onset of end stage organ failure for a new patient with end stage organ failure. The HHS Poverty Guidelines are updated periodically and the guidelines in effect at the time of application will be applied. As an illustration, the HHS Poverty Guidelines for 2006 (71 Fed. Reg. 3848) are shown in the table below.

2006 HHS POVERTY GUIDELINES

Persons in family or household	48 Contiguous states and DC	Alaska	Hawaii
1	$9,800	$12,250	$11,270
2	13,200	16,500	15,180
3	16,600	20,750	19,090
4	20,000	25,000	23,000
5	23,400	29,250	26,910
6	26,800	33,500	30,820
7	30,200	37,750	34,730
8	33,600	42,000	38,640
For each additional person, add	3,400	4,250	3,910

Source: 71 FR 3848 (Jan. 24, 2006).

Proposed Criteria for Donor Reimbursement

In addition to the eligibility and priority guidelines discussed above, the following criteria for donor reimbursement are proposed:

1. Any individual who in good faith incurs qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs (see special provision). This criteria is specifically discussed in the authorizing statute.
2. Donor and recipient of the organ are either U.S. citizens or lawfully admitted residents of the U.S.
3. Donor and recipient have primary residence in the U.S. or its territories.
4. Travel is originating from the donor's primary residence.
5. Donor meets the criteria for informed consent for the planned procedure according to applicable State and Federal laws.
6. Donor and recipient are not participating in a paired exchange program or a living donor/deceased donor exchange for the particular donation procedure for which reimbursement is being sought unless the legality of such practices is clarified by the Federal Government.
7. Donor and recipient attest to full compliance with section 301 of the National Organ Transplant Act (NOTA), as amended (42 U.S.C. 274e) which stipulates in part that '' * * * [i]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.''
8. The transplant center where the donation procedure occurs attests to its status of good standing with the Organ Procurement and Transplantation Network (*i.e.*, it is not a Member Not in Good Standing) and assurance that the program follows best practices for the health and safety of living donors such as the recommendations provided in the Consensus Statement of the Ethics Committee of the Vancouver Forum on living organ donation (Source: *Pruett TL, Tibell A, Alabdulkareem A, Bhandari M, Cronin DC, Dew MA, Dib-Kuri A, Gutmann T, Matas A, McMurdo L, Rahmel A, Rizvi SA, Wright L, Delmonico FL. The ethics statement of the Vancouver Forum on the live lung, liver, pancreas, and intestine donor.* Transplantation 81(10):1386–1387; (2006).

The public is invited to submit comments on these criteria.

Proposed Qualifying Expenses

For the purpose of the Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Program, qualifying expenses presently include only travel, lodging, and meals and incidental expenses incurred by the donor and/or accompanying person(s) as part of:

(1) Donor evaluation clinic visit or hospitalization;

(2) Hospitalization for the living donor surgical procedure; and/or

(3) Medical or surgical follow-up clinic visit or hospitalization within 90 days after the living donation procedure.

The Program will pay for up to five trips per donation or intended donation. Three of these trips may be for the potential living donor and up to two trips may be for any accompanying person(s). The total Federal reimbursement for qualified expenses during the donation process for the donor and accompanying individuals shall not exceed $6,000.

The public is invited to submit comments on these criteria.

Special Provisions

The authorizing statute provides that the Secretary may consider as an eligible donating individual a person who in good faith incurs qualifying expenses toward the intended donation of an organ but with respect to whom, for reasons the Secretary determines to be appropriate, no donation of the organ occurs. Many factors may prevent the intended and willing donor from proceeding with the donation. Such circumstances include present health status of the intended donor or recipient that would prevent the transplant or donation from proceeding, perceived long-term risks to the intended donor, circumstances such as acts of God (e.g., major storms or hurricanes), or other unforeseen events outside of the intended donor's control. In such cases, the intended donor and accompanying persons may receive reimbursement for the qualified expenses incurred. In the case that a potential donor no longer wishes to donate, he or she may receive reimbursement for qualified expenses incurred. However, payments received for expenses that were not incurred by the intended donor and accompanying persons must be refunded. Otherwise, such payment will be treated as income to the intended donor, and in accordance with Internal Revenue Service (IRS) regulations, the Regents of the University of Michigan shall notify the IRS (Form 1099) that a payment has been made to the intended donor in the amount equivalent to the unexpended payment.

Dated: March 30, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–6598 Filed 4–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment; Pursuant to the Federal Advisory Committee Act, as Amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), Announces the Establishment of the Council of Councils (Council)

The Council shall provide advice and recommendations to the Director, NIH, or other appropriate delegated officials on matters related to the policies and activities of the Division of Program Coordination, Planning, and Strategic Initiatives including making recommendations with respect to the conduct and support of research that represents important areas of emerging scientific opportunities, rising public health challenges, or knowledge gaps that deserve special emphasis and would benefit from conducting or supporting additional research that involves collaboration between two or more national research institutes or national centers, or would otherwise benefit from strategic coordination and planning.

Duration of this committee is two years from the date the Charter is filed.

Dated: March 29, 2007.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 07–1730 Filed 4–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed 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 on Deafness and Other Communication Disorders Special Emphasis Panel, Loan Repayment.

Date: May 7, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Virtual Meeting).

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd—MSC 7180, Bethesda, MD 20892–7180, 301–496–8683, *so14s@nih, gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Translation Research Review.

Date: May 8, 2007.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Contract Proposal Review.

Date: May 11, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd—MSC 7180, Bethesda, MD 20892–7180, 301–496–8683, *so14s@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, NIDCD Core Centers Review.

Date: June 12, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Melissa Stick, PhD, MPH, Chief, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 2, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1732 Filed 4–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, April 18, 2007, 8 a.m. to April 19, 2007, 9 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 30, 2007, FR 07–360.

The meeting changed from March 14–15, 2007 to April 18–19, 2007. The meeting place changed from Crowne Plaza Hotel, Silver Spring to 6701 Democracy, Bethesda. The new time begins at 7:30 p.m. to 9 p.m.on 4/18/07 and 7:30 a.m. to 3 p.m. on 4/19/07. The meeting is closed to the public.

Dated: April 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1733 Filed 4–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, March 5, 2007, 5:30 p.m. to March 5, 2007, 6 p.m., Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910 which was published in the **Federal Register** on January 30, 2007, FR 07–359.

The meeting date was changed from March 5, 2007 to April 11, 2007. The meeting begins at 7:30 a.m. and ends at 3 p.m. The meeting location changed from Crowne Plaza Hotel, Silver Spring to 6701 Democracy Blvd, Bethesda. The meeting is closed to the public.

Dated: April 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1734 Filed 4–6–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 Grant Application.

Date: April 11, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health/NIDCD, 6120 Executive Blvd.—MSC 7180, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov.*

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. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 2, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1735 Filed 4–6–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of K05 Applications.

Date: May 7, 2007.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 2, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1737 Filed 4–6–07; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 18, 2007, 8 a.m. to May 18, 2007, 5 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on March 29, 2007, 72 FR 14824.

The meeting will be held at the DoubleTree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting date and time remain the same. The meeting is closed to the public.

Dated: April 2, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1731 Filed 4–6–07; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Deferred Application UKGD.

Date: April 13, 2007.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@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.

(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: April 2, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–1736 Filed 4–6–07; 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: 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: Obligated Service for Mental Health Traineeships: Regulations (42 CFR Part 62a) and Forms (OMB No. 0930–0074)—Revision

SAMHSA's Center for Mental Health Services (CMHS) awards grants to institutions for training instruction and traineeships in mental health and related disciplines. Prior to statutory change in 2000, graduate student recipients of these clinical traineeships were required to perform service, as determined by the Secretary to be appropriate in terms of the individual's training and experience, for a length of time equal to the period of support. The clinical trainees funded prior to implementation of the statutory change are required to submit the SAMHSA Form SMA 111–2, which is an annual report on employment status and any changes in name and/or address, to SAMHSA.

The annual burden estimate is provided below.

42 CFR citation	Number of respondents	Responses per respondent	Average burden per response (Hrs.)	Annual burden (hrs.)
64a.105(b)(2): Annual Payback Activities Certification—SMA 111–2	*57	1	.18	10

*The actual number of trainees is now 83, less the estimated number in 3 years of 30 = 53; 53 divided by 2 = 27; 27 + 30 = 57.

Written comments and recommendations concerning the proposed information collection should be sent by May 9, 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: April 2, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–6474 Filed 4–6–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket Number DHS–2007–0010]

Privacy Act: Verification Information System Records Notice

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice to alter a system of records; request for comments.

SUMMARY: As part of its ongoing effort to review and update the legacy system of records notices, the Department of Homeland Security is altering previously established Privacy Act systems of records published by the former Immigration and Naturalization Service for the Verification and Information System (VIS) Justice/INS–035 published October 17, 2002 (67 FR 64134) and Alien Status Verification Index (ASVI) Justice/INS–009 published September 7, 2001 (66 FR 46815). The Department of Homeland Security will consolidate information from different systems of records notices and is adding new sources of data to the VIS to update the routine uses that were previously published for this system of records.

DATES: The established systems of records will be effective on May 9, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2007–0010 by one of the following methods:

- *Federal e-Rulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: For system related questions please contact: Gerri Ratliff, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Hugo Teufel III, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. USCIS Verification Information System

In various statutes, Congress mandated that USCIS establish a system that can be used to verify citizenship and immigration status of individuals seeking government benefits and establish a system for use by employers to determine whether a newly hired employee is authorized to work in the United States. USCIS implemented this mandate through the Systematic Alien Verification for Entitlements (SAVE) program for government benefits and the Basic Pilot Program for determining whether a newly hired employee is authorized to work in the United States. The Verification Information System (VIS) is the technical infrastructure that enables USCIS to operate SAVE and Basic Pilot. VIS is a nationally accessible database of selected immigration status information containing in excess of 100 million records. Government agencies use SAVE information to help determine whether a non-citizen is eligible for any public benefit, license or credential based on citizenship and immigration status. Private employers and government users use Basic Pilot information to determine whether a newly hired employee is authorized to work in the United States.

VIS is currently comprised of citizenship, immigration and employment status information from several DHS systems of records, including records contained in the U.S. Customs and Border Protection (CBP) Treasury Enforcement Communication Systems (TECS) (66 FR 52984), the Image Storage and Retrieval System (ISRS) (66 FR 6672), the USCIS Central Index System (CIS) (72 FR 1755), and the USCIS Computer Linked Application Information Management System (CLAIMS 3) (62 FR 11919).

This System of Records Notice is replacing the following systems of records previously published by Department of Justice's Immigration and Naturalization Service (DOJ/INS): the DOJ/INS 009 Alien Status Verification Index system (ASVI) (66 FR 46815) and the DOJ/INS 035 Verification Information System (VIS) (67 FR 64134).

A. SAVE Program

The SAVE Program, which is supported by VIS, provides government agencies with citizenship and immigration status information for use in determining an individual's eligibility for government benefits. Government agencies input biographic information into VIS for government benefit eligibility determinations and if VIS has a record pertaining to the individual, the government agency will receive limited biographic information on the citizenship and immigration status of the individual applying for a benefit. If VIS does not have a record pertaining to the individual, VIS automatically notifies a USCIS Immigration Status Verifier (ISV). The ISV then conducts a manual search of other DHS databases to determine whether there is any other information pertaining to that individual that would provide citizenship and immigration status. If the ISV finds additional relevant information, citizenship and immigration status data is provided to the requesting government agency user through VIS. The ISV will also update the appropriate record in USCIS' CIS database. The REAL ID Act requires that beginning May 2008, with a possible extension for States until December 2009, all states routinely utilize the USCIS SAVE program to verify the legal immigration status of applicants for driver's licenses and identification cards.

B. Basic Pilot

VIS also supports the Basic Pilot Program, a free and voluntary program allowing participating employers to

verify the employment eligibility of newly hired employees. The program is a collaboration between the Social Security Administration (SSA) and USCIS.

After an individual is hired by the employer and completes the Form I–9, employers input information from Sections 1 and 2 of the Form I–9 into the Basic Pilot portion of VIS. This query is first sent from VIS to SSA to verify social security information. If SSA cannot verify the employee's social security information, SSA will send a response to VIS which in turn will notify the employer of SSA's inability to verify the information provided by employee. The employer is then required to provide information to the employee about how the employee may contact SSA to resolve any issues. If SSA is able to verify the employee information and verify that the individual is a U.S. Citizen, (''USC''), VIS provides a confirmation to the employer. No further action is taken by VIS. If SSA is able to verify the employee information and the individual is a non-USC, the VIS system continues the process in order to verify employment authorization. Through VIS, USCIS provides the employer with a case verification number and the disposition of whether an employee is authorized to work. If VIS does not have a record pertaining to the individual, VIS automatically notifies an ISV. The ISV then conducts a manual search of other DHS databases to determine whether there is any other information pertaining to that individual that would provide employment eligibility status. If the ISV cannot determine the person's work eligibility, VIS notifies the employer that the employee must contact USCIS. If it is determined that an employee is not authorized to work after the employee is referred to SSA or USCIS, the employer may terminate the individual's employment.

Performing a verification query through the Basic Pilot system is only legally permissible after an offer of employment has been extended to an employee. The earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete the Form I–9. The employer must initiate the query no later than the end of three business days after the new hire's actual start date. Information from the Basic Pilot cannot be used to pre-screen individuals, re-screen individuals after being employed for longer than three days, or discriminate against individuals legally authorized to work in the United States.

C. Updates to VIS

VIS previously consolidated information from different DHS Systems of Records, with this update VIS will now add additional data elements from different DHS Systems of Records in order to enhance data completeness within VIS. USCIS is currently enhancing the employment verification function of VIS to allow an employer to query the system by inputting the new hire's USCIS receipt number, which is located on the secure Form I–551 (Permanent Resident Card) or the secure Form I–766 (Employment Authorization Document). The receipt number is a unique number associated with the issuance of the card. In addition, USCIS is piloting a new functionality that allows employers using Basic Pilot to compare the photo contained on secure issued USCIS cards against the photo on file in ISRS and/or the USCIS Biometric Storage System (BSS) (when deployed). These enhancements will significantly improve the speed at which USCIS will be able to verify the employment eligibility of many non-citizen new hires and reduce the likelihood of identity fraud through forged documents.

Once deployed, additional data elements from the BSS and ICE's Student and Exchange Visitor Information System (SEVIS) will be added to the VIS system. In order to support programmatic goals, the system will also have improved audit and reporting capability so that USCIS can better identify misuse of the system and programs supported by the system.

II. The Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United Stated Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other particular assigned to an individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals reading the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

SYSTEM OF RECORDS:

DHS/USCIS–004.

SYSTEM NAME:

U.S. Citizenship and Immigration Services Verification Information System (VIS).

SYSTEM LOCATION:

The Verification Information System (VIS) database is housed in a contractor-owned facility in Meriden, CT. The system is accessible via the Internet, Web services, Secure File Transfer Protocol (SFTP) batch, and through a computer via analog telephone line, and is publicly accessible to participants of the Systematic Alien for Verification Entitlements (SAVE) program and the Basic Pilot Employer Verification program, including authorized USCIS personnel, other authorized government users, participating employers, and other authorized users.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the Immigration and Nationality Act of the United States including but not limited to individuals who have been lawfully admitted to the United States, individuals who have been granted citizenship and individuals who have applied for other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.*

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Data originating from the USCIS Central Index System (CIS), including the following information about the Individual who comes before USCIS: Alien Registration Number (A-Number), Name (last, first, middle), Date of birth, Date entered United States (entry date), Country of birth, Class of Admission code, File Control Office code, Social Security Number, Admission Number (I–94 Number), Provision of Law code cited for employment authorization, office code where the authorization was granted, Date employment authorization decision issued, Date employment authorization may begin (start date), Date employment authorization expires (expiration date), Date employment authorization denied (denial date).

B. Data originating from the U.S. Customs and Border Protection Treasury Enforcement Communications System (TECS), including the following information about the individual: A-Number, Name (last, first, middle), Date

alien's status was changed (status change date), Date of birth, Class of Admission Code, Date admitted until, Country of citizenship, Port of entry, Date entered United States (entry date), Departure date, I–94 Number, Visa Number.

C. Data originating from the USCIS Image Storage and Retrieval System and/or the USCIS Biometric Storage System (when deployed), including: Receipt Number, Name (last, first, middle), Date of Birth, Country of Birth, Alien number, Form number, for example Form I–551 (Lawful Permanent Resident card) or Form I–766 (Employment Authorization Document), Expiration Date, and Photo.

D. Data originating from the USCIS Computer Linked Application Information Management System (CLAIMS 3), including: Receipt number, Name (last, first, middle), Date of Birth, Country of Birth, Class of Admission Code, A-number, I–94 number, Date entered United States (entry date), and Valid To Date.

E. Data originating from the U.S. Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS), including: SEVIS Identification Number (SEVIS ID), Name (last, first, middle), Date of Birth, Country of Birth, Class of Admission Code, I–94 number, Date entered United States (entry date), and Valid To Date.

F. Data originating from Social Security Administration (SSA), including: Confirmation of employment eligibility based on SSA records, Tentative non-confirmation of employment eligibility and the underlying justification for this decision, and Final non-confirmation of employment eligibility.

G. Information collected from the benefit applicant by the benefit-issuing agency to facilitate immigration status verification that may include the following about the benefit applicant: Receipt Number, A-Number, I–94 Number, Name (last, first, middle), Date of birth, User Case Number, DHS document type, DHS document expiration date, SEVIS ID andVisa Number.

H. Information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification that may include the following about the Agency: Agency name, Address, Point of Contact, Contact telephone number, Fax number, E-mail address, Type of benefit(s) the agency issues (*i.e.* Unemployment Insurance, Educational Assistance, Driver Licensing, Social Security Enumeration, etc.).

I. Information collected from the benefit-issuing agency about the Individual Agency User including: Name (last, first, middle), Phone Number, Fax Number, E-mail address, User ID for users within the Agency.

J. System-generated response, as a result of the SAVE verification process including: Case Verification Number, Entire record in VIS database as outlined above, including all information from CIS, SEVIS, TECS, and CLAIMS 3 and with the exception of the biometric information (photo) from ISRS and/or BSS (once deployed), and Immigration status (*e.g.* Lawful Permanent Resident).

K. Information collected from the employee by the Employer User to facilitate employment eligibility verification may include the following about the Individual employee: Receipt Number, Visa Number, A-Number, I–94 Number, Name (last, first, middle initial, maiden), Social Security Number, Date of birth, Date of hire, Claimed citizenship status, Acceptable Form I–9 document type, and Acceptable Form I–9 Document expiration date.

L. Information Collected About the Employer, including: Company name, Physical Address, Employer Identification Number, North American Industry Classification System code, Number of employees, Number of sites, Parent company or Corporate company, Name of Contact, Phone Number, Fax Number, and E-Mail Address.

M. Information Collected about the Employer User (*e.g.*, Identifying users of the system at the Employers), including: Name, Phone Number, Fax Number, E-mail address, and User ID.

N. System-generated response information, resulting from the employment eligibility verification process, including: Case Verification Number; VIS generated response: Employment authorized, Tentative non-confirmation, Case in continuance, Final non-confirmation, Employment unauthorized, or DHS No Show; Disposition data from the employer includes Resolved Unauthorized/ Terminated, Self Terminated, Invalid Query, Employee not terminated, Resolved Authorized, and Request additional verification, which includes why additional verification is requested by the employer user.

AUTHORITY FOR MAINTENANCE OF RECORDS:

8 U.S.C. 1255a, 8 U.S.C. 1324a, 8 U.S.C. 1360 and 42 U.S.C. 1320b–7.

PURPOSE(S):

This system of records is used to provide immigration status information to Federal, State, and local government agencies for immigrants, non-immigrants, and naturalized U.S. citizens applying for Federal, State, and local public benefits. It is also used to provide employment authorization information to employers participating in the Basic Pilot/Employment Eligibility Verification Program. This System of Records Notice is replacing both the previously published ASVI SORN and VIS SORN.

VIS is the technical infrastructure that enables USCIS to operate SAVE and Basic Pilot. In instances when an electronic verification cannot be confirmed by the VIS for either the SAVE or the Basic Pilot program, an electronic transmission of the verification request is sent through VIS to USCIS's ISVs for secondary processing. For Federal, State, and local government agency users of the SAVE program, there are a variety of instances in which either a secondary or third-step query may need to be completed manually through submission of the form G–845 Immigration Status/ Document Verification Request. These instances occur due to technical limitations of the interfaces by which the agency users access the SAVE program. In these instances, the VIS system is not accessed at all, and secondary and third-step verifications are conducted through manual searches of DHS systems by ISVs. For Basic Pilot users, in instances when the verification cannot be confirmed by VIS, an electronic transmission is sent by VIS to USCIS for processing by the Los Angeles Status Verification Unit.

Currently, no other DHS component has access to VIS data except for those that have signed MOUs permitting them to use the SAVE and/or Basic Pilot programs. Examples of such use by DHS components include TSA, which is utilizing the system to ascertain the immigration status of applicants applying for hazardous materials driver's licenses.

The VIS system includes audit and reporting functionality, and will be used for monitoring and compliance with system and program usage requirements set forth by USCIS. Audit or use reporting data in the system may be used to refer potential occurrences of fraud and/or egregious violations of SAVE or the Basic Pilot program to ICE.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information

contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To a Federal, State, tribal, or local government agency, or to a contractor acting on its behalf, to the extent that such disclosure is necessary to enable these agencies to make decisions concerning: (1) Determination of eligibility for a Federal, State, or local public benefit; (2) issuance of a license or grant; or (3) government-issued credential.

B. To employers participating in the Basic Pilot Employment Verification Program in order to verify the employment eligibility of all newly hired employees in the United States.

C. To other Federal, State, tribal, and local government agencies seeking to verify or determine the citizenship or immigration status of any individual within the jurisdiction of the DHS as authorized or required by law.

D. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish a DHS mission function related to this system of records, in compliance with the Privacy Act of 1974, as amended.

E. To a Congressional office, from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

F. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To a former employee of the Department for purposes of: (1) Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or (2) facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

H. To the Department of Justice (DOJ), Civil Rights Division, for the purpose of responding to matters within the DOJ's jurisdiction to include allegations of fraud and/or nationality discrimination.

I. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) it is determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

J. To the United States Department of Justice (including United States Attorney offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to the court or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) DHS; (2) any employee of DHS in his or her official capacity; (3) any employee of DHS in his or her individual capacity where DOJ or DHS has agreed to represent said employee; or (4) the United States or any agency thereof;

K. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws;

L. To Federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in computer accessible storage media and hardcopy format.

RETRIEVABILITY:

Agency records are retrieved by name of applicant or other unique identifier to include: verification number, A-Number, I–94 Number, Visa Number, SEVIS ID , or by the submitting agency name. Employer records are retrieved by verification number, A-Number, I–94 Number, Receipt Number, or Social Security Number of the employee, or by the submitting company name.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws and policies, including the DHS information technology security policies and the Federal Information Security Management Act (FISMA). All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature, which provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

Information maintained by DHS contractors for this system is also safeguarded in accordance with all applicable laws and regulations, including DHS IT security policies and FISMA. . Access is controlled through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

Completed verifications are archived to a storage disk monthly and are archived. The following proposal for retention and disposal is being prepared to be sent to the National Archives and Records Administration for approval. Records are stored and retained in the VIS Repository for twenty (20) years, from the date of the completion of the verification. VIS will retain data contained within this system to facility USCIS' ability to conduct trend analysis that may reflect the commission of fraud or other illegal activity related to misuse of either the SAVE or Basic Pilot program and to facilitate the reconstruction of an individual's

employment eligibility history. Further, retaining the data for this period of time will enable USCIS to fight identity fraud and misappropriation of benefits.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Verification Division, U.S. Citizenship and Immigration Services, DDC Building, 4th Floor, 111 Massachusetts Avenue, NW., Washington, DC 20529.

NOTIFICATION PROCEDURES:

Please address your inquiries about the VIS system in writing to the system manager identified above. To determine whether this system contains records relating to you, provide a written request containing the following information:

1. Identification of the record system;
2. Identification of the category and types of records sought; and
3. The requesting individual's signature and verification of identity pursuant to 28 U.S.C. 1746, which permits statements to be made under penalty of perjury. Alternatively, a notarized statement may be provided.

Address inquiries to the system manager at: Director, Verification Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 4th Floor, Washington, DC 20529 or to the Freedom of Information/Privacy Act Office, USCIS, National Records Center, P.O. Box 6481010, Lee Summit, MO 64064–8010.

RECORD ACCESS PROCEDURES:

In order to gain access to one's information stored in the VIS database, a request for access must be made in writing and addressed to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at USCIS. Individuals who are seeking information pertaining to themselves are directed to clearly mark the envelope and letter ''Privacy Act Request.'' Within the text of the request, the subject of the record must provide his/her account number and/or the full name, date and place of birth, and notarized signature, and any other information which may assist in identifying and locating the record, and a return address. For convenience, individuals may obtain Form G–639, FOIA/PA Request, from the nearest DHS office and used to submit a request for access. The procedures for making a request for access to one's records can also be found on the USCIS Web site, located at *http://www.uscis.gov.*

An individual who would like to file a FOIA/PA request to view their USCIS record may do so by sending the request to the following address: U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010.

CONTESTING RECORDS PROCEDURES:

Individuals have an opportunity to correct their data by submitting a redress request directly to the USCIS Privacy Officer who refers the redress request to USCIS's Office of Records. When a redress is made, the change is added directly to the existing records stored in the underlying DHS system of records from which the information was obtained. Once the record is updated in the underlying DHS system of records, it is downloaded into VIS. If an applicant believes their file is incorrect but does not know which information is erroneous, the applicant may file a Privacy Act request as detailed in the section titled ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information contained comes from several sources: A. Information derived from the following DHS systems of records, USCIS's CIS, CLAIMS3, ISRS, and BSS; CBP's TECS; and ICE's SEVIS, B. Information collected from agencies and employers about individuals seeking government benefits or employment with an employer using an employment verification program, C. Information collected from system users at either the agency or the employer used to provide account access to the verification program, and D. Information developed by VIS to identify possible issues of misuse or fraud.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Issued in Arlington, Virginia.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E7–6611 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[COTP Morgan City, LA 07–002]

South Louisiana Area Maritime Security Committee

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: Under the Maritime Transportation Security Act of 2002, the Secretary of Homeland Security has established an Area Maritime Security (AMS) Committee under the direction of the Morgan City Captain of the Port (COTP)/Federal Maritime Security Coordinator (FMSC). The Morgan City COTP/FMSC hereby requests that qualified individuals interested in serving on the South Louisiana AMS Committee submit an application for membership.

DATES: Requests for membership should reach the U.S. Coast Guard Captain of the Port, Marine Safety Unit Morgan City on or before July 1, 2007.

ADDRESSES: Requests for membership should be submitted to Captain of the Port, USCG Marine Safety Unit Morgan City, 800 David Drive, Morgan City, Louisiana 70380.

FOR FURTHER INFORMATION CONTACT: For questions concerning either the procedure for submitting an application or the South Louisiana Area Maritime Security Committee generally, contact Mr. Joe Pasqua at 985–380–5313.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C. 70112; 33 CFR 103.205; Department of Homeland Security Delegation No. 0170.1.) The MTSA includes a provision exempting these AMS Committees from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App.2).

The AMS Committee assists the Captain of the Port (COTP)/Federal Maritime Security Coordinator (FMSC)in the review and update of the South Louisiana Area Maritime Security Plan for the Marine Safety Unit Morgan City area of responsibility. Such matters may include, but are not limited to:

(1) Identifying critical port infrastructure and operations;

(2) Identifying risks (threats, vulnerabilities, and consequences);

(3) Determining mitigation strategies and implementation methods;

(4) Developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and

(5) Providing advice to, and assisting the COTP/FMSC in reviewing and updating the South Louisiana Area Maritime Security Plan.

South Louisiana AMS Committee Membership

Applicants should have at least five years of experience related to maritime or port security operations. The South Louisiana AMS Committee currently has twenty-four members, which includes maritime industry members in addition to government agency members. We are seeking new members interested in improving maritime security along the Louisiana coast, west of the Mississippi River. Applicants may be required to pass an appropriate security background check prior to appointment to the committee.

Members' term of office will be for five years; however, a member is eligible to serve an additional term of office. Members will not receive any salary or other compensation for their service on the South Louisiana AMS Committee. In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Request for Applications

Applicants seeking AMS Committee membership are not required to submit formal applications to the local COTP/FMSC. However, because we have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries. Applications should include the applicant's name, employer, relationship to maritime industry and port interests, and general maritime security-related experience.

Dated: February 12, 2007.

T. D. Gilbreath,

Captain, U.S. Coast Guard, Captain of the Port/Federal Maritime Security Coordinator.

[FR Doc. E7–6538 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27672]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to the safety of navigation. The meeting will be open to the public.

DATES: NAVSAC will meet on Monday, May 07, 2007, from 1 p.m. to 4 p.m.; Tuesday, May 08, 2007, from 8:30 a.m. to 4 p.m.; and Wednesday, May 09, 2007 from 8:30 a.m. to 11:30 a.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 15, 2007. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 15, 2007.

ADDRESSES: NAVSAC will meet in the Holiday Inn Mart Plaza Hotel, 350 West Mart Street, Chicago, IL 60654. Send written material and requests to make oral presentations to Mr. John Bobb, Commandant (CG–3PWM–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mike Sollosi, Executive Director of NAVSAC, or Mr. John Bobb, Assistant to the Executive Director, telephone 202–372–1532, fax 202–372–1929 or e-mail at *john.k.bobb@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Introduction and swearing-in of new members.

(2) Automatic Identification System.

(3) Aids to Navigation.

(4) Navigation in reduced visibility.

(5) Inland Rules of the Road.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than April 15, 2007. Written material for distribution at the meeting should reach the Coast Guard no later than April 15, 2007. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 20 copies to the Executive Director no later than April 15, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: March 30, 2007.

Wayne A. Muilenburg,

Captain, U.S. Coast Guard, Acting Director of Waterways Management.

[FR Doc. E7–6536 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25843]

Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center

AGENCY: Coast Guard, DHS.

ACTION: Notice of interpretation; response to comments received.

SUMMARY: On October 13, 2006, the Coast Guard published a notice of interpretation that the prohibition in 46 U.S.C. 6308 on the use of any part of a report of a Coast Guard marine casualty investigation report (MCIR) in certain administrative proceedings does not prohibit use of such reports in the process used by the Coast Guard's National Pollution Funds Center (NPFC) for determining to pay or deny claims under the Oil Pollution Act of 1990. We received two comments in response to the notice, neither of which effects the interpretation.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Benjamin White, U.S. Coast Guard's National Pollution Funds Center (NPFC), telephone 202–493–6863.

SUPPLEMENTARY INFORMATION: On October 13, 2006, we published a notice of interpretation entitled ''Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center'' (71 FR 60553). The notice provided for a comment period ending November 13, 2006.

Background and Purpose

The Coast Guard investigates and reports on marine casualties pursuant to 46 U.S.C. Chapter 63. Under 46 U.S.C. 6308 no part of a report of a marine casualty investigation ''shall be admissible as evidence or subject to discovery in any civil or administrative proceedings, other than an administrative proceeding initiated by the United States.'' Marine casualties may result in the discharge or substantial threat of discharge of oil to the navigable waters, adjoining shorelines or the exclusive economic

zone. The National Pollution Funds Center (NPFC) processes claims against the Oil Spill Liability Trust Fund for oil removal costs and certain damages that result from such discharges or threats under authority of the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*). The circumstances of a marine casualty will often bear on the entitlement of a claimant to payment of its claim, particularly for vessel owners or operators who may claim a complete defense to their own liability for such costs or damages, or entitlement to limit their liability under OPA.

In the past, the NPFC has not considered such reports of marine casualty investigations on the grounds that a broad interpretation of 46 U.S.C. 6308 might proscribe their use in the NPFC's claims processes. However, this resulted, in some instances, in the NPFC having to duplicate the investigative process in order to make findings of fact that were included in a Marine Casualty Investigation Report (MCIR).

As stated in the notice of interpretation, the NPFC may consider and rely on any part of a report of a MCIR in determining whether to pay or deny a claim. While such reports may be of use to NPFC in this regard, and may also be submitted by claimants to support their claims, the NPFC is not bound by such reports of investigation. The NPFC may require additional information from claimants in order to support their claims and may, considering the record as a whole, find additional facts or different facts from those included in such reports of investigation.

Discussion of Comments

Two commentors submitted comments to the Coast Guard during the comment period (71 FR 60553). Both commentors stated that the MCIRs are essentially field reports compiled under difficult circumstances by personnel of varying degrees of experience and knowledge. Commentors cautioned that the use of MCIRs should be undertaken with appropriate awareness of their possible shortcomings. The Coast Guard has stated that the NPFC is not bound by reports of investigation. Accordingly, the Director of the NPFC can reach not only different facts but also different opinions or conclusions than the opinions and conclusions in the MCIR.

A second comment noted that consideration of MCIRs by the NPFC will ultimately lead to their inclusion in the administrative record. The commentor reasoned that if a claim were appealed in a federal district court under the Administrative Procedure Act (APA), those documents would be introduced into civil proceedings as part of the administrative record in violation of 46 U.S.C. 6308.

The scope of APA judicial review is in 5 U.S.C. 706 and expressly provides that the court shall review the whole record. While the exclusion under 46 U.S.C. 6308 refers in general to civil proceedings, Congress did not intend to prevent proper judicial review under the APA and therefore 46 U.S.C. 6308 does not trump the APA record requirement.

For the reasons discussed above, these comments do not effect our interpretation as published in the **Federal Register** on October 13, 2006 (71 FR 60553).

Dated: April 3, 2007.

William D. Baumgartner,

U.S. Coast Guard Judge Advocate General.

[FR Doc. E7–6540 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the certification of flood proof residential basements in Special Flood Hazard Areas.

Title: Residential Basement Floodproofing Certificate.

OMB Number: 1660–0033.

Abstract: FEMA Form 81–78 is only used in communities that have been granted an exception by FEMA to allow the construction of flood proof residential basements in Special Flood Hazard Areas, (SFHAs). Homeowners must have a registered professional engineer or architect complete FEMA Form 81–78 for development or inspection of a properly designed and constructed basement and certify that the basement design and methods of constructions are in accordance with floodplain management ordinances. In any case homeowners are responsible for the fees involved with these services. Homeowners also provide FEMA Form 81–8 to the insurance agent to receive discounted flood insurance under the National Flood Insurance Program (NFIP).

Affected Public: Business or other for-profit.

Number of Respondents: 150.

Estimated Time per Respondent: 3.25 hours.

Estimated Total Annual Burden Hours: 487.5.

Frequency of Response: One-time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: March 28, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–6587 Filed 4–6–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3274–EM]

Indiana; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Indiana (FEMA–3274–EM), dated March 12, 2007, and related determinations.

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal

Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 12, 2007:

Adams, Allen, DeKalb, Hancock, Hendricks, Howard Huntington, LaGrange, LaPorte, Stark, St. Joseph, and Whitley Counties for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–6579 Filed 4–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–360, Petition for Amerasian, Widow, or Special Immigrant. OMB Control Number 1615–0020.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 8, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd floor, 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.* When submitting comments by email please add the OMB Control Number 1615–0020 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the 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 an existing information collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–360. 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. This information collection is used by several prospective classes of aliens who intend to establish their eligibility to immigrate to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 13,684 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 27,368 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: April 4, 2007.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–6613 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before May 9, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, California/Nevada Operations Office (CNO), 2800 Cottage Way, Room W–2606, Sacramento, California, 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, at the above CNO address, (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review

and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–144960

Applicant: Terry Strange, Wilseyville, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*), and to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Amador, Calaveras, Mariposa, Sacramento, San Joaguin, Stanislaus, and Tuolumne Counties, California for the purpose of enhancing their survival.

Permit No. TE–144965

Applicant: Brian Williams, Marysville, California.

The permittee requests a permit to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–144966

Applicant: Christopher Green, Sacramento, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–147691

Applicant: Arthur C. Gibson, Los Angeles, California.

The permittee requests a permit to remove/reduce to possession Astragalus brauntonii (Braunton's milk-vetch), *Astragalus pycnostachyus var. lanosissima* (Ventura marsh milk-vetch), and *Astragalus tener var. titi* (coastal milk-vetch), *Cordylanthus maritimus ssp. Maritimus* (salt marsh bird's beak), *Dudleya cymosa var. marcescens* (marcescent dudleya), *Dudleya cymosa var. ovatifolia* (Santa Monica Mountain dudleya), *Orcuttia californica* (California Orcutt grass), and Pentachaeta lyonii (Lyon's pentachaeta) from Federal lands in conjunction with scientific studies in Los Angeles and Ventura Counties, California, for the purpose of enhancing their survival.

Permit No. TE–802450

Applicant: Art Davenport, Barstow, California.

The applicant requests an amendment to take (harass by survey) the light footed clapper rail (*Rallus longirostris levipes*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–146039

Applicant: Hildegarde Spautz, El Cerrito, California.

The applicant requests a permit to take (harass by survey and monitor) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with surveys, monitoring and other life history studies in Contra Costa, Alameda, San Mateo, San Francisco, Santa Clara, Marin, Sonoma, Solano, and Napa Counties, California for the purpose of enhancing their survival.

Permit No. TE–146051

Applicant: Wendy Renz, Albany, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*) in conjunction with genetic research in Solano, Marin and Tehama Counties in California for the purpose of enhancing their survival.

Permit No. TE–147553

Applicant: Jeffrey Mitchell, San Francisco, California.

The permittee requests a permit to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout in Contra Costa County, California for the purpose of enhancing its survival.

Permit No. TE–1476489

Applicant: Sara Throne, La Mesa, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–147652

Applicant: J. Hall Cushman, Rohnert Park, California.

The permittee requests a permit to take (survey by pursuit, capture, handle, remove from the wild, captive propagate, and release to the wild) the Smith's blue butterfly (*Euphilotes enoptes smithi*) in conjunction with surveys, propagation activities, and other life history studies in Monterey County, California for the purpose of enhancing their survival.

Permit No. TE–148555–0

Applicant: Phillip Brylski, Irvine, California.

The applicant requests a permit to take (capture and release) the Stephens' kangaroo rat (*Dipodomys stephensi*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–148556

Applicant: Deborah Van Dooremolen, Wilseyville, California.

The applicant requests an amendment to take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys throughout the range of the species in Clark County, Nevada for the purpose of enhancing its survival.

Permit No. TE–148552

Applicant: Holley Sheply, Oakland, California.

The applicant requests a permit to take (harass by survey, capture, and mark) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with surveys and monitoring activities throughout the range of the species in California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all

submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: April 3, 2007.

Michael Fris,

Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E7–6592 Filed 4–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW137943]

Wyoming: 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 from Ryder Oil and Gas LLC for noncompetitive oil and gas lease WYW137943 for land in Fremont County, Wyoming. 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, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163.00 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 Sections 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 WYW137943 effective November 1, 2006, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E7–6543 Filed 4–6–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of the Abbreviated Final Environmental Impact Statement and General Management Plan Amendment for Dayton Aviation Heritage National Historical Park, OH

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(c)), the National Park Service (NPS) announces the availability for the Abbreviated Final Environmental Impact Statement and General Management Plan Amendment (EIS/GMPA) for Dayton Aviation Heritage National Historical Park, Ohio.

DATES: The Abbreviated Final EIS/GMPA will remain available for public review for 30 days following the publishing of the notice of its availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Requests for copies should be sent to the Superintendent, Dayton Aviation Heritage National Historical Park, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409–7705. You may also view the document via the Internet through the NPS Planning, Environment, and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov*); simply click on the link to Dayton Aviation Heritage National Historical Park.

SUPPLEMENTARY INFORMATION: The NPS prepared a Draft EIS/GMPA for Dayton Aviation Heritage National Historical Park pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969. The draft was made available for public review for 60 days (January–March) during which time the NPS distributed over 200 copies of the draft. In addition to the distribution, the draft EIS/GMPA was also made available at the park, on the Internet, and at area libraries. A total of 10 written comments were received, and 20 participants attended 2 open houses. The consensus from the public comment period was that the NPS is pursuing the correct path for the site in Alternatives C, the preferred alternative. Comments from individuals and public agencies did not require the NPS to add other alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative. Because of the lack of substantive comments, the NPS is issuing an abbreviated final EIS/GMPA.

FOR FURTHER INFORMATION CONTACT: The Superintendent, Dayton Aviation Heritage National Historical Park, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409–7705, telephone 937–225–7705.

Dated: August 15, 2006.

Ernest Quintana,

Director, Midwest Region.

Editorial Note: This document was received at the Office of the Federal Register on April 3, 2007.

[FR Doc. 07–1711 Filed 4–6–07; 8:45 am]

BILLING CODE 4312–88–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. AGOA–07]

Commercial Availability of Fabric and Yarns in AGOA Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following enactment of legislation that amends the African Growth and Opportunity Act (AGOA) to provide for certain determinations by the Commission, the Commission has instituted investigation No. AGOA–07, *Commercial Availability of Fabric and Yarns in AGOA Countries,* for the purpose of gathering information and making the determinations required through September 30, 2007, with respect to the denim articles identified in the statute.

DATES: April 2, 2007: Institution of investigation.

May 22, 2007: Deadline for filing requests to appear at the hearing.

May 24, 2007: Deadline for filing pre-hearing briefs and statements.

June 5, 2007: Public hearing.

June 19, 2007: Deadline for filing post-hearing briefs and statements.

August 3, 2007: Deadline for filing all written submissions.

August 24, 2007: Deadline for filing supplemental written submissions.

September 25, 2007: Transmittal of Commission report to the President.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission

Building, 500 E Street SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Linda Linkins, Project Leader (202–205–3231; *linda.linkins@usitc.gov*), Office of Operations, United States International Trade Commission, Washington, DC, 20436 or Jackie Jones, Co-Project Leader (202–205–3466; *jackie.jones@usitc.gov*), Office of Industries. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired individuals may 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.

BACKGROUND AND SUPPLEMENTARY INFORMATION: On December 20, 2006, the President signed into law amendments to section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721) (AGOA), included in Public Law 109–432, that require the Commission to make certain determinations relating to the commercial availability of regional fabric or yarn for use in lesser developed beneficiary sub-Saharan African countries. Specifically, section 112(c)(2)(A) of the AGOA (as amended) requires the Commission, upon receipt of a petition (properly filed), to determine whether a fabric or yarn produced in beneficiary sub-Saharan African countries is available in commercial quantities for use by lesser developed beneficiary sub-Saharan African countries. If the Commission makes an affirmative determination, section 112(c)(2)(B)(i) requires that the Commission determine the quantity of the fabric or yarn that will be so available in lesser developed beneficiary sub-Saharan African countries in the applicable 1-year period (October 1–September 30) after the determination is made.

Thereafter, in each case in which the Commission determines that a fabric or yarn is available in commercial quantities for an applicable 1-year period, section 112(c)(2)(B)(ii) requires that the Commission determine, before the end of that applicable 1-year period, whether the fabric or yarn produced in beneficiary sub-Saharan African countries will be available in commercial quantities in the succeeding applicable 1-year period, and if so, the quantity of the fabric or yarn that will be so available in the succeeding 1-year period, subject to section 112(c)(2)(B)(iii). After the end of each applicable 1-year period for which such a determination under section 112(c)(2)(B)(i) is in effect, the Commission must make the determination required by section 112(c)(2)(B)(iii) with respect to the quantity of fabric or yarn used in the production of apparel articles receiving preferential treatment under section 112(c)(1) that was entered in the applicable 1-year period and, to the extent that the quantity so determined was not so used, add to the quantity of that fabric or yarn determined to be available in the next applicable 1-year period the quantity not so used in the preceding 1-year period.

Section 112(c)(2)(C) of AGOA states that denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule of the United States shall be deemed to be available in commercial quantities and specifies the quantity available for the 1-year period beginning October 1, 2006. Accordingly, pursuant to section 112(c)(2)(B)(ii), the Commission must determine before September 30, 2007, whether such denim articles produced in beneficiary sub-Saharan African countries will be available in commercial quantities in the succeeding 1-year period and, if so, the quantity that will be so available in that succeeding 1-year period, subject to clause (iii).

On February 27, 2007, the Commission published an interim rule in the **Federal Register**, that became effective upon publication (72 FR 8624), describing the procedures it will follow in making determinations in response to petitions received and accepted from interested parties under section 112(c)(2)(A) of AGOA. The interim rule also describes the information that must be included in a petition if it is to be accepted by the Commission. The Commission indicated that it will make its determinations under section 112(c)(2)(A) by September 25, 2007, with respect to petitions received on or before March 28, 2007, and accepted on or before April 11, 2007, and, for any such determinations that are in the affirmative, it will make its determinations with respect to the quantity available in fiscal 2008 (October 1, 2007-September 30, 2008) by September 25, 2007.

For docketing and other purposes, the Commission's proceedings and actions with respect to denim articles have been designated as investigation No. AGOA–07–001. No petitions were filed on or before March 28, 2007.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC beginning at 9:30 a.m. on June 5, 2007. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., May 22, 2007, in accordance with the requirements in the ''Submissions'' section below. In the event that, as of the close of business on May 22, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after May 22, 2007, to determine whether the hearing will be held.

Statements and Briefs: In lieu of or in addition to participating in the hearing, parties and non-parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the ''Submissions'' section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., May 24, 2007; the deadline for filing post-hearing briefs or statements is 5:15 p.m., June 19, 2007. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and must be received no later than the close of business on August 3, 2007. Any parties and non-parties who filed timely submissions may file supplemental submissions. Such supplemental submissions must be filed no later than the close of business on August 24, 2007, and the information contained therein shall be limited to information not available at the time of the August 3 submission.

Submissions: All written submissions including requests to appear at the hearing, statements, and briefs should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. All written submissions must conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8

of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize the filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the President. After transmitting its report, the Commission intends to publish a public version of its report, with any confidential business information deleted. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in the public version of the report in a manner that would reveal the operations of the firm supplying the information.

Issued: April 3, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–6600 Filed 4–6–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1111–1113 (Preliminary)]

Glycine from India, Japan, and Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1111–1113 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India, Japan, and Korea of glycine,[1] provided for in subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 14, 2007. The Commission's views are due at Commerce within five business days thereafter, or by Monday, May 21, 2007.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

EFFECTIVE DATE: March 30, 2007.

[1] The imported product covered by these investigations is glycine, which in its solid (*i.e.*, crystallized) form is a free-flowing crystalline material, like salt or sugar. These investigations cover glycine in any form and purity level, regardless of additives. Glycine's chemical composition is $C_2H_5NO_2$ and generally is classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

In addition, precursors of dried crystalline glycine, including, but not limited to, glycine slurry (*i.e.*, glycine in a non-crystallized form) and sodium glycinate are included in these investigations. Glycine slurry is classified under the same HTSUS as crystallized glycine (2922.49.4020) and sodium glycinate is classified under HTSUS 2922.49.8000. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727, *russell.duncan@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 615–U, 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on March 30, 2007, by GEO Specialty Chemicals, Inc., Lafayette, IN.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a

conference in connection with these investigations for 9:30 a.m. on Friday, April 20, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Russell Duncan (202–708–4727) not later than April 18, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 25, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 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 § 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 §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: April 2, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–6601 Filed 4–6–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1110 (Preliminary)]

Sodium Hexametaphosphate (SHMP) From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of sodium hexametaphosphate, provided for in subheadings 2835.39.50 and 3823.90.39 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On February 8, 2007, a petition was filed with the Commission and Commerce by ICL Performance Products, LP, St. Louis, MO, and Innophos, Inc., Cranbury, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of sodium hexametaphosphate from China. Accordingly, effective February 8, 2007, the Commission instituted antidumping duty investigation No. 731–TA–1110 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of 72 FR 7458, February 15, 2007. The conference was held in Washington, DC, on March 1, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 26, 2007. The views of the Commission are contained in USITC Publication 3912 (April 2007), entitled *Sodium Hexametaphosphate from China: Investigation No. 731–TA–1110 (Preliminary).*

Issued: April 3, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–6599 Filed 4–6–07; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on March 14, 2007, a proposed Consent Decree in *United States of America* v. *William Montgomery, et al,* Civil Action No. 2:05–CV–0131 was lodged with the United States District Court for the Western District of Michigan.

In this action, pursuant to Sections 309(b) and (g), 33 U.S.C. §§ 1319(b) and (g) of the Clean Water Act, the United States sought judicial enforcement of an administrative Consent Agreement and Final Order (''CAFO'') that William Montgomery (''Montgomery'') and CCMS Associates, Inc. (''CCMS'') entered into on September 17, 2003. The CAFO resolved violations by Montgomery and CCMS of the Clean Water Act, requiring them to pay a $30,000 civil penalty and restore 18.51 acres of wetlands. The complaint also

sought relief against Montgomery and Montgomery Aggregate Products, Inc., for failing to comply with permitting and notice requirements, in violation of the Clean Air Act (''CAA''), 42 U.S.C. 7401, *et seq.,* specifically the New Source Performance Standards (''NSPS''), for nonmetallic mineral processing plants, 40 CFR part 60.

A default judgment was entered against Defendant CCMS. The proposed Consent Decree would, resolve the remaining claims against Defendants Montgomery and Montgomery Aggregate Products, Inc., by *inter alia,* (1) requiring them to pay a civil penalty of $72,000; (2) requiring Montgomery to perform the wetlands mitigation they previously agreed to undertake in the CAFO, as modified in the Decree; and (3) requiring them to comply with the provisions of the Clean Air Act and specifically, the NSPS for nonmetallic mineral processing plants, 40 CFR part 60, or pay stipulated penalties for any infraction thereof.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Montgomery, et al.,* D.J. Ref. 90–5–2–1–08092/1. Comments may also be submitted by e-mail to the following e-mail address: *pubocmment-ees.enrd@usdoj.gov.*

The Consent Decree may be examined at the Office of the United States Attorney, Fifth Floor, 330 Ionia NW., Grand Rapids, MI 49503, and at the United States Environmental Protection Agency, Region V, 77 West Jackson Boulevard, C–14J, Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html* A copy of the Consent Decree 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 $25.75 (25 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. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Jennifer L. McManus,

Assistant United States Attorney, U.S. Attorney's Office—Western District of Michigan.

[FR Doc. 07–1721 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–JH–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Standards

Notice is hereby given that, on March 13, 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''), ASTM International—Standards (''ASTM'') 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, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2006 and February 2007, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM 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 10, 2004 (69 FR 65226).

The last notification was filed with the Department on December 14, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 25, 2007 (72 FR 3415).

For additional information, please contact: Thomas B. O'Brien, Jr., General Counsel, at 100 Barr Harbor Drive, West Conshohocken, PA 19428, telephone 610–832–9597 e-mail address *tobrien@astm.org.*

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–1724 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on February 27, 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''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, BCO, Inc., Billerica, MA has withdrawn as a party to this venture. In addition, Systems & Electronics Inc. has changed its name to DRS Sustainment Systems, Inc., St. Louis, MO.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. 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 July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on December 8, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 29, 2006 (71 FR 78468).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–1722 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Serum Industry Association

Notice is hereby given that, on February 20, 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''), International Serum Industry Association (''ISIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: International Serum Industry Association, McHenry, MD. The nature and scope of ISIA's standards development activities are: to bring together, as members of the corporation, companies worldwide that are involved in the collection, sale, distribution, and processing of serum, and related companies. Serum is used in connection with research, diagnostic testing, and the development, sale and distribution of life sciences and biopharmaceutical products. The corporation's purpose is to enhance the understanding, safety, use and general knowledge of serum and serum related products by adopting, promoting and encouraging policies by which its members will: (1) Establish common nomenclature and testing standards for use within the serum industry; (2) work together to address common regulatory issues (e.g. import/export); (3) address common concerns about health related issues; (4) develop industry quality standards for product and company performance; (5) develop a market wide understanding of sourcing and traceability and policies to standardize business practices; (6) develop a proactive industry, regulatory and world interface to educate, inform and advocate as appropriate, acting as a spokesperson for the international serum industry in North America and other parts of the world on government and public policy issues, especially those impacting worldwide trade; (7) develop and implement standards of compliance to ensure that the industry is seen by all constituencies as operating at a high level of professional ethics; and (8) conduct such other activities, and adopt such other policies and practices, which are furtherance of the general objective of promoting uniform standards and reliability in the serum industry.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–1723 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on March 1, 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''), LiMo Foundation (the ''Foundation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Motorola, Inc., Libertyville, IL; NEC Corporation, Tokyo, JAPAN; Panasonic Mobile Communications Co., Ltd., Yokohama, JAPAN; Samsung Electronics Co., Ltd., Seoul, REPUBLIC OF KOREA; and Vodafone Group Services Limited, Newbury, Berkshire, UNITED KINGDOM. The nature and purpose of the Foundation is to develop a Linux-based, open mobile communication device software platform (the ''Foundation Platform''); to advance the creation, evolution, promotion, and support of the Foundation Platform; and to cultivate an ecosystem of complementary products, capabilities, and services, along with all other things ancillary to the foregoing purposes.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–1727 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

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. 4310 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, TEGAM, Inc., Geneva, OH has been added as a party to this venture. Also, Global Test Solutions for Tabor Electronics, Yucaipa, CA and EADS North American Defense Test & Services, Irvine, CA have withdrawn as parties to this venture. In addition, B&B Technologies has changed its name to National Technical Systems-TSE, Albuquerque, NM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. 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 March 8, 2001 (66 FR 13971).

The Last notification was filed with the Department on December 21, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 25, 2007 (72 FR 3416).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–1726 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on February 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''), Telemanagement Forum (''the Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, 24 Online Oy, Espoo, FINLAND; ADVA AG Optical Networking, Munich, GERMANY; ADVA Optical Networking Inc., Mahwah, NJ; ArcSight, Cupertino, CA; ArtinSoft LLC, Herndon, VA; BH Telecom, Joint Stock Company Sarajevo, Sarajevo, BOSNIA-HERZEGOVINA; BOYRA, Bogota, COLOMBIA; Brennan Software Development PTY LTD, Sydney, NSW, AUSTRALIA; Cadence LLC, Denver, CO; CASCADE Limited, Quarry Bay, PEOPLE'S REPUBLIC OF CHINA; Catalyst IT Partners Ltd, London, UNITED KINGDOM; Chalmers Associates, Congleton, UNITED KINGDOM; China Link Communications LTD., Shanghai, PEOPLE'S REPUBLIC OF CHINA; CIMI Corp., Voorhees, NJ; Citizens Telecom Services Company L.L.C., Stamford, CT; Cogitas, Utrecht, NETHERLANDS; Comergent Technologies, Redwood City, CA; Cosmote, Athens, GREECE; Cox Communications, Atlanta, GA; Dimetis GmbH, Dietzenbach, GERMANY; Dubai World Center, Dubai, UNITED ARAB EMIRATES; EDEL Consulting, Zurich, SWITZERLAND; EITC, Dubai, UNITED ARAB EMIRATES; EMBARQ, Overland Park, KS; Etisalat UAE, Abu Dhabi, UNITED ARAB EMIRATES; EVSC, Seoul, REPUBLIC OF KOREA; Factdelta, Swansea, UNITED KINGDOM; Fluke Networks, Duluth, GA; Great Bear International Services (Pvt) Ltd., Islamabad, PAKISTAN; Highdeal, Caen, FRANCE; Integra Consultores, Caracas, VENEZUELA; Jose Ricardo Formagio Bueno, Sao Paulo, BRAZIL; Kentor IT AB, Stockholm, SWEDEN; LMU Munich, Munich, GERMANY; Manconsult Development, Vastra Gotaland, SWEDEN; Metrocom Inc., Miami, FL; Mission Critical, Braine-l'Alleud, BELGIUM; MTN Network Solutions (Pty) Limited, Gauteng, SOUTH AFRICA; NetScout Systems, Westford, MA; Networked/Assets GmbH, Berlin, Germany; NetworkMining, Mechelen, Belgium; Newsdesk Media Group, London, UNITED KINGDOM; Northrup Grumman, Los Angeles, CA; OKB Telecom, Moscow, RUSSIA; Orascom Telecom Holding, Cairo, EGYPT; Orga Systems GmbH, Paderborn, GERMANY; Orishatech, Glen Echo, MD; OSS Terrace, Cupertino, CA; PT Bandung TalentSource, Jakarta, INDONESIA; Qosmos, Paris, FRANCE; Reachview Technologies Inc., Atlanta, GA; Revenue Protect Limited, Hatfield, UNITED KINGDOM; Selectica, Bracknell, UNITED KINGDOM; SERVA Software Inc., Wichita Falls, TX; Servei de Telecomunicacions d'Andorra, Andorra la Vella, ANDORRA; Sheerscape Inc., Austin, TX; Solegy LLC, New York, NY; Soluziona Mexico S.A. de C.V., Mexico City, MEXICO; Switchlab, London, UNITED KINGDOM; TelcoSI, Sydney, NSW, AUSTRALIA; Telefonica 02 Czech Republic, a.s., Prague 3, CZECH REPUBLIC; Teracom AB, Sundbyberg, SWEDEN; TerreStar Networks, Reston, VA; THUS, Glasgow, UNITED KINGDOM; TIM Hellas, Athens, GREECE; Time Warner Cable, Herndon, VA; Tiscali International Network, Utrecht, NETHERLANDS; Vernikov and Partners Group, Moscow, RUSSIA; Virgin Mobile, Trowbridge, Wiltshire, UNITED KINGDOM; Wireless Maingate Nordic AB, Karlskrona, SWEDEN; Zenulta Limited, Swindon, Wiltshire, UNITED KINGDOM; and ZIRA Ltd., Sarajevo, BOSNIA-HERZEGOVINA, have been added as parties to this venture.

Also, Acterna, Atlanta, GA; al-ELM Information Security, Riyadh, SAUDI ARABIA; Borland Corporation, Scotts Valley, CA; Cherrytee Solutions Limited, TaliNadu, INDIA; ClickSoftware Inc., Burlington, MA; Connexion by Boeing, Irvine, CA; Digital Fairway Corporation, Toronto, Ontario, CANADA; Distocraft Oy, Helsinki, FINLAND; Dubai Internet City, Dubai, UNITED ARAB EMIRATES; Emirates, Abu Dhabi, UNITED ARAB EMIRATES; ERM, Sao Paulo, BRAZIL; ExpertEdge Software & Systems Limited, Lagos, NIGERIA; FineGrain Networks, Ltd., Fairview, TX; Frost & Sullivan, Beijing, PEOPLE's REPUBLIC OF CHINA; Gamma Projects, Magor, Monmouthshire, UNITED KINGDOM; Grupo Auna, Barcelona, SPAIN; IDS Scheer Japan Co., Ltd., Tokyo, JAPAN; Information-control LLC, Gaithersburg, MD; InfoRoad AB, Uppsala, SWEDEN; InterAcct Solutions, Sydney, NSW, AUSTRALIA; IP Value GmbH, Dortmund, GERMANY; IPANEMA TECHNOLOGIES, Fontenay aux Roses, FRANCE; Jamcracker, Inc., Santa Clara, CA; LG TeleCom, Seoul, REPUBLIC OF KOREA; Mangrove Systems, Inc., Wallingford, CT; Martin Dawes Systems, Fearnhead, UNITED KINGDOM; Noventum Consulting GmbH, Muenster, GERMANY; OKB Telecom, Moscow, RUSSIA; Olista, Natanya, ISRAEL; ORMvision, Lochristi, BELGIUM; Pelagic Group, Singapore, SINGAPORE; PMCL MOBILINK, Islamabad, PAKISTAN; Pontis Inc., Gill Yam, ISRAEL; Practical Enterprise Architecture P/L, Bentleigh, Victoria, AUSTRALIA; proCaptura as, Billingstad, NORWAY; RGAE, Longueuil, Quebec, CANADA; RosettaNet, Santa Ana, CA; Ryder Systems, Blackburn, UNITED KINGDOM; Sleepycat Software, Inc., Lincoln, MA; Spirent Communications, Rockville, MD; Subex Systems Limited, Bangalore, INDIA; Technology Optimisation Consultants Ltd., Bishoptown, IRELAND; Ukranian Mobile Communications UMC, Kiev, UKRAINE; Valaran Corporation, Cranbury, NJ; VokeTel, Concord, Ontario, CANADA; Voyence, Richardson, TX; and ZTE Technology Center, Shenchen PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

The following members have changed their names: Advav Optical Networking to ADVA AG Optical Networking, Munich, GERMANY; Teleca Sweden South to auSystems Sweden South, Stockholm, SWEDEN; Bell South to BellSouth, Atlanta, GA; Brennan IT to Brennan Software Development PTY LTD, Sydney, NSW, AUSTRALIA; Catalyst IT Partners Limited to Catalyst IT Partners Ltd., London, UNITED KINGDOM; Cominfo to Cominfo Consulting, Moscow, RUSSIA; Cramer Systems Limited to Cramer Amdocs OSS Division, Bath, UNITED KINGDOM; SI–TECH Information Technology Ltd. to Digital China (SI–TECH) Information Technology Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; du/Emirates Integrated Telecoms Company to EITC, Dubai, UNITED ARAB EMIRATES; Flextronics Software Systems Ltd. to Flextronics Software Systems, Haryana, INDIA; Bonus Technology, Inc. to GlobalLogic, Newark, NJ; IONA to IONA Technologies, Waltham, MA; MRN Network Solutions to MTN Network Solutions (PTY) Limited, Randburg, SOUTH AFRICA; Wanadoo UK to Orange Home UK PLC, London, UNITED KINGDOM; Patni Computer Services to Patni Computer Systems, Fremont, CA; Pantero Corp. to Progress Software, Waltham, MA; Progress to Progress Software, Waltham, MA; Siemens AG to Siemens Networks GmbH & Co. KG, Milano, ITALY; Azure Solutions to Subex Azure Ltd., Bangalore, INDIA; Heerklotz GmbH to teleconvergence GmbH, Olching,

GERMANY; TDS to Telephone and Data Systems, Inc, Chicago, IL; TNO Telecom to TNO Information & Communication Technology, Delft, NETHERLANDS; SMI Telco Ltd. to TuringSMI, Fareham, Hampshire, UNITED KINGDOM; Vodacom South Africa to Vodacom (PTY) Ltd., Gauteng, SOUTH AFRICA; and VPI Systems to VPI Systems-NJ, Holmdel, NJ.

The following members have changed their addresses: Aircom International Ltd. to Leatherhead, UNITED KINGDOM; Atreus Systems to Ottawa, Ontario, CANADA; Cognizant Technology Solutions Corporation to Teaneck, NJ; Cominfo Consulting to Moscow, RUSSIA; Computer Sciences Corporation to Wiesbaden, GERMANY; Fortinet, Inc. to Sunnyvale, CA; INOSS, Inc. to Spicewood, TX; Leapstone Systems to Somerset, NJ; Siemens Network GmbH & Co. KG to Muenchen, GERMANY; Soluziona Mexico S.A. de C.V. to Mexico City, MEXICO; STC KOMSET to Moscow, RUSSIA; Subex Azure Ltd. to Bangalore, INDIA; Telchemy Incorporated to Duluth, GA; Teracom AB to Sundbyberg, SWEDEN; and VPI Systems-NJ to Holmdel, NJ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum 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 December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 11, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2006 (71 FR 58006).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 07–1725 Filed 4–6–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–0002]

Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award; Extension of Period for Submission of Nominations Notice

1. *Subject:* The Secretary of Labor's New Freedom Initiative Award.

2. *Purpose:* This document extends the period for submission of nominations for the Secretary of Labor's New Freedom Initiative Award. This action is taken to permit increased participation by interested stakeholders.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Dates:* Nomination packages must be submitted to Secretary of Labor's New Freedom Initiative Award, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210 by May 31, 2007. Any application received after 4:45 p.m. EDT on May 31, 2007 will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than May 25, 2007;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. EDT at the place of mailing, May 30, 2007.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, e-mail, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

For further information, contact Margaret Roffee of the Office of Disability Employment Policy at telephone (202) 693–7880, (866) ODEP–DOL, TTY (202) 693–7881, prior to the closing deadline.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 2007 (72 FR 6673), the Office of Disability Employment Policy published a Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award. Nomination packages were to be submitted to the Office of Disability Employment Policy by April 30, 2007. Because of the continuing interest in this solicitation, the agency believes that it is desirable to extend the period for submission of nominations. Therefore, the period for submission of nominations is extended until May 31, 2007.

Signed at Washington, DC, this 4th day of April 2007.

John R. Davey,

Director of Operations.

[FR Doc. E7–6609 Filed 4–6–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 85–68—To Permit Employee Benefit Plans To Invest in Customer Notes of Employers

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested

data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 85–68. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 8, 2007.

ADDRESSES: Joseph S. Piacentini, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 408 of ERISA, the Department has authority to grant an exemption from the prohibitions of sections 406 and 407(a) if it can determine that the exemption is administratively feasible, in the interest of participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. Prohibited Transaction Class Exemption 85–68 describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. Specifically, the exemption requires that the employer provide a written guarantee to repurchase a note which becomes more than 60 days delinquent, that such notes be secured by a perfected security interest in the property financed by the note, and that the collateral be insured. The exemption requires records pertaining to the transaction to be maintained for a period of six years for the purpose of ensuring that the transactions are protective of the rights of participants and beneficiaries. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0094. The OMB approval is currently scheduled to expire on July 31, 2007.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 85–68. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 85–68.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0094.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 525.

Frequency: On Occasion.

Responses: 1900.

Average Response time [if applicable]: 1 hour.

Estimated Total Burden Hours: 1900 hours.

Estimated Total Burden Cost: $0.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: April 3, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E7–6551 Filed 4–6–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Class Exemption 91–55—Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 91–55. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before June 8, 2007.

ADDRESSES: Joseph S. Piacentini, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Exemption 91–55 permits purchases and sales by certain ''individual retirement accounts,'' as defined in Internal Revenue Code section 408 (IRAs) of American Eagle bullion coins (''Coins'')

in principal transactions from or to broker-dealers in Coins that are ''authorized purchasers'' of Coins in bulk quantities from the United States Mint and which are also ''disqualified persons,'' within the meaning of Code section 4975(e)(2), with respect to IRAs. The exemption also describes the circumstances under which an interest-free extension of credit in connection with such sales and purchases is permitted. In the absence of an exemption, such purchases and sales and extensions of credit would be impermissible under the Employee Retirement Income Security Act of 1974 (ERISA).

Among other conditions, the exemption requires certain information related to covered transactions in Coins must be disclosed by the authorized purchaser to persons who direct the transaction for the IRA. Currently, it is standard industry practice that most of this information is provided to persons directing investments in an IRA when transactions in Coins occur. The exemption also requires that the disqualified person maintain for a period of at least six years such records as are necessary to allow accredited persons, as defined in the exemption, to determine whether the conditions of the transaction have been met. Finally, an authorized purchaser must provide a confirmation statement with respect to each covered transaction to the person who directs the transaction for the IRA. The requirements constitute information collections within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0079. The OMB approval is currently scheduled to expire on July 31, 2007.

The recordkeeping requirement facilitates the Department's ability to make findings under section 408 of ERISA and section 4975(c) of the Code. The confirmation and disclosure requirements protect a participant or beneficiary who invests in IRAs and transacts in Coins with authorized purchasers by providing the investor or the person directing his or her investments with timely information about the market in Coins and about the individual's account in particular.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 91–55. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 91–55.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0079.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 2.

Responses: 12,800.

Frequency: On occasion.

Estimated Total Burden Hours: 554 hours.

Estimated Total Burden Cost: $0.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: April 3, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E7–6552 Filed 4–6–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Class Exemption 92–6—Sale of Individual Life Insurance or Annuity Contracts by a Plan

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 92–6. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before June 8, 2007.

ADDRESSES: Joseph S. Piacentini, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 92–6 exempts from the prohibited transaction restrictions of the Employee Retirement Security Act of 1974 (ERISA) the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of ERISA.

Among other conditions, PTE 92–6 requires that pension plans inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder-employee. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0063. The OMB approval is currently scheduled to expire on July 31, 2007.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in PTE 92–6. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 92–6.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0063.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 8,360.

Responses: 8,360.

Estimated Total Burden Hours: 1,671.

Estimated Total Burden Cost (Operating and Maintenance): $3,093.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: April 3, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E7–6553 Filed 4–6–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Final Rule on Health Care Continuation Coverage

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of its final rule at 29 CFR Part 2590, Health Care Continuation Coverage. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 8, 2007.

ADDRESSES: Joseph S. Piacentini, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The continuation coverage provisions of section 601 through 608 of ERISA (and parallel provisions of the Internal Revenue Code (Code)) generally require group health plans to offer qualified beneficiaries' the opportunity to elect continuation coverage following certain events that would otherwise result in the loss of coverage. Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in health coverage that otherwise could limit their access to health care.

COBRA provides the Secretary of Labor (the Secretary) with authority under section 608 of ERISA to carry out the continuation coverage provisions. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage.

On May 26, 2004, the Department of Labor (the Department) published in the **Federal Register** (69 FR 30084) final regulations governing the timing, content, and administration of the notice obligations arising under ERISA. These final rules implementing the notice requirements of the COBRA provisions of ERISA also apply for purposes of the parallel Code provisions.

This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from the Office of Management and Budget (OMB) under OMB Control No. 1210–0123. The OMB approval is currently scheduled to expire on July 31, 2007.

II. Current Actions

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in its final rule at 29 CFR 2590, Health Care Continuation Coverage. After considering comments received in

response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice Requirements of the Health Care Continuation Coverage Provisions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0123.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 411,000.

Frequency of Responses: On occasion.

Responses: 9,225,900.

Estimated Total Burden Hours: None

Estimated Total Burden Cost (Operating and Maintenance): $14,723,400.

Estimated Total Annualized Cost: $16,379,900.

III. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: April 3, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E7–6554 Filed 4–6–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Operations Under Water

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.

DATES: Submit comments on or before June 8, 2007.

ADDRESSES: Send comments to, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR § 75.1716, 75.1716–1 and 75.1716–3 require operators of underground coal mines to notify MSHA of proposed mining under bodies of water and to obtain a permit to mine under a body of water if, in the judgment of the Secretary, it is sufficiently large to constitute a hazard to miners. This is a statutory provision contained in Section 317(r) of the Federal Mine Safety and Health Act of 1977. The regulation is necessary to prevent the inundation of underground coal mines with water, which has the potential of drowning miners. The coal mine operator submits an application for the permit to the District Manager in whose district the mine is located. Applications contain the name and address of the mine; projected mining and ground support plans; a mine map showing the location of the river, stream, lake or other body of water and its relation to the location of all working places; a profile map showing the type of strata and the distance in elevation between the coal bed and the water involved.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Operations Under Water. MSHA 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Operations Under Water.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Operations Under Water.

OMB Number: 1219–0020.

Affected Public: Business or other for-profit.

Number of Respondents: 30.

Annual Reponses: 30.

Average Response Time: 5 hours.

Total Annual Burden Hours: 150.

Total Burden Cost (operating/maintaining): $450.

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 at Arlington, Virginia, this 4th day of April, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–6604 Filed 4–6–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Program to Prevent Smoking in Hazardous Areas

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the Sections 317(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 877(c), and 30 CFR 75.1702 which prohibits persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Section 75.1702–1 requires that the mine operator submit the program plan to MSHA for approval.

DATES: Submit comments on or before June 8, 2007.

ADDRESSES: Send comments to, Debbie Ferraro, Management Services Division, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Ferraro.Debbie@DOL.GOV*. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Mine Act and § 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines, etc. The Mine Act and the standard further require that the mine operator submit the program plan to MSHA for approval. The purpose of the program is to insure that a fire or explosion hazard does not occur.

MSHA's investigation determined that the most likely source of ignition for several fatal explosions in the past was the open flame of a cigarette lighter or match.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and choosing ''Rules and Regs'', then choosing ''Fed Reg Docs.''

III. Current Actions

The mine operator uses the information to conduct the program. MSHA uses the information to determine the mine operator's compliance with the standard and that a program is developed and implemented to prevent smoking in hazardous areas.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Program to Prevent Smoking in Hazardous Areas.

OMB Number: 1219–0041.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 492.

Responses: 101.

Estimated Time Per Respondent: .5 hours.

Total Burden Hours: 50.5 hours.

Total Burden Cost (operating/maintaining): $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 at Arlington, Virginia, this 4th day of April, 2007.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E7–6605 Filed 4–6–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL COUNCIL OF DISABILITY

Sunshine Act Meetings

TYPE: Quarterly Meeting.

DATES AND TIMES: April 16, 2007, 10 a.m.–5 p.m. April 17, 2007, 9 a.m.–4 p.m.

LOCATION: Crowne Plaza Hotel Atlanta-Buckhead, 3377 Peachtree Road, NE., Atlanta, Georgia.

STATUS: April 16, 2007, 10 a.m.–5 p.m.—Open. April 17, 2007, 9 a.m.–4 p.m.—Open. April 17, 2007, 4 p.m.–5 p.m.—Closed.

AGENDA: Public Comments; Livable Communities/Best Practices Panel Presentation; Emergency Preparedness Panel Presentation; Reports from Council Members and the Acting Co-Executive Directors; Committee and Team Reports; Unfinished Business; New Business; Announcements; Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax).

AGENCY MISSION: NCD is an independent Federal agency making recommendations to the President and Congress to enhance the quality of life

for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD immediately.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD immediately.

Dated: April 5, 2007.

Mark S. Quigley,

Acting Co-Executive Director.

[FR Doc. 07–1751 Filed 4–5–07; 10:39 am]

BILLING CODE 6820–MA–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before May 9, 2007. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: SBIC Management Assessment Questionnaire & License Application Exhibits to SBIC License Application Management Assessment.

No's: 2181, 2182, 2183.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Responses: 150.

Annual Burden: 4,300.

Title: Microloan Program Electronic Reporting System (MPERS).

No: N/A.

Frequency: On Occasion.

Description of Respondents: Microloan Program Intermediary Lenders.

Responses: 2,500.

Annual Burden: 625.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–6640 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before June 8, 2007.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Michael Pappas, Associate Administrator, Office of Field Operation, Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael Pappas, Associate Administrator, Office of Field Operations 202–619–1727, *michael.pappas@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''Lender Relationship Management''.

Description of Respondents: Financial Institutions eligible for the SBA 7(a) program (existing and potential).

Form No: N/A.

Annual Responses: 500.

Annual Burden: 166.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–6641 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0398]

Sorrento Growth Partners I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Sorrento Growth Partners I, L.P., 4370 La Jolla Village Drive, Suite 1040, San Diego, CA 92122, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2006)). Sorrento Growth Partners I, L.P. provided debt financing to Perlan Therapeutics, Inc., 6310 Nancy Ridge Drive, Suite 102, San Diego, CA 92121. The financing is contemplated for operating expenses and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because three Associates, Sorrento Ventures CE, L.P., Sorrento Ventures III, L.P. and Sorrento Ventures IV, L.P., by way of common management, collectively own more than ten percent of the Company. Therefore, Perlan Therapeutics, Inc. is also considered an Associate of Sorrento Growth Partners I, L.P. as defined at 13 CFR 107.50 of the SBIC Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

Jaime Guzmn-Fournier,

Associate Administrator for Investment.

[FR Doc. E7–6638 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10821 and #10822]

Alabama Disaster Number AL–00007

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1687–DR), dated 03/03/2007.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/01/2007.

EFFECTIVE DATE: 03/26/2007.

Physical Loan Application Deadline Date: 05/02/2007.

EIDL Loan Application Deadline Date: 12/03/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Alabama, dated 03/03/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:
Jefferson

Contiguous Counties:
Alabama
Bibb, Blount, Saint Clair, Shelby, Tuscaloosa, Walker

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–6630 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10819 and #10820]

Georgia Disaster Number GA–00008

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1686–DR), dated 03/03/2007.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/01/2007 through 03/02/2007.

EFFECTIVE DATE: 03/24/2007.

Physical Loan Application Deadline Date: 05/02/2007.

EIDL Loan Application Deadline Date: 12/03/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Georgia, dated 03/03/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:
Dougherty, Warren, Worth

Contiguous Counties: Georgia
Glascock, Handock, Taliaferro, Tift, Turner

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–6629 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10838 and #10839]

Minnesota Disaster #MN–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of MINNESOTA dated 04/02/2007.

Incident: Severe Storms and Flooding.

Incident Period: 03/14/2007.

EFFECTIVE DATE: 04/02/2007.

Physical Loan Application Deadline Date: 06/01/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 01/02/2008.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Traverse

Contiguous Counties: Minnesota
Big Stone, Grant, Stevens
Wilkin

North Dakota
Richland

South Dakota
Roberts

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10838 6 and for economic injury is 10839 0.

The States which received an EIDL Declaration # are: Minnesota, North Dakota, South Dakota.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 2, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–6634 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10840 and # 10841]

New Mexico Disaster # NM–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1690–DR), dated 04/02/2007.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/23/2007 through 03/24/2007.

EFFECTIVE DATE: 04/02/2007.

Physical Loan Application Deadline Date: 06/01/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 01/02/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/02/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Curry, Quay.

Contiguous Counties (Economic Injury Loans Only): New Mexico:

De Baca, Guadalupe, Harding, Roosevelt, San Miguel, Union.

Texas:

Bailey, Deaf Smith, Hartley, Oldham, Parmer.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.750
Homeowners Without Credit Available Elsewhere:	2.875
Businesses With Credit Available Elsewhere:	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere:	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 10840C and for economic injury is 108410.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–6639 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region III Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Tuesday, April 17, 2007, at 10 a.m. The forum will take place at the U.S. Courthouse, Ceremonial Court Room, 601 Market Street (Entrance on 6th Street), Philadelphia, PA 19106–1797. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

Anyone wishing to attend or to make a presentation must contact Joe McDevitt, in writing or by fax in order to be placed on the agenda. Joe McDevitt, Chief Entrepreneurial Development, SBA, Philadelphia District Office, 900 Market Street, 5th Floor, Philadelphia, PA 19107, phone (215) 580–2706 and fax (202) 481–2724, e-mail: *joseph.mcdevitt@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–6631 Filed 4–6–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5749]

U.S. Department of State Advisory Committee on Private International Law: Study Group on Consumer Protection

One of the goals of the Organization of American States is to harmonize private international law through Inter-American Specialized Conferences on Private International Law (CIDIP). The OAS has hosted these conferences every four to six years. Currently states are drafting instruments for ''CIDIP–VII,'' which will focus inter alia on consumer protection. States are currently reviewing a draft Brazilian treaty on choice of law, a Canadian draft model law on choice of law and jurisdiction, and a U.S. proposal for a model law on the availability of consumer dispute resolution and redress. OAS member states discussed the three proposals at an initial meeting held in Porto Alegre, Brazil in December. No dates have been set for future meetings, but the views of participating states have been requested. The Department of State Advisory Committee on Private International Law (ACPIL) will hold a public meeting to continue reviewing the results of the Porto Alegre meeting and the views on the three proposals with regard to consumer protection, that were begun at the March 22, 2007 meeting.

Time: The public meeting will take place at the Federal Trade Commission, 600 Pennsylvania Ave., NW., Room H–481, Washington, DC on April 24, 2007 from 10 a.m. EST to 12 p.m. EST. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Trisha Smeltzer to receive the conference call number and the relevant materials (the Brazilian proposal for a treaty on choice of law, the Canadian proposal for a model law on jurisdiction and choice of law, and the U.S. proposal for a model law on the availability of consumer dispute resolution and redress).

Public Participation: Advisory Committee Study Group meetings are open to the public. Persons wishing to attend should contact Trisha Smeltzer at *smeltzertk@state.gov* or at 202–776–8423 and provide your name, e-mail address, and affiliation(s). Additional meeting information can also be obtained from Ms. Smeltzer. Persons who cannot attend but who wish to comment on any of the proposals are welcome to do so by e-mail to Michael Dennis at *DennisMJ@state.gov*.

Dated: April 2, 2007.

Michael Dennis,

Attorney-Adviser, Office of the Legal Advisor, Office of Private International Law, Department of State.

[FR Doc. E7–6625 Filed 4–6–07; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: This is a recurring Notice of Availability, and request for comments, on draft advisory circulars (ACs), other policy documents, and proposed technical standard orders (TSOs) currently offered by Aviation Safety.

SUMMARY: The FAA's Aviation Safety, an organization responsible for the certification, production approval, and

continued airworthiness of aircraft, and certification of pilots, mechanics, and others in safety related positions, publishes proposed non-regulatory documents that are available for public comment on the Internet at *http://www.faa.gov/aircraft/draft_docs/.*

DATES: We must received comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the Federal Aviation Administration at the address specified on the Web site for the document being commented on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: See the individual or FAA office identified on the Web site for the specified document.

SUPPLEMENTARY INFORMATION: Final advisory circulars, other policy documents, and technical standard orders (TSOs) are available on FAA's Web site, including final documents published by the Aircraft Certification Service on FAA's Regulatory and Guidance Library (RGL) at *http://rgl.faa.gov/.*

Comments Invited

When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Aviation Safety organizations, will consider all comments received on or before the closing date before issuing a final document. You can obtain a paper copy of the draft document or proposed TSO by contacting the individual or FAA office responsible for the document as identified on the Web site. You will find the draft ACs, other policy documents and proposed TSOs on the ''Aviation Safety Draft Documents Open for Comment'' Web site at *http://www.faa.gov/aircraft/draft_docs/.* For Internet retrieval assistance, contact the AIR Internet Content Program Manager at 202–267–8361.

Background

We do not publish an individual **Federal Register** Notice for each document we make available for public comment. On the Web site, you may subscribe to our service for e-mail notification when new draft documents are made available. Persons wishing to comment on our draft ACs, other policy documents and proposed TSOs can find them by using the FAA's Internet address listed above. This notice of availability and request for comments on documents produced by Aviation Safety will appear again in 30 days.

Issued in Washington, DC, on April 2, 2007.

Frank Paskiewicz,

Manager, Production and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 07–1719 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clackamas County, Oregon

AGENCY: Federal Highway Administration, Oregon Department of Transportation, and Clackamas County, Oregon.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice of intent to advise agencies and the public that an Environmental Impact Statement (EIS) will be prepared to assess the impacts of a proposed transportation project on Harmony Road in Clackamas County, Oregon.

DATES: A public scoping meeting will be held on Wednesday, May 9, 2007 at the Sunnybrook Service Center Auditorium, 9101 SE., Sunnybrook Blvd., Clackamas, OR 97015. The public scoping meeting will include an open house from 4 p.m. to 7 p.m. and informational presentations at 4:30, 5, 5:30, 6, and 6:30 p.m. The informational presentation will be followed by a question and answer period. An agency scoping meeting will be held on May 10, 2007 at the Oregon Department of Transportation, 123 NW Flanders, Room 344, Portland, OR 97209. The agency scoping meeting will be from 2:30 P.M. to 4:30 P.M.

FOR FURTHER INFORMATION CONTACT: Jeff Graham, P.E., Operations Engineer, Federal Highway Administration, 530 Center Street NE., Suite 100, Salem, OR 97301, Telephone: (503) 587–4727 or Ron Weinman, Principal Transportation Planner, Clackamas County, 9101 SE., Sunnybrook Blvd., Clackamas, OR 97015, Telephone: (503) 353–4533.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation (ODOT), and Clackamas County Department of Transportation and Development, will prepare an EIS on a proposal to improve the transportation system in the SE Harmony Road corridor, from SE 82th Avenue to State Highway 224 (approximately 1.5 miles). The project will consider alignment and improvement options on SE Harmony Road and intersections at SE Railroad Avenue/SE Linwood Avenue and SE Lake Road/SE International Way. In addition, the project study will consider alignment options for the extension of SE Sunnybrook Boulevard west of SE 82nd Avenue and its western terminus. A significant project consideration is grade separation of the road and the Union Pacific rail line at the Harmony Road/Linwood Avenue/Railroad Avenue intersection.

Improvements to the corridor are considered necessary to enhance safety and to reduce congestion associated with existing and projected traffic demand. Levels of service at intersections in the area are currently failing and are anticipated to worsen without improvements. By 2030, the number of households in the study area is expected to increase by 24 percent and the number of jobs by 43 percent. Growth is anticipated in association with planned development in and around the extension of regional light-rail service to the Clackamas Regional Center, which encompasses the Harmony Road corridor and is adopted in the Metro 2040 Growth Concept.

The at-grade railroad mainline that crosses on the southwest side of the Harmony Road/Linwood Avenue/Railroad Avenue intersection is part of the future high-speed rail corridor between Eugene, OR and Vancouver, BC. Operation of high-speed passenger trains along this corridor mandates grade separation of the rail line and the roadway for safety and operational purposes. Currently, there are approximately 6 passenger trains and 24 freight trains crossing at this location each day, resulting in an average daily gate activation time of 150 minutes. These train crossings further burden the Harmony Road corridor with traffic delay.

The EIS will identify transportation needs and deficiencies in the project study area, including mobility, access, system linkages and continuity, and safety. The range of evaluated transportation alternatives in the EIS will be developed to meet the identified project purpose and need. Potential alternatives and combinations thereof may include but are not limited to: (1) Taking no action; (2) adding capacity to existing roadways; (3) extending Sunnybrook Boulevard to the west of SE 82nd Avenue and determining its alignment and terminus; (4) redesigning intersections along Harmony Road at Linwood Avenue/Railroad Avenue and Lake Road/International Way; (5) grade separating the road from the railroad crossing at the Harmony Road/Linwood

Avenue/Railroad Avenue intersection; and (6) improving pedestrian and bicycle facilities. Design variations of potential alternatives will also be studied, as appropriate.

The EIS will be initiated with a scoping process. The scoping process will include a program of public outreach and agency coordination conducted over the next several months in order to elicit input on project purpose and need, potential alternatives, significant and insignificant issues, and collaborative methods of analyzing transportation alternatives and environmental impacts.

In total, the public outreach program will include multiple public meetings conducted by Clackamas County as well as coordination with two stakeholder committees—one committee comprised of community and technical representatives and the other committee comprised of policy level representatives. A public hearing will be held in connection with the release of the draft EIS. Public notice will be given regarding the time and place of the public meetings and hearing.

An Internet Web site (*http://www.harmonyroadea.org*) and other communication media will be utilized throughout the process to provide public information and to receive comments. All comments and input received during the EIS process will be considered and documented.

The FHWA, ODOT, and Clackamas County Department of Transportation and Development will evaluate significant transportation, environmental, social, and economic impacts of the project alternatives. Potential areas of impact include: Neighborhoods, Section 4(f) resources, environmental justice, and natural resources. All impacts will be evaluated for both the construction period and long-term period of operation. Measures to avoid, minimize and mitigate any significant adverse impacts will be developed.

Comments and suggestions are invited from all interested parties, to ensure that the full range of issues related to this project are addressed and all significant issues are identified. Comments or questions regarding the proposed action and the EIS should be directed to the FHWA or Clackamas County at the address provided above.

(Authority: 23 U.S.C. 315)

Dated: April 2, 2007.

Jeff Graham,

Operations Engineer, FHWA Oregon Division.

[FR Doc. E7–6580 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–05–22706]

Motor Vehicle Registration and Licensed Driver Information

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: On January 6, 2006, the FHWA published a notice in the **Federal Register** at 71 FR 969 to solicit public comments on the quality, timeliness, comprehensiveness, and other characteristics of data collected on motor vehicle registration and licensed driver information. Based on public comments received, the FHWA has determined to make a change to the driver's license data definition for teenage drivers, to eliminate the collection of information on disqualified commercial drivers licenses, and to develop enhanced software to receive and process motor vehicle registration and licensed driver data more efficiently.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Erickson, Office of Highway Policy Information, (202) 366–9235, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366–1396, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Electronic Access and Filing:* Internet users may access this document, the initial notice, and all comments received by the U.S. DOT Docket Facility by using the Universal Resource Locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at *http://www.archives.gov* and from the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background: The FHWA collects and publishes motor vehicle registration and licensed driver information obtained from the States and the District of Columbia. This information is collected from State departments of transportation pursuant to 23 CFR 420.105 and is published in *Highway Statistics.*[1]

The information in *Highway Statistics* plays a key role in the development of Federal highway legislation. The information is used in preparing legislatively required reports to Congress, in evaluating highway safety programs, and, in general, as an aid to highway planning, programming, budgeting, forecasting, and fiscal management. This information is also used extensively in the evaluation of Federal, State, and local highway programs. In recent years, FHWA has implemented several reassessment efforts to assure that *Highway Statistics* data remains up-to-date and relevant for current purposes.

On January 6, 2006, the FHWA published a notice in the **Federal Register** at 71 FR 969 to solicit public comments on the quality, timeliness, comprehensiveness, and other characteristics of the driver license data. Based on the public comments received, the FHWA has determined to make a change to the data definition of teenage driver to reflect more accurately the actual number of teens driving, to eliminate the collection of information on disqualified commercial drivers licenses, and to update the software used to collect the motor vehicle registration and licensed driver information from the States.

Actions Taken to Date

Teenage Drivers

In the past, FHWA's definition of a licensed driver has been ''[a] person that can drive inclusively between the hours of 5 a.m. and Midnight without another licensed driver in the vehicle.'' However, State drivers license laws have changed significantly in recent years, especially in the area of teenage drivers. Now, all 50 States and the District of Columbia have some form of graduated licensing for teenage drivers. Some States prohibit teens from driving unless accompanied by a supervisory driver. Other States prohibit teens from driving during certain hours of the day. And still other States may allow nighttime teenage driving, but only with adult supervision. A full definition of Graduated Driver's License can be found in Section 1313.5(d) in the following National Highway Traffic Safety Administration URL: *http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/GrantMan/HTML/24b_Sec410T21Reg_23CFR1313.html.* As such, the past FHWA data definition

[1] *Highway Statistics* is an annual report containing analyzed data on motor fuel, motor vehicles, driver licensing, highway user taxation, State and local highway finance, highway mileage, and other selected data. This report has been published each year since 1945. It is available at the following URL: *http://www.fhwa.dot.gov/ohpi/hss.*

is very narrow in view of recent State law changes on teen-age drivers.

The Office of Highway Policy Information disseminated a memorandum to FHWA Division Offices on September 6, 2006, revising its instructions for Form–562 State Driver License and Fees, with instructions to forward the material to the State data providers. The revised instructions will also be incorporated into Chapter 4 of A Guide to Reporting Highway Statistics (Guide). Since this change does not create an additional burden for data collection under the Paperwork Reduction Act requirements, the Office of Highway Policy Information will revise the Guide within 3 months of publication of this notice. This revised definition is intended to be more detailed in the types of licenses teen-aged drivers obtain. The new definition reads: Teenage Graduated Drivers Licenses: Graduated licenses are defined as driver licenses that have some restriction placed on the driver to provide basic driving experience under optimal conditions or under the supervision of more experienced drivers, but restrict driving in certain less than optimal conditions, such as driving at night.

The new definition is effective for Highway Statistics—2006. Thus, when preparing Form FHWA–562 (State Drivers Licenses and Fees), data providers should use the new definition for the State's 2006 data, either fiscal year or calendar year. The revised data definition is not a new data requirement; it is a re-definition of already required data.

Disqualified Commercial Drivers Licenses

In addition, FHWA has determined that the data collected on page four of the FHWA Form 562—data concerning the number of Commercial Driver's Licenses disqualified—is no longer necessary. FHWA collected this data for the Federal Motor Carrier Safety Administration, but now that organization collects this data in its business procedures. Hence, it is redundant for FHWA to also collect the data.

Data Quality

The FHWA received many comments regarding overall data quality. FHWA is addressing this concern through improved software to significantly reduce reporting inconsistencies. Under the mandates of E-Government initiatives, the FHWA is developing enhanced software to receive and process motor vehicle registration and licensed driver data more efficiently. The questions asked will remain the same, but the software used to collect the information will ease data submittal and will result in more accurate reporting. This enhanced software, once developed, will enable State data providers to take advantage of more advanced submittal and editing features that can significantly reduce reporting time and errors.

With respect to enhanced software, FHWA is in the process of making software improvements to the features in the following form templates:

- FHWA Form 561—State Motor Vehicle Registrations, Registration Fees and Miscellaneous Receipts;
- FHWA Form 562—State Driver Licenses and Fees;
- FHWA Form 566—State Motor Vehicle Registration and Other Receipts;
- FHWA Form 571—Receipts from State Taxation of Motor Vehicles Operated for Hire and Other Motor Carriers.

The FHWA anticipates that the enhanced software containing these revised form templates will be released and distributed to the States mid-2007, allowing sufficient time for the FHWA to train States in preparation for the 2008 release of Highway Statistics—2007. The FHWA notes that any revisions to the software will result in template and format changes only, and with the exception of the elimination of page four of the FHWA Form 562, will not change the type or quantity of data collected. Revision of the forms will involve some additional paperwork burden on the data providers in transition to the new forms and learning how the new forms function, but will also reduce the paperwork burden over time as the automated forms will take less time to complete. A discussion of the requirements of the Paperwork Reduction Act follows.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal contains collection of information requirements for the purposes of the PRA.

In March 2006, The Office of Management and Budget approved FHWA's Paperwork Reduction Act Submission (OMB Control Number 2125–0032), extending FHWA's authority to collect this data for an additional 3 years (until March 2009). The overall annual burden of collecting driver's license and motor vehicle registration data from the States is estimated to be 4,182 hours. See below for the breakout of the estimated burden hours by Form:

FHWA form	Collection period	Total hours	Assumptions
FHWA–561	Annual	1,632	32 Hours/50StatesDC/Year.
FHWA–562	Annual	714	14.0 Hours/50StatesDC/Year.
FHWA–566	Annual	1,224	24 Hours/50StatesDC/Year.
FHWA–571	Annual	612	12 Hours/50StatesDC/Year.
Total		4,182	

The FHWA is required to periodically submit this proposed collection of information to OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Issued on: March 30, 2007.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E7–6531 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27794]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JO.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27794 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27794. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JO is:

Intended Use: ''fewer than 6 passengers for hire''.

Geographic Region: Washington State.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: April 3, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–6547 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27796]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GENESIS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27796 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27796. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GENESIS is: Intended Use: ''Passenger transport, Scuba diving charter.'' Geographic Region: Coastal and Inland waters of FL, GA, SC, NC, VA, MD, NJ, DE, NY, MA, CT, RI, ME, AL, MS, LA, TX.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: April 3, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–6546 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–27795]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PROSIT.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2007–27795 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 9, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–27795. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PROSIT is:

Intended Use: ''sailing school, charter''.

Geographic Region: Washington and Alaska (excluding Southeast Alaska).

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: April 3, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–6548 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–27802]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (NHTSA).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document proposes to consolidate four existing collections of information into two collections, and seeks comments accordingly. The first information collection proposes consolidatation of OMB control numbers 2127–0511, ''49 CFR 571.213, Child Restraint Systems,'' and 2127–0576, ''Child Safety Seat Registration,'' into a new one. Thus, all child restraint labeling and registration requirements would be included in one information collection entitled ''Consolidated Child Restraint System Registration, Labeling and Defect Notifications'' (OMB Control Number: 2127–0576).

The second information collection proposes to merge the existing OMB control number 2127–0038, ''49 CFR 571.205, Glazing Materials,'' into 2127–0512, ''Consolidated Labeling Requirements for Motor Vehicles (except the VIN).''

DATES: You should submit your comments early enough to ensure that Docket Management receives them no later than June 8, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number NHTSA–2007–27802] by any of the following methods:

- *Web site:http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0003.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this collection. It is requested, but not required, that two copies of the comments be provided. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif

Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Maurice Hicks, NHTSA, 400 Seventh Street, SW., Room 5320, NVS–113, Washington, DC 20590.

Mr. Hicks' telephone number is (202) 366–6345. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1.) *Title:* Consolidated Child Restraint System Registration, Labeling and Defect Notifications.''

OMB Control Number: 2127–0576.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Consolidation of OMB control numbers 2127–0511, ''49 CFR 571.213, Child Restraint Systems,'' and 2127–0576, ''Child Safety Seat Registration.''

Affected Public: Business, Individuals and Households.

Summary of the Collection of Information: This action consolidates two existing collections of information. In the previous collections of information: (1) A collection was established to require manufacturers to provide owner registration cards and to label each child restraint system (CRS) with a message informing users of the importance of registering the device with the manufacturer, and (2) another collection was issued to allow NHTSA to implement a registration program to send CRS owners a substitute registration form if owners had lost the registration card. Furthermore, in the second collection, it was also required that if either NHTSA or a manufacturer determines that a CRS contains a defect that relates to motor vehicle safety or fails to comply with an applicable Federal Motor Vehicle Safety Standard, pursuant to Chapter 301 of title 49 of the United States, the manufacturer must notify owners and purchasers of the defect or noncompliance and must provide a remedy without charge. The proposed revised collection will consolidate these provisions.

Child restraint manufacturers are required to provide an owner's registration card for purchasers of child safety seats in accordance with title 49 of the Code of Federal Regulation (CFR), part 571–section 213, ''Child Restraint Systems.'' The registration card is perforated into two-parts (see Figures 1 and 2). The top part contains a message and suitable instructions to be retained by the purchaser. The bottom part is to be returned to the manufacturer by the purchaser. The bottom part includes prepaid return postage, the pre-printed name/address of the manufacturer, the pre-printed model and date of manufacture, and spaces for the purchaser to fill in his/her name and address. Optionally, child restraint manufacturers are permitted to add to the registration form: (a) Specified statements informing CRS owners that they may register online; (b) the Internet address for registering with the company; (c) revisions to statements reflecting use of the Internet to register; and (d) a space for the consumer's e-mail address. For those CRS owners with access to the Internet, online registration may be a preferred method of registering a CRS.

In addition to the registration card supplied by the manufacturer, NHTSA has implemented a CRS registration system to assist those individuals who have either lost the registration card that came with the CRS or purchased a previously owned CRS. Upon the owner's request, NHTSA provides a substitute registration form that can be obtained either by mail or from the Internet [1] (see Figure 3). When the completed registration is returned to the agency, it is then submitted to the CRS manufacturers. In the absence of a substitute registration system, many owners of child passenger safety seats, especially any second-hand owners, might not be notified of safety defects and noncompliances, and would not have the defects and noncompliances remedied.

Child seat owner registration information is retained in the event that owners need to be contacted for defect recalls or replacement campaigns. Chapter 301 of title 49 of the United States Code specifies that if either NHTSA or a manufacturer determines that motor vehicles or items of motor vehicle equipment contain a defect that relates to motor vehicle safety or fail to comply with an applicable Federal Motor Vehicle Safety Standard, the manufacturer must notify owners and purchasers of the defect or noncompliance and must provide a remedy without charge. In title 49 of the CFR, part 577, defect and noncompliance notification for equipment items, including child restraint systems, must be sent by first class mail to the most recent purchaser known to the manufacturer.

Child restraint manufacturers are also required to provide a printed instructions brochure with step-by-step information on how the restraint is to be used. Without proper use, the effectiveness of these systems is greatly diminished. Each child restraint system must also have a permanent label. A permanently attached label gives ''quicklook'' information on whether the restraint meets the safety requirements, recommended installation and use, and warnings against misuse.

Estimated Annual Burden: 265,500 hours.

Number of Respondents: 15.

The total burden hours for this collection consist of: (1) The administrative hours spent to produce registration cards and labels, (2) the hours spent collecting registration information, and (3) the hours spent by CRS manufacturers to create and keep records.

Currently, approximately 15 CRS manufacturers produce,[ras1] on average, a total of approximately 4,500,000 child restraints each year. [ras2] NHTSA has determined that

[1] *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Vehicle%20Safety/Articles/Associated%20Files/csregfrm.pdf.*

approximately 1,575,000 owners or purchasers register (i.e., either by registration card, NHTSA registration form or by the Internet) their child seats with the CRS manufacturers each year (an estimated 35 percent return rate x 4,500,000 restraints).

For each child restraint system, a CRS manufactures must spend 0.025 hours to cut/print, label and to attach a registration card. A manufacturer must also spend 0.04 hours to collect the information for each returned registration and then spend a total of 0.02 hours to create and keep a record on each child restraint system. Given these estimates, the estimated total annual burden hours for this collection of information are 265,500 hours. This number reflects the combination of 112,500 hours to produce materials (0.025 hours per seat × 4,500,000 child restraints), 63,000 hours to collect registrations (0.04 hours per seat × 1,575,000 registrations) and 90,000 hours to create and keep records (0.02 hours per seat × 4,500,000 child restraints) each year.

(2) *Title:* Consolidated Labeling Requirements for Motor Vehicles (Except the VIN).

OMB Control Number: 2127–0512.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Consolidation of OMB control numbers 2127–0038, ''49 CFR 571.205, Glazing Materials,'' and 2127–0512, ''Consolidated Labeling Requirements for Motor Vehicles (except the VIN).''

Affected Public: Business.

Summary of the Collection of Information: Because of the similarities in the collections of information, NHTSA seeks to combine the provisions of the existing collection for glazing materials labeling into a collection for labeling information for five other Federal motor vehicle safety standards.

49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulation, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to invoke such rules and regulations as deemed necessary to carry out these requirements. Using this authority, the agency issued the following FMVSS and regulations, specifying labeling requirements to aid the agency in achieving many of its safety goals:

FMVSS No. 105, ''Hydraulic and electric brake systems,''
FMVSS No. 135, ''Passenger car brake systems,''
FMVSS No. 205, ''Glazing materials,''
FMVSS No. 209, ''Seat belt assemblies,''
Part 567, ''Certification.''

This notice requests comments on the labeling requirements of these FMVSS and regulations.

Description of the need for the information and proposed use of the information: In order to ensure that manufacturers are complying with the FMVSS and regulations, NHTSA requires a number of specific labeling requirements in FMVSS Nos. 105, 135, 205, 209 and part 567. FMVSS No. 105, ''Hydraulic and electric brake systems'' and FMVSS No. 135, ''Passenger car brake systems,'' require that each vehicle shall have a brake fluid warning statement in letters at least one-eighth of a inch high on the master cylinder reservoirs and located so as to be visible by direct view.

Federal Motor Vehicle Safety Standard No. 205, ''Glazing materials,'' provides labeling requirements for glazing and motor vehicle manufacturers. In accordance with the standard, NHTSA requires each new motor vehicle glazing manufacturer to request and be assigned a unique mark or number. This number is then used by the manufacturer as their unique company identification on their self-certification label on each piece of motor vehicle glazing. As part of that certification label, the company must identify itself with the simple two or three digit number assigned by the agency. FMVSS No. 205 requires that manufacturers mark their automotive glazing with certain label information including:

Manufacturer's distinctive trademark;
Manufacturer's ''DOT'' code number;
Model of glazing (there are currently 21 items of glazing ranging from plastic windows to bullet resistant windshields).

In addition to these requirements, which apply to all glazings, certain specialty items such as standee windows in buses, roof openings, and interior partitions made of plastic require that the manufacturer affix a removable label to each item. The label specifies cleaning instructions to minimize the loss of transparency. Other information may be provided by the manufacturer but is not required.

FMVSS No. 209, ''Seat belt assemblies,'' requires safety belts to be labeled with the year of manufacture, the model, and the name or trademark of the manufacturer (S4.1(j)).

Additionally, replacement safety belts that are for use only in specifically stated motor vehicles must have labels or accompanying instruction sheets to specify the applicable vehicle models and seating positions (S4.1(k)). All other replacement belts are required to be accompanied by an installation instruction sheet (S4.1(k)). Seat belt assemblies installed as original equipment in new motor vehicles need not be labeled with position/model information.

Part 567, ''Certification,'' responds to 49 U.S.C. 30111 that requires each manufacturer or distributor of motor vehicles to furnish to the dealer or distributor of the vehicle a certification that the vehicle meets all applicable FMVSS. This certification is required by that provision to be in the form of a label permanently affixed to the vehicle.

Under 49 U.S.C. 32504, vehicle manufacturers are directed to make a similar certification with regard to bumper standards. To implement this requirement, NHTSA issued 49 CFR part 567. The agency's regulations establish form and content requirements for the certification labels.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): NHTSA anticipates that approximately 21 new prime glazing manufacturers per year will contact the agency and request a manufacturer identification number. These new glazing manufacturers must submit one letter, one time, identifying their company. In turn, the agency responds by assigning them a unique manufacturer number. For other collections in this notice, no response is necessary from manufacturers. These labels are only required to be placed on each master cylinder reservoir, each safety belt and every motor vehicle intended for retail sale in the United States. Therefore, the number of respondents is not applicable.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: Based upon previous notice and comments for those information collections, NHTSA estimates that all manufacturers will need a total of 73,071 hours to comply with these requirements, at a total annual cost of $1,096,065.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued in Washington, DC, on April 2, 2007.

Roger A. Saul,

Director, Crashworthiness Standards.

BILLING CODE 4910–59–P

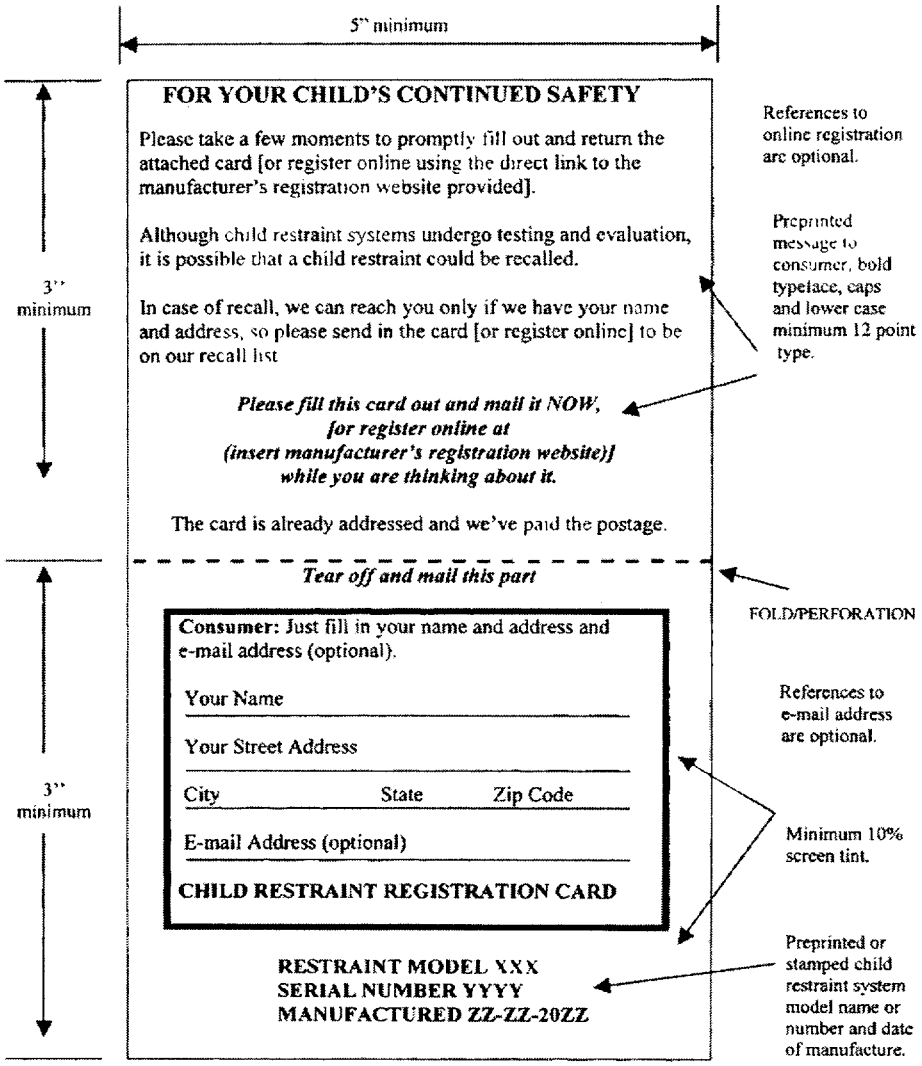

Figure 1 – Registration form for child restrain systems – product identification number and purchaser information side

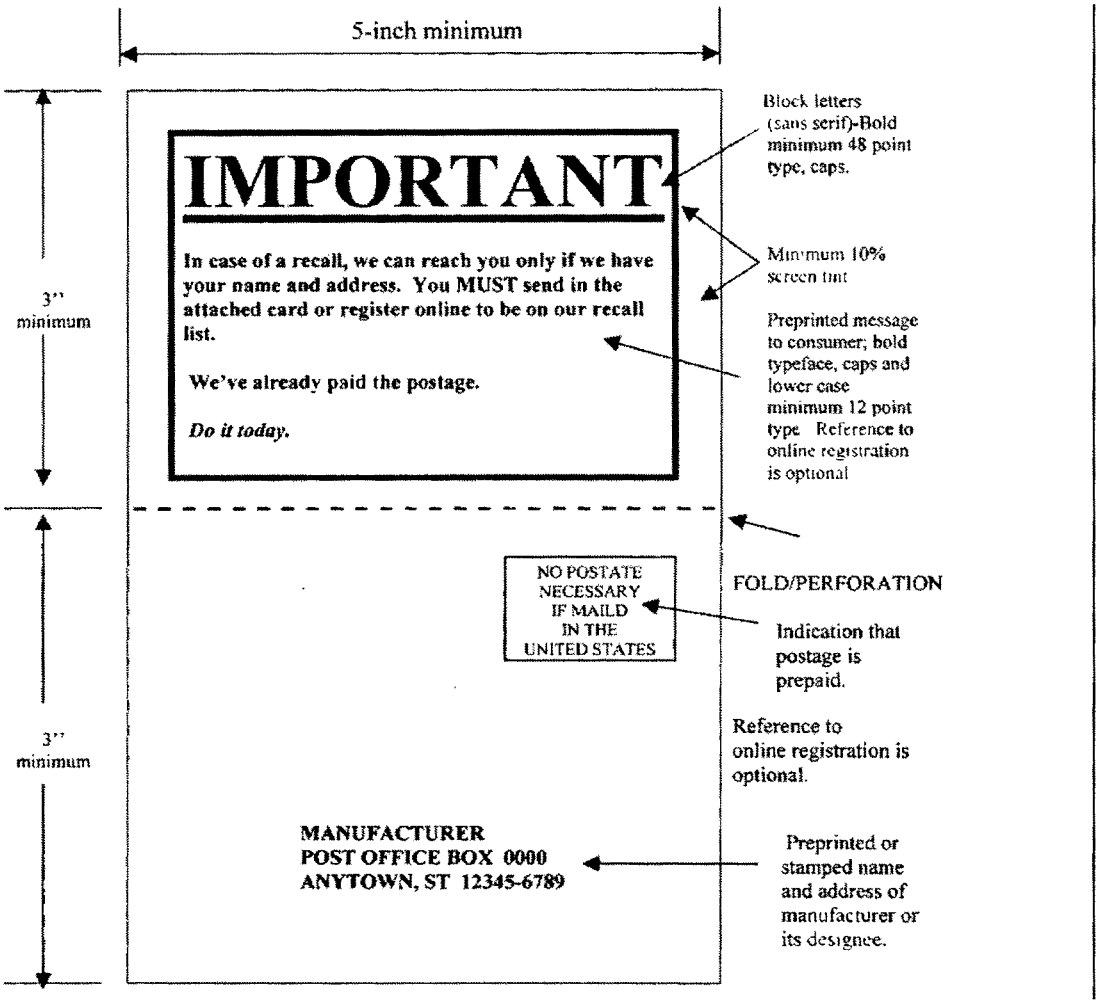

Figure 2 – Registration form for child restraints systems – address side

Form Approved: O.M.B. No. 2127-0576

CHILD SAFETY SEAT REGISTRATION FORM
FOR YOUR CHILD'S CONTINUED SAFETY

Although child safety seats undergo testing and evaluation, it is possible that your child seat could be recalled. In case of a recall it is important that the manufacturer be able to contact you as soon as possible so that your seat can be corrected.

All child safety seats manufactured since March 1993 have a registration form so that owners can provide their names/addresses to the manufacturer. In case of a safety recall, the manufacturer can use that information to send recall letters to owners. Also, child safety seat manufacturers have agreed to maintain owner names/addresses for child safety seats manufactured before March 1993, so they can notify those consumers in the event of a future safety recall. However, in order for the manufacturer to know which child safety seat you own, all of the information on the lower half of this page must be provided.

If you would like the National Highway Traffic Safety Administration (NHTSA) to give your name and address to the manufacturer of your child safety seat, so that you can be notified of any future safety recalls regarding your child safety seat, fill out this form. Please type or print clearly, sign and mail this postage-paid, pre-addressed form.

If you have any questions, or need help with any child safety seat or motor vehicle safety issue, call the U.S. Department of Transportation's toll-free Vehicle Safety Hotline at 1-888-424-9393 (Washington DC AREA RESIDENTS, 202-366-0123).

Your Name:_____ Telephone_____

Your Street Address_____

City:_____. State:_____ Zip Code:_____

IMPORTANT: The following information is essential and can be found on labels on your child seat.

Child Seat Manufacturer:_____

Child Seat Model Name & Number:_____

Child Seat Date of Manufacture:_____

I AUTHORIZE NHTSA TO PROVIDE A COPY OF THIS REPORT TO THE CHILD SAFETY SEAT MANUFACTURER.

SIGNATURE:_____ **DATE:**_____

Please mail to:
U.S. Department of Transportation
National Highway Traffic Safety Administration
DOT Vehicle Safety Hotline
400 7th Street, SW
Washington, DC 20590

The Privacy Act of 1974 - Public Law 93-579, As Amended: This information is requested pursuant to the authority vested in the National Highway Traffic Safety Act and subsequent amendments. You are under no obligation to respond to this questionnaire. Your response maybe used to assist the NHTSA in determining whether a manufacturer should take appropriate action to correct a safety defect. If the NHTSA proceeds with administration enforcement or litigation against a manufacturer, your response, or statistical summary thereof, may be used in support of the agency's action.

Figure 3 – Illustration of Child Safety Seat Registration Form

[FR Doc. E7–6523 Filed 4–6–07; 8:45 am]
BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (DP06–004) submitted by Mr. Eric Moening. In his petition, dated August 23, 2006, the petitioner requests the agency to remedy a failure of his model year (MY) 1999 Ford Contour to ''comply with Federal Motor Vehicle Safety Standard 208 Occupant Crash Protection.'' He describes the failure on his vehicle as instrument panel warping, and he believes that the warping may adversely affect performance of the air bag system or create loose instrument panel components (such as the defrost bezel) that could ''become projectiles during air bag deployments.'' After a review of the petition and other information, including the results of NHTSA's own testing, NHTSA has concluded that further expenditure of the agency's resources on the issue raised by the petition is not warranted. The agency accordingly denies the petition.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Glass, Vehicle Integrity Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2920.

SUPPLEMENTARY INFORMATION: On August 23, 2006, NHTSA's Office of Defects Investigation (ODI) received a petition submitted by Mr. Eric Moening (hereinafter identified as the petitioner), requesting that NHTSA ''remedy a failure'' of the instrument panel of his MY 1999 Ford Contour so that it complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208. The petitioner alleges that his instrument panel has warped and the defrost bezel rattles. He contends that ''improperly retained instrument panel components can be detrimental to the desired performance of front air bag deployments as well as become projectiles during air bag deployments.''

Federal law prohibits manufacturers from selling motor vehicles and equipment that do not comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS). 49 U.S.C. 30112(a)(1). However, this prohibition does not apply after the first purchase of the vehicle or equipment. 49 U.S.C. 30112(b)(1). The petitioner alleges that the problem with his vehicle first began to develop at least three years after its first purchase. Accordingly, the alleged facts provide no basis for a compliance investigation. NHTSA has no authority to intervene in disputes between an individual and a manufacturer with regard to repairs unrelated to safety recalls. However, because the petitioner has characterized his letter as a ''petition'', we are construing his letter as a request for a defect investigation into warping of the leading edge of the dashboard in MY 1999–2000 Ford Contour and Mercury Mystique vehicles under 49 U.S.C. 30162.

Under 49 U.S.C. 30166, NHTSA has the authority to conduct an investigation to consider whether a motor vehicle or motor vehicle equipment contains a safety-related defect. In addition, any interested person may file a petition under 49 U.S.C. 30162 requesting that NHTSA begin a proceeding to decide whether to issue an order under § 30118. NHTSA is authorized under 49 U.S.C. 30118(b) to make a determination that a motor vehicle or motor vehicle equipment contains a defect related to motor vehicle safety. If NHTSA makes such a determination, NHTSA issues an order directing the manufacturer of the vehicle or equipment to notify the owners, purchasers and dealers of the defect and to remedy the defect under § 30120.

As a practical matter, NHTSA's grant of a petition under § 30162 begins an investigation that may or may not result in a recall. In determining whether to grant or deny a petition under § 30162, NHTSA conducts a technical review of the petition. 49 CFR 552.6. This review may consist of an analysis of the material submitted, together with the information already in possession of the agency or acquired in the course of the review. NHTSA has discretion to decide which matters are worthy of investigation and a possible recall order. In addition to the technical merits of the petition, NHTSA may consider additional factors, such as the allocation of agency resources, agency priorities, and the likelihood of success of litigation that might arise from the order sought by the petitioner. 49 CFR 552.8. As noted above, if NHTSA grants the petition, an investigation is commenced to determine the existence of the defect. 49 CFR 552.9.

In August 2001, the petitioner received a letter from Ford Motor Company describing Ford's Customer Satisfaction Program Number 01B78 (01B78). Ford initiated this program in August 2001, and it was in effect through August 31, 2002. Ford offered free repair of any 1999 and 2000 Ford Contour and Mercury Mystique vehicle experiencing panel warping at the front edge of the instrument panel cover near the windshield. Initially, Ford offered customers a dealer inspection of the instrument panel and a free repair as required. Ford instructed dealers to repair all vehicles with a panel repair kit unless the warping was greater than 2 inches at the defroster grill opening. For vehicles with greater than 2 inches warping, Ford instructed dealers to replace the instrument panel.

Ford issued to Ford and Lincoln Mercury dealers two supplements to the original 01B78 program that superseded each preceding program. In December 2001, Ford issued Supplement #1 (01B78S1), which provided a revision of the original repair procedure to ''address some dealer-identified issues.'' 01B78S1 did not affect Ford's policy of replacing the instrument panel only when the panel warping is greater than 2 inches and repairing other vehicles with a panel repair kit. In May 2002, Ford issued Supplement #2 (01B78S2), which provided a revised repair procedure that ''requires the use of a new repair kit that includes a new defroster grille cover that is placed on top of the defroster grille.'' 01B78S2 also provided that ''[i]nstrument panel replacement is no longer covered under this program.'' And, 01B78S2 states that, ''All vehicles that have not had 01B78 or 01B78S1 completed, regardless of whether the warpage is visible or not, should be serviced as soon as possible before expiration of this program.'' Neither 01B78S1 nor 01B78S2 changed the program's August 31, 2002, expiration date.

In February 2003, after Customer Satisfaction Program Number 01B78 expired, Ford issued technical service bulletin ''TSB 03–4–6, Trim—Instrument Panel Warpage Repair.'' This TSB described Ford's most current repair procedure for a warped instrument panel, which was identical to the procedure provided in 01B78S2. The TSB did not extend the expiration date of the offer for free repair that had now expired.

The petitioner indicates that when he took his car into his Lincoln-Mercury dealership in 2001 in response to 01B78, the dealership advised him that his vehicle ''was not in need of repair.'' He reports that, by late 2002, his vehicle

began to show signs of the instrument panel warping and that by spring 2006, ''the defrost bezel began to rattle.'' In July 2006, he contacted the same dealership and ''was told that this $400 repair would not be covered [under the TSB]'' because his vehicle was past warranty coverage (36,000 miles/3 years).

Determining an appropriate response to Mr. Moening's petition requires assessment of the potential safety consequences of the alleged defect. A review of NHTSA's consumer complaint database for the MY 1999 and 2000 Ford Contour and Mercury Mystique vehicles in February 2007 revealed 302 complaints regarding instrument panel warping. Most of the complaints report that the warping of the instrument panel reduces forward visibility or degrades the performance of the defroster. Other complaints indicate that the repair performed by the dealer was only a temporary fix and the problem returned. A considerable number of complaints express concern that the instrument panel warping may affect the performance of the air bag system, either by causing the air bag to deploy prematurely or by hindering proper inflation of the air bag. However, as of November 2006 there were no reports of actual improper deployments, nor were there reports of injuries, crashes or loss of control because of instrument panel warping while driving the subject vehicle.

NHTSA evaluated forward visibility from the driver's seating position in a subject vehicle, a 1999 Ford Contour, with a warped instrument panel (more than 3 inches of vertical warping at the centerline of the vehicle) and compared this to the forward visibility in the vehicle with the warped portion of the instrument panel held down in its proper position. Also, NHTSA used for comparison two other vehicles: a 2000 Ford Contour with an unwarped instrument panel and a peer vehicle, a 2005 Saturn Ion with an unwarped instrument panel. NHTSA evaluated the visibility using both a 12-inch and a 28-inch tall traffic cone placed at various positions in front of the subject and peer vehicles. NHTSA selected three subject drivers; two were short females (4′9″ and 5′3″ tall) and the other a tall male (6′1″). NHTSA recorded the minimum distance from the front of the vehicle to the cone that allowed the driver to see the top of the cone.

When conducting the test using the 28-inch cone, there were negligible visibility differences between the subject and peer vehicles for all three drivers. Similarly, when conducting the test using the 12-inch cone, there were negligible visibility differences when each driver viewed the cone through the portion of the windshield directly in front of the driver. However, in order for each short female to see the top of the 12-inch cone through the right side of the windshield of the 1999 Contour with the warped instrument panel, the cone needed to be moved two feet further from the vehicle than was necessary for the same driver to see the same cone through the same portion of the windshield for either the 1999 Contour with the instrument panel held down or the 2000 Contour with the unwarped instrument panel. The practical effect of this difference is minimal: the smallest drivers still have a clear view as they approach such a small object (12 inches or less), but could lose sight of such an object if it is off to the right of their forward field of vision just two feet sooner than a taller driver would. We believe that the observed slight reduction in one portion of the field of view that might be experienced by the smallest of drivers fails to demonstrate any material effect on safety. This conclusion is supported by the absence of any report in the agency's complaint database of alleged loss of control or crash attributed to this problem for these vehicles, which have now acquired nearly 8 years of field experience.

NHTSA also evaluated the ability of the defroster in a 1999 Ford Contour with a warped instrument panel to clear the windshield of heavy early morning frost. NHTSA compared these results with the performance of the defrosters in three other vehicles with unwarped instrument panels: a 2000 Ford Contour, a 2005 Saturn Ion and a 1999 Volvo S80. The comparison demonstrated that the defroster in the subject vehicle with the warped instrument panel, though functional, required approximately three to four minutes longer to clear most of the frost from the windshield compared with the other vehicles. However we do not find this reduction in the speed of the defroster's performance to be a likely safety hazard. The defroster is still capable of performing its intended function.

The principal concern expressed by the petitioner was the potential for warping of the instrument panel to degrade the performance of the air bag system. As of November 2006, NHTSA's consumer complaint database contained no allegations that instrument panel warping affected the actual deployment of the passenger air bag, nor are there reports of instrument panel components becoming projectiles during air bag deployments. Through examination of the construction of the instrument panel on a subject vehicle, NHTSA determined that warping of the instrument panel is confined to the surface materials of the instrument panel, and does not extend to the supporting structure of the air bag system. Based on a review of the agency's complaint database and examination of subject vehicles, we find no evidence that the warping of the instrument panel could cause either inappropriate deployment of the passenger air bag, impede proper deployment of the passenger air bag, or block the air bag deployment path.

Based on a review of the petitioner's request and the information provided above, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–6545 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Fuji Heavy Industries U.S.A., Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Fuji Heavy Industries U.S.A., Inc.'s (FUSA) petition for exemption of the Subaru Impreza vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). FUSA requested confidential treatment for the information and attachments it submitted in support of

its petition. In a letter dated November 27, 2006, the agency granted the petitioner's request for confidential treatment of the indicated areas of its petition.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated October 31, 2006, FUSA requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Subaru Impreza vehicle line, beginning with the 2008 model year. The petition has been filed pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per model year. In its petition, FUSA provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Impreza vehicle line. FUSA stated that all Impreza vehicles will be equipped with a passive, transponder-based electronic immobilizer device as standard equipment beginning with MY 2008. Features of the antitheft device will include an electronic key, a passive immobilizer system which includes a key ring antenna and an engine control unit (ECU). The system immobilization is automatically activated when the key is removed from the vehicle's ignition switch or after 30 seconds if the ignition is simply moved to the off position (key not removed). The device will also have a visible and audible alarm feature. The alarm system will monitor the door status and key identification. Unauthorized opening of a door will activate the alarm system horn and lamps. FUSA's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

FUSA also provided information on the reliability and durability of its proposed device, conducting tests based on its own specified standards. In a letter dated November 27, 2006, NHTSA granted FUSA confidential treatment for the test information. FUSA provided a list of the tests it conducted. FUSA based its belief that the device is reliable and durable on the fact that the device complied with the specific requirements for each test.

FUSA stated that theft rates for its Subaru vehicles have typically been low and that based on the most recent National Insurance Crime Bureau's (NICB) state-by-state theft results, only in 2 out 48 states, including the District of Columbia have any Subaru vehicle appeared in the top ten list of stolen vehicles. Review of the theft rates published by the agency through MY/CY 2004 also revealed that, while there is some variation, the theft rates for Subaru vehicles has on average, remained below the median theft rate of 3.5826. On December 21, 2006, by email, FUSA provided a list of similar devices for which NHTSA has already granted parts marking exemptions. FUSA believes that this comparison supports its claim that its MY 2008 immobilizer device will be at least as effective in reducing theft as similar devices for which the agency has already granted exemptions. Additionally, FUSA referred to the most recent Highway Loss Data Institute's (HLDI) reports that support the effectiveness of immobilizing antitheft devices and believes that the enhancement of electronic immobilization will further help to reduce its lower theft rates. The agency agrees that the device is substantially similar to devices in other vehicles lines for which the agency has already granted exemptions.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that FUSA has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information FUSA provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full FUSA's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If FUSA decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if FUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 3, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–6527 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–27437; Notice 1]

Grote Industries, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Grote Industries, LLC (Grote) has determined that the amber reflex reflectors on certain trucks manufactured between 2004 through 2007 do not comply with S5.1.5 of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Grote has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Grote has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Grote's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 137,050 reflex reflectors that have been sold for installation as original equipment on trucks and were manufactured between December 28, 2004 and January 22, 2007. S5.1.5 of FMVSS No. 108 requires:

> The color in all lamps, reflective devices, and associated equipment to which this standard applies shall comply with SAE Standard J578c, Color Specification for Electric Signal Lighting Devices, February 1977.

The reflex reflectors do not contain the correct reflective material required to meet the requirements of S5.1.5. Grote has corrected the problem that caused these errors so that they will not be repeated in future production. Grote believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

Grote first became aware of the noncompliance of these reflex reflectors when a report was received from one of its customers who noticed a shipment of reflex reflectors it had received from Grote were a different color than previous shipments. The customer was supposed to receive amber reflex reflectors that met the requirements of FMVSS No. 108 for use as front side-mounted and intermediate side-mounted reflex reflectors.

This noncompliance pertains solely to the failure of these reflectors to meet the applicable color requirements. The subject reflex reflectors were manufactured for Grote by a third-party supplier. The third-party supplier incorporated reflective tape that it purchased from a reflective material supplier. Based on the results of tests conducted for Grote, Grote believes the intermediate supplier had been using retroreflective tape that was manufactured to the specification for ''selective yellow,'' instead of the correct specification for ''amber,'' as set forth in the SAE J578c requirement. The intermediate supplier was operating under a certification letter from the reflective material supplier, which erroneously listed the material as compliant.

Grote believes the failure of these reflex reflectors to meet the color specification does not reduce their effectiveness in providing proper visibility to allow identification of the front and (where applicable) intermediate side points of a vehicle. Grote believes the difference between compliant amber reflex reflectors and the subject noncompliant selective yellow colored reflex reflectors is barely discernible to the naked eye when reflected with ''Illuminant A'' light under conditions of ambient darkness. Such conditions are intended to imitate nighttime driving conditions when reflex reflectors serve their primary purpose.

Grote states that it knows of no accidents or other issues associated with this noncompliance. The noncompliant reflex reflectors continue to perform their intended function without any identifiable reduction in safety. Therefore, Grote believes that this noncompliance is inconsequential to motor vehicle safety and that all other requirements under FMVSS No. 108 are met.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. *Mail:* Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the *Federal eRulemaking Portal:* go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 9, 2007.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: April 3, 2007.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–6462 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25546, Notice 2]

Koenigsegg Automotive AB; Response to Application for a Temporary Exemption From the Headlamp Requirements of FMVSS No. 108; Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of application for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, and from certain provisions of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*.

SUMMARY: This document grants the Koenigsegg Automotive AB (''Koenigsegg'') application [1] for temporary exemption from certain advanced air bag requirements of

[1] While Koenigsegg also petitioned for an exemption from the 49 CFR Part 581 Bumper Standard, it subsequently withdrew that portion of its petition (*see* Docket No. NHTSA–2006–25546–4).

FMVSS No. 208, *Occupant Crash Protection*, and from the headlamp requirements of FMVSS No. 108 through December 31, 2009. These exemptions apply to the Koenigsegg CCX. In accordance with 49 CFR Part 555, the basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the application [2] in the **Federal Register** and asked for public comments.[3] We received no comments on the application.

DATES: The exemption from the specified provisions of FMVSS No. 208 and FMVSS No. 108 is effective immediately and remains in effect through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. *Telephone:* (202) 366–2992; *Fax:* (202) 366–3820.

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [4] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers (i.e., original vehicle manufacturers producing or assembling fewer than 5,000 vehicles annually for sale in the United States) were not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are addressing a petition that seeks, in part, a temporary exemption from the advanced air bag requirements. As part of the same document, we are addressing the petitioner's request for temporary exemptions from the agency's headlamp requirements. The petitioner is a manufacturer of low volume, exotic sports cars.

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Koenigsegg petitioned the agency for a temporary exemption from certain headlamp requirements of FMVSS No. 108 (S7), advanced air bag requirements of FMVSS No. 208 (S14), and bumper requirements of 49 CFR Part 581. However, in a letter dated December 12, 2006, Koenigsegg advised the agency that recently completed testing had indicated that its modified bumper system complied with the Part 581 bumper standard and that it was withdrawing the portion of its petition requesting an exemption from that standard (*See* Docket No. NHTSA–2006–25546–4). Accordingly, we need not further discuss that portion of the Koenigsegg petition dealing with the now-superseded request concerning the bumper standard.

The basis for each portion of the application is that compliance would cause substantial economic hardship [5] to a manufacturer that has tried in good faith to comply with these standards. A copy of the petition [6] is available for review and has been placed in the docket for this notice. The agency closely examines and considers the information provided by manufacturers in support of these factors, and, in addition, pursuant to 49 U.S.C. 30113(b)(3)(A), determines whether exemption is in the public interest and consistent with the Safety Act.[7]

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113). In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a

[2] To view the application, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter Docket No. NHTSA–2006–25546.

[3] *See* 71 FR 50974 (August 28, 2006) (Docket No. NHTSA–2006–25546–1).

[4] *See* 65 FR 30680 (May 12, 2000) (Docket No. NHTSA–2000–7013).

[5] When considering financial matters involving companies based in the European Union (EU), it is important to recognize that EU and U.S. accounting principles have certain differences in their treatment of revenue, expenses, and profits. Public statements by EU manufacturers relating to financial results should be understood in this context. This agency analyzes claims of financial hardship carefully and in accordance with U.S. accounting principles.

[6] The company requested confidential treatment under 49 CFR Part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

[7] The Safety Act is codified as Title 49, United States Code, Chapter 301.

''temporary basis,'' [8] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Petition of Koenigsegg

Background. Koenigsegg Automotive is a Swedish corporation formed in 1999 to produce high-performance sports cars. This application concerns the Koenigsegg CCX which was developed as the next generation of Koenigsegg vehicles after production of the CCR model ended on December 30, 2005. The CCX model (the company's only model at this point) is scheduled to go into production in 2006 and to continue at least through the end of 2009. Originally, Koenigsegg planned to sell vehicles only in the European, Mid-East, and Far-East markets, but the company decided in late 2005 to seek entry to the U.S. market for reasons related to ongoing financial viability. The retail price for the CCX is reported to be over $700,000 per vehicle.

As discussed in further detail below, the petitioner argued that it tried in good faith, but could not bring the vehicle into compliance with the headlamp and advanced air bag requirements, and would incur substantial economic hardship if it cannot sell vehicles in the U.S. after January 1, 2007.

Eligibility. Koenigsegg is a small, privately-owned company with 30 full-time staff members and several part-time employees. The company is a small volume manufacturer whose total production is less than 50 cars per year, having produced between four and eight vehicles per year for the past four years. According to the company, its sales revenues have averaged approximately $3.7 million per year. Koenigsegg is not affiliated with any other automobile manufacturer.

According to its current forecasts, Koenigsegg anticipates the following number of CCX vehicles would be imported into the United States, if its requested exemptions were to be granted: 25 in calendar year (CY) 2007; 30 in CY 2008, and 30 in CY 2009.

Requested exemptions. Koenigsegg stated that it intends to certify the CCX as complying with the rigid barrier belted test requirement using the 50th percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner stated that it previously determined the CCX's compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Koenigsegg stated that it, therefore, cannot at present say with certainty that the CCX will comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the CCX's compliance with the other advanced air bag requirements, Koenigsegg stated that it does not know whether the CCX will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, Koenigsegg is requesting an exemption for the CCX from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Koenigsegg further requested exemption from the headlamp requirements set forth in S7 of FMVSS No. 108.

Koenigsegg stated its intention to produce a second generation of the CCX model by late 2009, which would be certified as complying with all applicable U.S. standards, including ones for head lamps (FMVSS No. 108, S7) and advanced air bags (FMVSS No. 208, S14). Accordingly, the company is requesting exemption from the enumerated requirements for the period from January 1, 2007 through December 31, 2009.

Economic hardship. Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the CCX project will result in financial losses unless Koenigsegg obtains a temporary exemption.[9]

In the past three years (2003 to 2005), the company has had losses totaling $1,637,398, and during this time period, the company's factory burned to the ground and had to be rebuilt. Koenigsegg did make a profit of $58,341 in 2003 and $722,406 in 2004, but it incurred a substantial loss of $2,418,145 in 2005.

As of the time of the application, Koenigsegg has invested over $3.2 million in the CCX project in order to have the vehicle meet U.S. standards—not including the provisions which are the subject of the present petition for temporary exemption. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

Koenigsegg stated that costs for external assistance with developing an advanced air bag system would cost over $3 million (over $9 million if internal costs are included for interior redesign, testing, and tooling), and meeting the headlamp requirements would entail an additional expenditure of at least $500,000.

In its petition, Koenigsegg reasoned that worldwide sales (including the U.S. market) of the current CCX in higher volumes over the next three years is necessary to reduce production costs and to make available funding for development of the next generation of the CCX, which would be compliant with all U.S. air bag and headlamp requirements. In essence, Koenigsegg argued that the exemption is necessary to allow the company to ''bridge the gap'' until fully compliant vehicles can be funded, developed, tooled, and introduced.

If the exemption is denied, Koenigsegg projects a net loss of over $10.5 million over the period from 2006–2009. However, if the petition is granted, the company anticipates a profit of nearly $3.5 million during that same period. The petitioner argued that a denial of this petition could preclude entry into the U.S. market until 2010 or later, a development which would have a highly adverse impact on the company. According to the petitioner, if

[8] 49 U.S.C 30113(b)(1).

[9] During the course of the agency's consideration of Koenigsegg's petition, certain minor discrepancies were discovered between the company's Part 555 application and its supporting financial statements. These discrepancies were ultimately determined to be the result of the company's inadvertent error in failing to convert Swedish kronas to U.S. dollars. Koenigsegg subsequently submitted two errata sheets to correct these errors (*see* Docket No. NHTSA–2006–25546–3); we note that these corrections did not substantively change the company's underlying financial position as would affect the agency's determination of economic hardship under 49 CFR Part 555. This document utilizes the company's updated figures denominated in U.S. dollars.

the exemption request is not granted, the company would face a ''virtually insurmountable problem'' in terms of funding and introducing a vehicle that meets all applicable U.S. requirements, and it might ultimately drive the company out of business because the rest of the world export market would be inadequate to ensure profitability.

Good faith efforts to comply. As stated above, Koenigsegg initially planned to produce vehicles for the European, Mid-East, and Far-East markets, but once it was determined in 2005 that entry into the U.S. market was a necessary part of its business plan, the company invested over $3.2 million in research and development and tooling for its U.S. CCX program. In 18 months, the company was able to bring the vehicle into compliance with all applicable NHTSA regulations other than those which are the subject of the present exemption petition, as well as the emissions regulations administered by the Environmental Protection Agency (EPA).

In light of limited resources, the petitioner stated that it was necessary to first develop the vehicle with a standard U.S. air bag system (i.e., one meeting the requirements of FMVSS No. 208, other than the advanced air bag requirements). The company reengineered the CCX with an Audi TT driver air bag system and developed a new passenger air bag system, a $641,000 project.

According to its petition, Koenigsegg anticipates that two years will be needed to install an advanced air bag system on the CCX. Modifications would involve development of new components, such as changes to the instrument panel design and incorporation of advanced air bag installation components such as mountings and brackets. Vehicle testing would also be conducted during that time.

Furthermore, because the vehicle was not originally designed for the U.S. market, it likewise did not have headlamps that comply with U.S. requirements. According to Koenigsegg, achieving compliance with those requirements will necessitate a redesign of the headlamps. Koenigsegg explained that it has undertaken significant efforts in pursuit of CCX compliance with the headlamp requirements of FMVSS No. 108, but problems have stemmed from the company's inability to find a supplier. The petitioner stated that given the unique shape of the CCX, there is no available ''off-the-shelf'' headlamp system available, and efforts to find a supplier willing to undertake the project to produce a FMVSS No. 108-compliant headlamp for the CCX have been unavailing, presumably due to the ultra-low quantity of vehicles involved.[10]

Instead, Koenigsegg decided to produce a headlamp for the CCX in-house (homologated to European Union requirements), utilizing a lighting source from a major lighting manufacturer (Hella). The petitioner stated that the plexiglass lens of the headlamp box is an integral part of the vehicle body and design. The company explained that despite its good faith efforts, the headlamps for the CCX as yet do not fully comply with the headlamp requirements of FMVSS No. 108. Specifically, while the CCX headlamps have been designed to pass the geometry requirements of FMVSS No. 108, the required aerodynamic lens will not pass environmental testing and must be re-engineered.

According to Koenigsegg, the company did explore the possibility of developing an ''interim U.S. headlamp'' without a polycarbonate cover. However, that alternative was determined to be unworkable for the following reasons. First, there were concerns that the absence of the polycarbonate lens ''ruins the design of the body,'' a result which customers were deemed unlikely to accept and which was expected to result in decreased sales.[11] Second, the petitioner determined that an interim headlamp without a polycarbonate lens would have unacceptable aerodynamic effects which would negatively impact vehicle performance. Third, there were concerns that by engineering an interim headlamp exclusively for the U.S. market, the company would lose the advantages associated with producing a ''world car'' which can be introduced into any market, something of great importance for an ultra-low-volume manufacturer. In addition, Koenigsegg determined that the cost of developing the interim headlamp could not be justified when amortized over the small number of units involved.

In light of the above, the company again stated that because of the cost and length of this project, such headlighting efforts must await the second generation of the U.S. CCX.

In short, Koenigsegg argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. With funding from sale of the current generation of U.S. CCX, the company expects that additional development efforts could start in 2007, thereby allowing production of a fully compliant vehicle in late 2009.

Koenigsegg argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Koenigsegg argued that the vehicle would be equipped with a fully-compliant standard U.S. air bag system. As to headlamps, Koenigsegg stated that the CCX's current headlamps (designed to European specifications) are very close to meeting the photometric requirements of FMVSS No. 108, and consequently, they do not pose a safety risk. In all other areas, Koenigsegg emphasized that the CCX will comply with applicable FMVSSs.

As additional bases for showing that its requested exemption would be in the public interest, Koenigsegg offered the following. The company asserted that there is consumer demand in the U.S. for the CCX, and granting this application will allow the demand to be met, thereby expanding consumer choice. The company also suggested another reason why granting the exemption would not be expected to have a significant impact on safety, specifically because the vehicle is unlikely to be used extensively by owners, due to its ''sporty (second car) nature.'' Koenigsegg reasoned that given its very low production volume and customer base, the possibility of any child being in the vehicle is extremely small. Finally, Koenigsegg indicated that the CCX incorporates advanced engineering and certain advanced safety features that are not required by the FMVSSs, including racing brakes with anti-lock capability and traction control. In addition, the company argued that the CCX has enhanced fuel efficiency due to its highly aerodynamic design.

IV. Agency Decision on Koenigsegg Petition

The following discussion provides our decision regarding Koenigsegg's temporary exemption requests

[10] In an August 10, 2006 supplement to its application (included in this docket, following the Koenigsegg petition), Koenigsegg stated that it may have now identified a large lighting manufacturer interested in developing a FMVSS No. 108-compliant headlighting system for the CCX, but it would be ''at a price higher than the $500,000 thus far estimated.''

[11] The petitioner asserted that such considerations were a factor in the agency's earlier decision to grant a ''waiver'' for the headlamp of the Lotus Elise (*see* 69 FR 5658 (Feb. 5, 2005)(Docket No. NHTSA–2003–16341–5)).

pertaining to the advanced air bag requirement of FMVSS No. 208 and the headlamp requirements of FMVSS No. 108. These exemption requests will be discussed separately, in order to examine the engineering challenges and the good faith efforts that the manufacturer has made to meet the applicable requirements. However, because the agency's analyses related to economic hardship and the public interest are essentially the same for these requested exemptions, a single discussion of those matters is provided at the end of our decision.

Advanced Air Bag Requirements. We are granting the Koenigsegg petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Koenigsegg must continue to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for that requirement. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Koenigsegg to undertake a major redesign of its vehicles, in order to overcome the engineering limitations of the CCX. Specifically, Koenigsegg would be required to undertake significant interior redesign in order to upgrade the vehicle's standard air bag system to an advanced air bag system. While the petitioner was aware of the new requirements for some time, its business plans did not initially involve sales in the U.S. However, Koenigsegg subsequently determined that it would be necessary to introduce the CCX into the U.S., thereby raising the problem of compliance with the advanced air bag requirements. Once the determination was made to seek entry into the U.S. market in late 2005, Koenigsegg undertook significant homologation efforts in order to meet applicable U.S. requirements, but compliance with the advanced air bag provisions of FMVSS No. 208 are beyond the company's capabilities at the present time. Koenigsegg plans to utilize proceeds from sales of the current generation of CCX vehicles to finance the development of a fully compliant successor vehicle.

Koenigsegg explained the main engineering challenges precluding incorporation of advanced air bag into the CCX at this time, as follows. The company must undertake redesign work to the vehicle's instrument panel and must incorporate a number of advanced air bag installation components. Furthermore, the petitioner stated that it would need an additional two years time to work with an advanced air bag supplier (because very low volume manufacturers have had to wait for technology to ''trickle down'' from larger manufacturers and suppliers), to make the necessary changes, and to conduct testing. Koenigsegg has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Koenigsegg made good faith efforts to bring the CCX into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. As a small specialty manufacturer, the company had a difficult time in gaining access to advanced air bag systems and components (which presumably reflects restraint system suppliers' initial focus on meeting the needs of large volume manufacturers), so alternative means of compliance were not available as a practical matter. Small manufacturers such as Koenigsegg are dependent upon air bag suppliers for the engineering expertise and technology transfer necessary for compliance with FMVSS No. 208. This further reduced the lead time available for development.

Furthermore, because Koenigsegg is an independent automobile manufacturer, there was no possibility of technology transfer from a larger parent company that also manufactures motor vehicles. Consequently, no viable alternatives remain. The petitioner is unable to redesign its vehicle in time to meet the new advanced air bag requirements that became effective on September 1, 2006 for small volume manufacturers.

Headlamp Requirements. We are granting the Koenigsegg petition to be exempted from the headlamp requirements of FMVSS No. 108 (S7). We understand that vehicle design involves numerous complex design, engineering, and production challenges. To some extent, small volume manufacturers may face difficulties in situations where they must wait for advanced technologies to ''trickle-down'' from major suppliers (e.g., advanced air bag systems), but we do not expect that every vehicle component or system would fall in that category. Accordingly, the agency will carefully consider the modifications to the vehicle necessary to achieve compliance with the relevant safety standard(s), as well as the good faith efforts made by the manufacturer to meet those requirements.

In the present case, we agree that it may be desirable for Koenigsegg to incorporate a specialized headlamp for a variety of reasons, including aesthetics and aerodynamics. While we acknowledge that the company undertook good faith effort to comply with the headlamp requirements of FMVSS No. 108 and that current financial and production limitations would make compliance impractical in the near term, we expect that it would be possible to achieve compliance with all applicable headlamp requirements by the conclusion of the exemption period requested by Koenigsegg. We do not believe that the required modifications would be as complex as those associated with advanced air bags. Our reasoning is explained in further detail below.

To start, we would note that passenger vehicles generally are not designed to accommodate ''off the shelf'' headlamp systems, but instead incorporate specialized headlamp designs dedicated to the specific vehicle. Thus, developing a specialized headlamp for the CCX may be necessary, but it is not an unusual event. Furthermore, as discussed below, we believe that it would be possible to make modifications to the headlamp independent of changes to the bumper system.

As noted above, there are several reasons why we believe that Koenigsegg should install FMVSS No. 108-compliant headlamps on the CCX as rapidly as possible, even for the small numbers involved here. First, one should not lose sight of the fact that headlamps are safety devices intended to illuminate the roadway and overhead signs for the driver and to also make the vehicle visible to other drivers and pedestrians. Accordingly, styling characteristics of the headlamp are a secondary consideration. We further note that the petitioner did not provide any basis for its speculative arguments regarding decreased sales that would be expected to result from installation of an interim headlamp without a polycarbonate lens, but which would comply with FMVSS No. 108. The petitioner also provided no details as to the negative impact on vehicle performance that would be expected from incorporation of an FMVSS No. 108-compliant interim headlamp design or support for its contention that such a headlamp would ''ruin the design of the body.''

Likewise, we disagree with the petitioner's contention that construction of an FMVSS No. 108-compliant headlamp would deprive the manufacturer of the advantages associated with building a ''world car.'' On the contrary, developing a headlamp for the CCX that meets the requirements of the Economic Commission for Europe (ECE) regulations, as well as FMVSS No. 108, provides the opportunity to build the CCX as a world car. As the Koenigsegg petition suggests, these two sets of regulations are quite similar, with a primary difference being the requirement in FMVSS No. 108 for photometric test points intended to ensure illumination of overhead signs. However, it is possible to manipulate the headlamp's beam pattern to achieve compliance with the photometric requirements for both sets of regulations.

In support of its request for a temporary exemption from the headlamp requirements of FMVSS No. 108, Koenigsegg argued that the agency granted a similar exemption to Group Lotus Plc (Lotus) (*see* 69 FR 5658 (Feb. 5, 2004) (Docket No. NHTSA–2003–16341–5)). As discussed in that notice, Lotus made many of the same arguments that Koenigsegg is currently making regarding engineering challenges, aesthetic concerns, loss of performance, and decreased sales. However, as compared to the Koenigsegg headlamp, there were significant differences in the headlamp for the Lotus Elise, which supported the agency's decision to grant a temporary exemption for nearly three years. Specifically, Lotus stated that not only were its headlamp's photometrics very close to the requirements of FMVSS No. 108, but the lamp also had been subjected to relevant environmental testing and exhibited a strong warranty record for this aspect of the vehicle.

In contrast, Koenigsegg stated that the CCX's current headlamps are designed to pass the geometry requirements of FMVSS No. 108, but they would not pass the environmental requirements of the standard.[12] Thus, even if the CCX headlamps were to meet all the photometric requirements of the standard at the time of vehicle certification, performance could deteriorate if the lenses on those headlamps could not meet the applicable weathering, vibration, or abrasion requirements. Such degraded performance (resulting from the lamp's failure to meet relevant photometric test points) could negatively impact the vehicle's forward illumination and increase glare for oncoming drivers. Choosing to grant Koenigsegg's requested exemption from FMVSS No. 108's headlamp requirement required considerable deliberation within the agency, and it was only after careful balancing of the manufacturer's good faith efforts, the small number of vehicles involved, and the potential safety consequences that we decided to do so. Because we are hesitant to set a precedent in terms of granting temporary exemptions for vehicles whose headlamps do not meet the environmental requirements of the standard, we would state that the agency will carefully examine and decide such petitions on a case-by-case basis.

In further support of expediently achieving compliance with the headlamp requirements of FMVSS No. 108, we understand from the petition that Koenigsegg now has identified a large lighting manufacturer willing to develop a FMVSS No. 108-compliant headlighting system for the CCX. Having identified such a supplier, we would expect this arrangement to accelerate Koenigsegg's efforts to develop a FMVSS No. 108-compliant headlamp.

In sum, the information supplied by the petitioner demonstrates that the company to date has made good faith efforts to achieve compliance with the headlamp requirements of FMVSS No. 108 and that it would not be economically or technically feasible to meet these requirements until late 2009. We are also cognizant of the very small number of vehicles at issue here, many of which will probably have limited road use. For these reasons, we have decided to grant Koenigsegg a temporary exemption from the headlamp requirements of FMVSS No. 108 through December 31, 2009. However, we urge the company to achieve full compliance with FMVSS No. 108 earlier, to the maximum extent possible.

For the reasons discussed above, we believe that this period should provide sufficient time to engage with the identified lighting manufacturer and to conduct any necessary retooling of components related to the headlamps. We also believe that it would be possible to modify the CCX's headlamps in a manner that would not change the shape of the outer lens; accordingly, it should be possible to undertake headlamp and bumper modifications independently. In addition, we note that achieving compliance with FMVSS No. 108 would benefit the company by allowing the CCX to attain ''world car'' status sooner. Finally, in terms of economic feasibility, the petitioner's financial submissions demonstrated that if its requested temporary exemptions are granted, it anticipates profits of nearly $3.5 million over the period from 2006–2009, so a portion of the profits expected to be generated during the first year of the exemption period (nearly $2.5 million in 2007) could be channeled into headlamp development.

Economic Hardship. We now turn to our analysis more broadly to the issues of the economic hardship facing the petitioner and the impact on motor vehicle safety surrounding the requested temporary exemptions from the advanced air bag and headlamp requirements discussed above. After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, experiencing net operating losses of about $1.6 million over the past three years (2003–2005). The company did turn a small profit in 2003 (about $58,000) and a larger profit in 2004 (about $722,000), but these were overwhelmed by an over $2.4 million loss in 2005. These figures suggest that the company's current profitability situation is somewhat precarious. If the petitioner's request for a temporary exemption is denied, the company will be precluded from selling any vehicles in the U.S. market at this time. The resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially amounting to the difference between a profit of nearly $3.5 million (if an exemption is granted) and a loss of over $10.5 million (if an exemption is denied) over the period from 2006–2009. Ultimately, denial of the exemption request could preclude development of a U.S.-compliant vehicle and jeopardize the continued existence of Koenigsegg.

According to Koenigsegg, absent the exemption, the company anticipates being unable to enter the U.S. market until 2010 or later. However, Koenigsegg's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the CCX over the next two years to finance development of a fully compliant vehicle for delivery to the U.S. market. Granting the exemption will allow Koenigsegg to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the current generation of the CCX that meets all U.S. requirements.

While some of the information submitted by Koenigsegg has been granted confidential treatment and is

[12] It is unclear from the petition whether the CCX headlamps would meet all applicable geometric and photometric requirements in Standard No. 108.

not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208 and S7 of FMVSS No. 108 and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Koenigsegg's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.
2. Itemized costs of each component that would have to be modified in order to achieve compliance.
3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.
4. A detailed OEM price-volume quotation from an advanced air bag supplier, including detailed costs for the necessary components for each stage of the development program.
5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.
6. Corporate income statements and balance sheets for the period from 2002–2005, and projected income statements for the period from 2006–2009 (analyzing alternative scenarios in which the petition is granted and denied).

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (approximately 85 to be imported for the duration of the requested three-year exemption). Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the CCX features several advanced ''active'' safety features. These features are listed in the petitioner's application.[13] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208 and the headlamp requirements of Standard No. 108. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture ''except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. ____.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

We note that the text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. Specifically in the case of FMVSS No. 208, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, ''except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *''. We note that the phrase ''Advanced Air Bag Requirements'' is an abbreviated form of the title of S14 of Standard No. 208. Similarly, regarding the temporary exemption for the CCX's headlamps, we believe that the two labels should read in relevant part, ''except for S7 of Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, exempted pursuant to * * *.'' We believe it is reasonable to interpret § 555.9 as requiring this language.

In sum, the agency concludes that Koenigsegg has demonstrated good faith effort to bring the CCX into compliance with the advanced air bag requirements of FMVSS No. 208 and the headlamp requirements of FMVSS No. 108 and has also demonstrated the requisite financial hardship. Further, we find these exemptions to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, and the headlamp requirements of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption from these provisions would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Koenigsegg CCX is granted NHTSA Temporary Exemption No. EX 06–10, from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208 and from S7 of 49 CFR 571.108. The exemption is effective immediately and continues in effect through December 31, 2009.

Issued on: March 29, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. E7–6549 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

[13] *See* page 16 of Koenigsegg's petition.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition to Modify an Exemption of a Previously Approved Antitheft Device; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of a petition to modify an exemption from the Parts Marking Requirements of a previously approved antitheft device.

SUMMARY: On August 15, 1989, the National Highway Traffic Safety Administration (NHTSA) granted in part General Motors Corporation's (GM) petition for an exemption in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard* for the Chevrolet Camaro vehicle line. The exemption was granted because the agency determined that the antitheft device proposed to be placed on the line as standard equipment was likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. On November 10, 2006, GM petitioned the agency to amend the exemption previously granted for the Chevrolet Camaro vehicle line. NHTSA is granting in full GM's petition to modify the exemption because it has determined that the modified antitheft device to be placed on the Chevrolet Camaro line as standard equipment will also likely be as effective in reducing

and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: On August 15, 1989, NHTSA published in the **Federal Register** a notice granting in part a petition from GM for an exemption from the parts marking requirements of the Theft Prevention Standard (49 CFR 541) for the 1990 Chevrolet Camaro vehicle line. The Chevrolet Camaro was equipped with the PASS–Key antitheft device (See 54 FR 33655). For MY 1993, the device was changed to the PASS–Key II device. GM did not submit a petition for modification at that time because, in a February 7, 1992, letter to GM, the agency determined that changes in the ''PASS–Key II'' constituted a *de minimis* change in the PASS-Key device. GM suspended production of the Chevrolet Camaro vehicle line at the end of the 2003 MY.

In a petition dated November 10, 2006, GM requested a modification of the previously granted exemption for the Chevrolet Camaro vehicle line. GM stated that ''(F) or the 2010 Model Year, General Motors will be reinstating production of the Chevrolet Camaro and upgrading the standard theft deterrent system.'' GM's November 10, 2006, submission is a complete petition, as required by 49 CFR Part 543.9(d), in that it meets the general requirements contained in 49 CFR Part 543.5 and the specific content requirements of 49 CFR Part 543.6. GM's petition provides a detailed description and diagram of the identity, design, and location of the components of the antitheft device proposed for installation beginning with the 2010 model year.

The 1990 antitheft device (PASS–Key) installed on the Chevrolet Camaro was a passively activated, transponder-based, electronic immobilizer system. The PASS–Key system used a standard ignition key to rotate a specially coded ignition switch. Before the vehicle could be operated, the electrical resistance of a pellet embedded in the shank of the key had to be sensed by elements in the ignition lock cylinder and recognized by the decoder. If a key with the incorrect electrical resistance was inserted, the PASS–Key decoder module would shut down, disabling the start and fuel delivery systems.

The 1993 antitheft device (PASS–Key II) was a modification of the PASS–Key device. GM stated that the key resistance read by discrete electrical components in the PASS–Key circuitry was replaced in the PASS–Key II device with the key resistance being determined by a microprocessor. Additionally, a security indicator would illuminate continuously directing the operator to have the vehicle serviced if ''fail enabled'' conditions (i.e., vehicle does not start with the proper key because of a dirty or contaminated resistor pellet) arose. If a fault was detected, future ignition cycles would not be allowed regardless of key authorization.

In its second modification, GM stated that it proposes to install its Chevrolet Camaro vehicle line with its PASS–Key III+ antitheft device for MY 2010. The PASS–Key III+ is also a transponder based, electronic immobilizer system. It is designed to be active at all times without direct intervention by the vehicle operator. The antitheft device is fully armed immediately after the ignition has been turned off and the key removed. The device will continue to provide protection against unauthorized use (i.e., starting and engine fueling), but will not provide any visible or audible indication of unauthorized vehicle entry (i.e., flashing lights or horn alarm).

Components of the modified antitheft device include an electronically-coded ignition key, a PASS–Key III+ controller module and an engine control module. Unlike the ignition key used with the PASS–Key and PASS–Key II devices, the PASS–Key III+ ignition key contains electronics embedded within the head of the key. These electronics receive energy and data from the control module. Upon receipt of the data, the key will calculate a response to the data using secret information and an internal encryption algorithm, and transmit the response back to the vehicle. The controller module translates the radio frequency signal received from the key into a digital signal and compares the received response to an internally calculated value. If the values match, the key is recognized as valid and the vehicle can be operated.

The PASS–Key III+ device has the potential for over four billion unique electrical key codes which varies with every ignition cycle, while the PASS–Key and PASS–Key II has a possibility of 15 code combinations that never varies at each ignition cycle. In the PASS–Key III+, each key is uniquely coded and the vehicle can be programmed to operate with up to ten different codes, compared to the PASS–Key and PASS–Key II devices that only allow a vehicle to recognize a single unique code.

GM indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), are lower for GM models equipped with the ''PASS–Key''-like systems which have exemptions from the parts-marking requirements of 49 CFR Part 541, than the theft rates for earlier, similarly-constructed models which were parts-marked. Based on the performance of the PASS–Key, PASS–Key II, and PASS–Key III systems on other GM models, and the advanced technology utilized by the modification, GM believes that the MY 2010 antitheft device will be more effective in deterring theft than the parts-marking requirements of 49 CFR Part 541.

GM stated that the theft rates for the 2003 and 2004 Cadillac CTS and the MY 2004 Cadillac SRX currently installed with the PASS-Key III+ antitheft device exhibit theft rates that are lower than the median theft rate (3.5826) established by the agency. The Cadillac CTS introduced as a MY 2003 vehicle line has been equipped with the PASS-Key III+ device since the start of production. The theft rates for the MY 2003 and 2004 Cadillac CTS is 1.0108 and 0.7681 respectively. Similarly, the Cadillac SRX introduced as a MY 2004 vehicle has been equipped with the PASS-Key III+ device since production. The theft rate for MY 2004 Cadillac SRX is 0.7789. GM stated that the theft rates experienced by these lines with installation of the PASS-Key III+ device demonstrate the effectiveness of the device. The agency agrees that the device is substantially similar to devices for which the agency has previously approved exemptions.

GM's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lack an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR Part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. Based on comparison of the reduction in the theft rates of GM vehicles using a passive theft deterrent device with an audible/visible alarm system to the reduction in theft rates for GM vehicle models equipped with a passive antitheft device without an alarm, GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent

performance of a system such as PASS-Key III+. In past petitions, the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

On the basis of this comparison, GM believes that the antitheft device (PASS-Key III+) for model years 2010 and later will provide essentially the same functions and features as found on its MY 1990–2002 PASS-Key device and therefore, its modified device will provide at least the same level of theft prevention as parts-marking. GM believes that the antitheft device proposed for installation on its MY 2010 Chevrolet Camaro is likely to be as effective in reducing thefts as compliance with the parts marking requirements of Part 541.

In addressing the specific content requirements of 543.6, GM provided information on the reliability and durability of the proposed device. To ensure reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of the tests conducted and believes that the device is reliable and durable since it complied with the specified requirements for each test. GM also stated that since the authorization code is not handled or contacted by the vehicle operator, the reliability of the PASS-Key III+ is significantly improved over the PASS-Key and PASS-Key II devices. This reliability allows the system to return to the ''Go/No Go'' based system, eliminating the ''fail enabled'' mode of operation.

The agency has evaluated GM's MY 2010 petition to modify the exemption for the Chevrolet Camaro vehicle line from the parts-marking requirements of 49 CFR Part 541, and has decided to grant it. It has determined that the PASS-Key III+ system is likely to be as effective as parts-marking in preventing and deterring theft of these vehicles, and therefore qualifies for an exemption under 49 CFR Part 543. The agency believes that the proposed device will continue to provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

If GM decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–6525 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of General Motors Corporation (GM) for an exemption in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard*, for the Saturn Aura vehicle line beginning with model year (MY) 2008. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated October 6, 2006, GM requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Saturn Aura vehicle line beginning with MY 2008. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year. In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. The antitheft device is a transponder-based, electronic, immobilizer system. GM will install its passive antitheft device as standard equipment on its Saturn Aura vehicle line beginning with MY 2008. GM stated that the device will provide protection against unauthorized use (i.e., starting and engine fueling), but will not provide any visible or audible indication of unauthorized vehicle entry (i.e., flashing lights or horn alarm). GM's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

The antitheft device to be installed on the MY 2008 Saturn Aura is the PASS-Key III+. The PASS-Key III+ device is designed to be active at all times without direct intervention by the vehicle operator. The system is fully armed immediately after the ignition has been turned off and the key removed. The system will provide protection against unauthorized starting and fueling of the vehicle engine. Components of the antitheft device include an electronically-coded ignition key, a PASS-Key III+ controller module and an engine control module. The ignition key contains electronics molded into the key head. These electronics receive energy and data from the control module. Upon receipt of the data, the key will calculate a response to the data using secret information and an internal encryption algorithm, and transmit the response back to the vehicle. The controller module translates the radio frequency signal received from the key into a digital signal and compares the received response to an internally calculated value. If the values match, the key is recognized as valid and the vehicle can be operated.

GM indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), are lower for GM models equipped with the ''PASS-Key''-like systems which have exemptions from the parts-marking requirements of 49 CFR Part 541, than the theft rates for earlier, similarly-constructed models which were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III systems on other GM models, and the advanced technology utilized by

the modification, GM believes that the MY 2008 antitheft device will be more effective in deterring theft than the parts-marking requirements of 49 CFR Part 541.

For clarification purposes, the agency notes that it does not collect theft data. NHTSA publishes theft rates based on data provided by the NCIC of the Federal Bureau of Investigation. NHTSA uses NCIC data to calculate theft rates and publishes these rates annually in the **Federal Register**.

In addressing the specific content requirements of 543.6, GM provided information on the reliability and durability of the proposed device. To ensure reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of the tests conducted and believes that the device is reliable and durable since it complied with the specified requirements for each test.

GM stated that the PASS-Key III+ system has been designed to enhance the functionality and theft protection provided by GM's first, second, and third generation PASS-Key, PASS-Key II, and PASS-Key III systems.

GM compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM stated that the theft rates for the 2003 and 2004 Cadillac CTS and the MY 2004 Cadillac SRX currently installed with the PASS-Key III+ antitheft device exhibit theft rates that are lower than the median theft rate (3.5826) established by the agency. The Cadillac CTS introduced as a MY 2003 vehicle line has been equipped with the PASS-Key III+ device since the start of production. The theft rates for the MY 2003 and 2004 Cadillac CTS is 1.0108 and 0.7681 respectively. Similarly, the Cadillac SRX introduced as a MY 2004 vehicle has been equipped with the PASS-Key III+ device since production. The theft rate for MY 2004 Cadillac SRX is 0.7789. GM stated that the theft rates experienced by these lines with installation of the PASS-Key III+ device demonstrate the effectiveness of the device. The agency agrees that the device is substantially similar to devices for which the agency has previously approved exemptions.

Based on comparison of the reduction in the theft rates of GM vehicles using a passive theft deterrent device with an audible/visible alarm system to the reduction in theft rates for GM vehicle models equipped with a passive antitheft device without an alarm, GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as PASS-Key III+.

GM's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lack an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR Part 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with devices similar to that which GM proposes. In these instances, the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

Based on the evidence submitted by GM, the agency believes that the antitheft device for the GM vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its device.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the Saturn Aura vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If GM decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 3, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–6528 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–04–17217]

Insurer Reporting Requirements; Reports Under 49 U.S.C. on Section 33112(c)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the annual insurer report on motor vehicle theft for the 2001 reporting year. Section 33112(h) of Title 49 of the U.S. Code,

requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community, and Congress. As required by section 33112(c), this report provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

ADDRESSES: Interested persons may obtain a copy of this report and appendices by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10 a.m. to 5 p.m. Requests should refer to Docket No. 2004–17217. This report and appendices may also be viewed on-line at: *http://www.nhtsa.dot.gov/cars/rules/theft.*

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98–547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which required the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Act also addressed several other actions to reduce motor vehicle theft, such as increased criminal penalties for those who traffic in stolen vehicles and parts, curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment, establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts, and development of ways to encourage decreases in premiums charged to consumers for motor vehicle theft insurance.

This notice announces publication by NHTSA of the annual insurer report on motor vehicle theft for the 2001 reporting year. Section 33112(h) of Title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community, and Congress. As required by section 33112(h), this report focuses on the assessment of information on theft and recovery of motor vehicles, comprehensive insurance coverage and actions taken by insurers to reduce thefts for the 2001 reporting period.

Section 33112 of Title 49 requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles, on rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts, and on actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency. In accordance with 49 CFR Part 544.5, each insurer, rental and leasing company to which this regulation applies must submit a report annually not later than October 25, beginning with the calendar year for which they are required to report. The report would contain information for the calendar year three years previous to the year in which the report is filed. The report that was due by October 25, 2004 contains the required information for the 2001 calendar year. Interested persons may obtain a copy of individual insurer reports for CY 2001 by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10 a.m. to 5 p.m. Requests should refer to Docket No. 2004–17217.

The annual insurer reports provided under section 33112 are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer report, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. The report included theft and recovery data by vehicle type, make, line, and model which were tabulated by insurance companies and, rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. This report, the seventeenth, discloses the same subject information and follows the same reporting format.

Issued on: March 30, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–6517 Filed 4–6–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. OTS–2007–0009]

Savings and Loan Holding Company Rating System

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

ACTION: Notice and request for comment.

SUMMARY: Changes in the environment in which depository institutions and their holding companies operate have had a substantial impact on the way they are managed and necessitate changes in the way they are supervised. OTS supervises a diverse population of holding companies ranging from non-complex companies with limited activities to large, internationally active conglomerates that engage in a variety of activities. OTS has a well-established program for meeting its statutory responsibilities with respect to savings and loan holding companies (SLHCs or holding companies) and the thrift industry. Holding company supervision is an integral part of this oversight program, and OTS routinely takes steps to enhance its risk-focused supervision of holding companies.

While OTS has emphasized risk management in its supervisory processes for SLHCs of all sizes and complexities, this emphasis is not readily apparent in the primary components of the current SLHC supervisory rating system, CORE (Capital, Organizational Structure, Relationship, and Earnings). Therefore, OTS is considering making changes to the component descriptions and rating scale used to evaluate the condition of SLHCs. All SLHCs are assigned a rating, although the degree of supervisory scrutiny varies based on a risk-focused evaluation of their size, complexity, business activities, and risk exposures. OTS is committed to maintaining a common CORE component framework and a rating system that is flexible and applies to all SLHCs. After reviewing public comments, OTS intends to make any necessary changes to the proposal and adopt a final SLHC rating system.

DATES: Comments must be received by June 8, 2007.

ADDRESSES: You may submit comments, identified by OTS–2007–0009, by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click submit. Select Docket ID ''OTS–2007–0009'' to submit or view public

comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2007–0009.

• Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2007–0009.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: Go to *http://www.regulations.gov*, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS–2007–0009'' to view public comments for this notice of proposed rulemaking.

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and Affiliates, (202) 906–7488.

SUPPLEMENTARY INFORMATION:

The SLHC rating system is a management information and supervisory tool that systematically indicates the condition of SLHCs. It provides an evaluation of the SLHC's condition for use by the supervisory community and focuses supervisory responses and actions. The SLHC rating system also provides a measurement tool to discuss the enterprise's condition with SLHC management. The current SLHC rating system was implemented in 1988. The rating system currently includes the following components:

Capital

The first component of a holding company examination is an evaluation of Capital. OTS does not apply a standardized capital requirement to SLHCs. Instead, OTS considers the overall risk profile of the consolidated entity on a case-by-case basis. This involves assessing analytical measures that include overall leverage, the level of short-term debt and liquidity, cash flow, reliance on thrift and other subsidiary earnings, interest coverage, quality of earnings, and level of consolidated tangible and equity capital. Individualized capital requirements can be used as a tool to achieve this goal when necessary.

Organizational Structure

The Organizational Structure component requires examiners to identify the organizational structure and ownership and assess any changes. OTS also reviews the activities of the holding company and other affiliates to determine regulatory compliance and to assess the risks these activities may pose to the thrift.

Relationship

In the Relationship component, examiners assess the interaction of the holding company's board of directors and executive management with the thrift. Examiners reach conclusions about:

• The materiality of the thrift to the holding company or its controlling shareholders;

• The degree of influence the holding company has over the thrift and how this influence affects the thrift's operations;

• Whether the board of directors provides adequate oversight for the holding company and its subsidiaries;

• How actively the holding company is involved in the management of the thrift;

• The degree of interdependence of the thrift and other entities within the holding company structure; and

• Whether the board has implemented effective policies and procedures to maintain separate corporate identities and avoid conflicts of interest.

Earnings

In the Earnings component, examiners assess the holding company's operations and financial condition and their current and prospective effect on the subsidiary thrift. OTS pays close attention to the holding company's earnings trends and capacity as well as cash flow. It also evaluates the relative contributions and dividend payout ratios of significant subsidiaries and the overall financial performance of the holding company enterprise.

You can find a thorough description along with examination procedures for each component in the OTS Holding Companies Handbook at *http://www.ots.treas.gov.*

After evaluating these four components, OTS assigns a composite SLHC rating using the following definitions: [1]

Above Average (A): Holding company enterprises in this group have a wealth of financial strength. The enterprise could be called upon to provide financial or managerial resources to the thrift if circumstances dictate. Above Average holding company enterprises may exhibit minor weaknesses, but they are deemed to be correctable in the normal course of business. For this rating, all component ratings will generally be rated 1 or 2.

Satisfactory (S): Holding company enterprises in this group are those whose effect on the thrift is considered neutral. Overall, these holding companies exhibit financial conditions and operating performance that pose only a remote threat to the viability of the thrift. Satisfactory holding company enterprises generally do not possess the financial strength to be considered a substantial resource to the thrift. These companies may be reliant on the thrift for dividends or other sources of funds to service debt; however, their debt level and expected need for funds from the thrift are not considered overwhelming.

For this rating, the components should generally be rated 2, but may include components rated 1 or 3.

Unsatisfactory (U): This rating is reserved for holding company enterprises that impose a detrimental or burdensome effect on the thrift. Such companies exhibit high levels of various operating weaknesses that at best are considered less than satisfactory. There exists an inordinate reliance involving the thrift. Either the holding company is

[1] Component ratings are assigned to all complex SLHCs and may be assigned, at the examiner's discretion, to noncomplex SLHCs. When assigned, the four components are rated on a scale of one to three in descending order of performance quality. The definitions currently in use are set forth in the OTS Holding Companies Handbook.

inordinately reliant on the thrift for cash flow, or the thrift is inordinately reliant on the holding company for critical operating systems. Without immediate corrective action, the thrift's viability may be impaired. Enterprises deserving of this rating will predominantly have components that are rated 3, although even one component with a 3 rating may suffice to justify an overall U rating if the problems are severe enough. An Unsatisfactory rating is only given in the most severe circumstances. Such a rating would be comparable to a 4 or 5 composite thrift rating, and would carry the presumption that formal enforcement action is required, pursuant to RB 18–1b.

Since the introduction of this rating system, banking organizations and SLHCs have become more complex. Several SLHCs have significant international operations and many engage in multiple types of financial activities. In addition, certain SLHCs that existed prior to the enactment of activities restrictions in the Gramm-Leach-Bliley Act engage in commercial, manufacturing, and other retail activities. As of December 2006, SLHCs had aggregate consolidated assets of $7.7 trillion. Because of SLHCs' diversity and OTS's risk focused holding company examination approach, the agency's approach to holding company examinations and ratings must document our assessment of the risk profile of the holding company enterprise as well as management's ability to identify, measure, monitor, and control risks.

Changes to Examination Components

This document proposes changes to two of the existing four examination components. OTS is proposing these changes to place greater emphasis on risk management. The number of components and OTS's risk focused examination approach would not change because of this proposal.

Using a slightly revised approach within the CORE framework, OTS will review two components that focus on financial condition (Capital and Earnings) and two other components (Organizational Structure and Risk Management) that focus on the activities and operations conducted within the enterprise and the SLHC's risk management practices.

With the exception of the ratings changes discussed later in this document, OTS is not proposing a change to its philosophy on evaluating the financial components (Capital and Earnings). OTS will continue to evaluate capital adequacy relative to a given enterprise's risk profile.

Within the Organizational Structure component, examiners would assess inherent risk in the context of lines of business, operations, affiliate relationships, concentrations, and other exposures. The most significant types of risk are defined in the proposed rating description for the Organizational Structure component. Based on its experience regulating holding companies and on a review of similar guidance by other banking and supervisory agencies, OTS compiled a comprehensive list of risks that holding company enterprises face.

OTS proposes changing the name of the ''R'' component from Relationship to Risk Management. Within the Risk Management component, examiners would evaluate corporate governance; board of directors and senior management oversight; policies, procedures, and limits; risk monitoring and management information systems; and internal controls. OTS recognizes that each SLHC must have the flexibility to tailor risk management programs to its size, complexity, and inherent risks. OTS also recognizes that its most complex holding companies are highly integrated and may manage risk on an enterprise-wide basis, both within and across business lines and legal entities.

Changes to Rating System

OTS believes that it should refine the current holding company supervisory approach and ratings system. An effective rating system must include an accurate assessment of each enterprise's financial and managerial condition. The rating system must be flexible and apply to holding companies of all sizes and complexity. The current rating scale does not facilitate meaningful distinctions in the strengths and weaknesses of an enterprise. Therefore, OTS is proposing the use of a five-point numeric scale similar to the Uniform Financial Institution Ratings System (UFIRS) and the OTS CAMELS rating system. The five-point scale would be used for both composite and component ratings assigned to SLHCs. The use of a five-point scale will better reflect issues of supervisory concern and will provide more distinction in the supervisory assessment of condition. A five-point scale also correlates with and is more comparable to the thrift and bank holding company rating systems.

OTS proposes to make one other change to the ratings definitions. Historically, OTS has based the rating of the holding company enterprise on its effect on its subsidiary thrift. OTS has encountered situations where it has supervisory concerns within the holding company enterprise, which did not have a direct impact on the thrift. OTS believes that using the effect on the thrift subsidiary as a SLHC rating criterion can lead to misinterpretation of the rating. It also may not be as accurate in portraying the condition of the SLHC enterprise as ratings criteria based on financial condition, operations, and risk profile.

After thoroughly evaluating the language in the ratings definitions, OTS believes that language emphasizing the SLHC's effect on its thrift subsidiary limits the supervisory purpose of the rating. The SLHC's effect on its thrift subsidiary will continue to be an important consideration in the examination process, but the proposal does not include such language as rating criterion.

The proposed changes will elevate the prominence of risk management; better align holding company examination components with OTS's supervisory process; and provide a more accurate assessment of the condition of SLHCs. OTS recognizes that it bases certain guidance and administrative processes on the current SLHC rating scale and definitions. OTS anticipates that a rating of ''4'' or ''5'' will equate to an ''unsatisfactory'' rating for assessment and enforcement purposes. OTS expects to conform existing guidance and regulations to incorporate any changes made to the SLHC rating system.

Proposed Text of the Savings and Loan Holding Company Rating System

Holding Company Rating System

The holding company rating system is used to assess a holding company's Capital, Organizational Structure, Risk Management, and Earnings. Using this system, OTS comprehensively and uniformly evaluates all holding company enterprises, focusing supervisory attention on the holding company enterprises that are complex or exhibit financial and operational weaknesses or adverse trends. The rating system:

- Identifies problem or deteriorating holding company enterprises
- Categorizes holding company enterprises with deficiencies in particular areas
- Assesses the aggregate strength of the SLHC industry.

Each holding company enterprise receives a composite rating based on the evaluation factors.

Composite and component ratings are assigned based on a 1 to 5 numeric scale. A ''1'' rating is the highest rating, indicating the strongest performance and practices and least degree of supervisory concern. A ''5'' rating is the

lowest rating, indicating the weakest performance and the highest degree of supervisory concern.

Examiners will use the following descriptions to assign composite and component ratings to SLHCs.

Description of the Rating System Elements

Composite Rating

The composite rating is the overall assessment of the holding company enterprise as reflected by its organizational structure, risk management, and consolidated financial strength. The composite rating encompasses both a forward-looking and current assessment of the consolidated enterprise, as well as an assessment of the relationship between the companies in the enterprise. The composite rating is not a simple numeric average of the CORE components; rather, the composite rating reflects OTS's judgment of the relative importance of each component to the operation of the holding company enterprise. Some components may receive more weight than others depending on the SLHC's activities and risk profile. Assignment of a composite rating may incorporate any factor that significantly affects the overall condition of the holding company enterprise, although generally the composite rating is closely related to the component ratings assigned.

Composite 1. A holding company enterprise in this group is sound in almost every respect and generally has components rated 1 or 2. Any weaknesses are minor, and the board of directors and management can correct them in the normal course of business. The enterprise is able to withstand economic, financial, and risk exposure changes because of solid risk management practices and financial condition. Cash flow is abundant and adequately services debt and other obligations. This holding company enterprise exhibits strong performance and risk management practices relative to its size, complexity, and risk profile.

Composite 2. A holding company enterprise in this group is fundamentally sound but may have modest weaknesses. The board of directors and management are capable and willing to correct any weaknesses. Generally, no component rating should be more severe than 3 for this holding company enterprise. Risk management practices and financial condition create stability, and this holding company enterprise is capable of withstanding business fluctuations. Cash flow is adequate to service obligations. Overall, risk management practices are satisfactory relative to the enterprise's size, complexity, and risk profile.

Composite 3. A holding company enterprise in this group raises some degree of supervisory concern in one or more of the component areas, with weaknesses that range from moderate to severe. The magnitude of the deficiencies is generally not severe enough to rate a component more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. This holding company enterprise is less resistant to adverse business conditions. Risk management practices may be less than satisfactory relative to the enterprise's size, complexity, and risk profile. However, there is only a remote threat to the holding company enterprise's continued viability.

Composite 4. A holding company enterprise in this group has serious financial or managerial deficiencies that result in unsatisfactory performance. The supervisory concerns, which management and the board are not satisfactorily addressing, range from severe to critically deficient. A holding company enterprise in this group is generally not capable of withstanding adverse business fluctuations. Risk management practices are generally unacceptable relative to the enterprise's size, complexity, and risk profile. The enterprise may place undue pressure on subsidiaries to meet its cash flow by upstreaming imprudent dividends or fees. Unless there is prompt action to correct these conditions, future viability could be impaired.

Composite 5. The magnitude and character of the risk management or financial weaknesses of a holding company enterprise in this category could lead to insolvency without immediate aid from shareholders or supervisory action. The volume and severity of problems are beyond the board and management's ability or willingness to control or correct. Risk management practices are inadequate relative to the enterprise's size, complexity, and risk profile. The inability to prevent liquidity or capital depletion places the holding company enterprise's continued viability in serious doubt.

Capital Adequacy (C) Component Rating

C reflects the adequacy of an enterprise's consolidated capital position, from a regulatory perspective and an economic capital perspective, as appropriate to the holding company enterprise. During OTS's review of capital adequacy, OTS will consider the risk inherent in an enterprise's activities and the ability of capital to absorb unanticipated losses, support business activities including the level and composition of the parent company and subsidiaries' debt, and support business plans and strategies.

Capital Rating 1. A rating of 1 indicates that the consolidated holding company enterprise maintains an abundant amount of capital to support the volume and risk characteristics of its business lines and products; to provide a significant cushion to absorb unanticipated losses; and to fully support the level and composition of borrowing. In addition, the enterprise has abundant capital to support its business plans and strategies, it has the ability to enter capital markets to raise additional capital as necessary, and it has a strong capital allocation and planning process.

Capital Rating 2. A rating of 2 indicates that the consolidated holding company enterprise maintains adequate capital to support the volume and risk characteristics of its business lines and products; to provide a sufficient cushion to absorb unanticipated losses; and to support the level and composition of borrowing. In addition, the enterprise has sufficient capital to support its business plans and strategies, it has the ability to enter capital markets to raise additional capital when necessary, and it has a satisfactory capital allocation and planning process.

Capital Rating 3. A rating of 3 indicates that the consolidated holding company enterprise may not maintain sufficient capital to support the volume and risk characteristics of certain business lines and products; the unanticipated losses arising from the activities; or the level and composition of borrowing. In addition, the enterprise may not maintain a sufficient capital position to support its business plans and strategies, it may not have the ability to enter into capital markets to raise additional capital as necessary, or it may not have a sufficient capital allocation and planning process. The capital position of the consolidated holding company enterprise could quickly become inadequate if there is deterioration in operations.

Capital Rating 4. A rating of 4 indicates that the capital level of the consolidated holding company enterprise is significantly below the amount needed to ensure support for the volume and risk characteristics of certain business lines and products; the unanticipated losses arising from activities; and the level and composition of borrowing. In addition, the weaknesses in the capital position

prevent the enterprise from supporting its business plans and strategies, it may not have the ability to enter into capital markets to raise additional capital as necessary, or it has a weak capital allocation or planning process.

Capital Rating 5. A rating of 5 indicates that the level of capital of the consolidated holding company enterprise is critically deficient. Immediate assistance from shareholders or other external sources of financial support is required.

Organizational Structure (O) Component Rating

The O component is an assessment of the operations and risks in the holding company enterprise. In the O component, OTS evaluates the organizational structure, considering the lines of business, affiliate relationships, concentrations, exposures, and the overall risk inherent in the structure.

OTS's analysis under the O component considers existing as well as potential issues and risks. OTS pays particular attention to the following types of risk in assigning the O rating:

Type of risk	Description
Credit	Credit risk arises from the potential that a borrower or counterparty will fail to perform on an obligation.
Market	Market risk is the risk to a financial institution's condition resulting from adverse movements in market rates or prices, such as interest rates, foreign exchange rates, or equity prices.
Liquidity	Liquidity risk is the potential that an institution will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding (funding liquidity risk) or that it cannot easily unwind or offset specific exposures without significantly lowering market prices because of inadequate market depth or market disruptions (market liquidity risk).
Operational	Operational risk arises from the potential that inadequate information systems, operational problems, breaches in internal controls, fraud, or unforeseen catastrophes will result in unexpected losses. Transaction risk arises from problems with service or product delivery. This risk is a function of internal controls, information systems, employee integrity, and operating processes.
Legal/Compliance.	Legal risk arises from the potential that unenforceable contracts, lawsuits, or adverse judgments can disrupt or otherwise negatively affect the operations or condition of a banking organization. Compliance risk is the risk to earnings or capital arising from violations of, or nonconformance with, laws, rules, regulations, prescribed practices, or ethical standards.
Reputation	Reputation risk is the potential that negative publicity regarding an institution's business practices, whether true or not, will cause a decline in the customer base, costly litigation, or revenue reductions.
Country/Sovereign.	Country risk arises from the general level of political, financial, and economic uncertainty in a country, which impacts the value of the country's bonds and equities. Sovereign risk is the risk that a central bank will impose foreign exchange regulations that will reduce or negate the value of foreign exchange contracts. It also refers to the risk of government default on a loan made to a country or guaranteed by it.
Contagion/Systemic.	Contagion entails the risk that financial difficulties encountered by a business line or subsidiary of a holding company could have an adverse impact on the financial stability of the enterprise and possibly even on the markets in which the constituent parts operate. Systemic risk is defined by financial system instability, potentially catastrophic, caused or exacerbated by idiosyncratic events or conditions in financial intermediaries. Impacted areas include: market value of positions, liquidity, credit-worthiness of counterparties and obligors, default rates, liquidations, risk premia, and valuation uncertainty.
Concentration	The exposure to losses due to a concentration (assets, liabilities, off-balance-sheet) at the subsidiary, business line, and/or enterprise level.
Intra-Group Transactions.	Exposures to risk that result from transactions between affiliates.
Strategic and Execution.	Strategic and execution risk is the risk to earnings or capital arising from adverse business decisions or improper implementation of those decisions. This risk is a function of the compatibility of an organization's strategic goals, the business strategies developed to achieve those goals, the resources deployed against these goals, and the quality of implementation. The resources needed to carry out business strategies are both tangible and intangible. They include communication channels, operating systems, delivery networks, and managerial capacities and capabilities. Strategic risk focuses on more than an analysis of the written strategic plan. It focuses on how plans, systems, and implementation affect the enterprise's franchise value. It also incorporates how management analyzes external factors that impact the strategic direction of the company.

Type of risk	Description
Insurance	
Pricing and Underwriting Risk.	The risk that pricing and underwriting practices are inadequate to provide for the risks assumed.
Reserving Risk	The risk that actual losses or other contractual payments reflected in reported reserves or other liabilities will be greater than estimated.

Organizational Structure Rating 1. A rating of 1 indicates that the organizational structure, including the nature and level of risk associated with the affiliates' activities, pose minimal concern. Management controls and monitors intra-group exposures. Any concerns posed by strategic plans, the control environment, concentrations, legal or reputational issues, or other types of risk within the enterprise are minor, and management and the board can address them in the normal course of business.

Organizational Structure Rating 2. A rating of 2 indicates that the organizational structure exhibits minor weaknesses, but the nature and level of risks associated with the holding company's activities are unlikely to be material concerns. Intra-group exposures, including servicing agreements, are generally acceptable, but isolated transactions or exposures may present limited cause for regulatory concern. Concerns posed by strategic plans, the control environment, concentrations, legal or reputational issues, or other types of risks within the enterprise are modest, and management and the board can address them in the normal course of business.

Organizational Structure Rating 3. A rating of 3 indicates that there are organizational structure weaknesses that raise supervisory concern. The nature and level of risks associated with the holding company activities are moderately likely to cause concern. Intra-group exposures, including servicing agreements, have the potential to undermine the financial condition of other companies in the enterprise. Strategic growth plans, weaknesses in the control environment, concentrations, legal or reputational issues, or other types of risk within the enterprise are moderately likely to cause regulatory concern. The enterprise has one or more entities in the structure that could adversely affect the operation of other entities in the enterprise if management does not take corrective action.

Organizational Structure Rating 4. A rating of 4 indicates that there are weaknesses in the organizational structure of the enterprise, and/or the nature and level of risks associated with the holding company's activities are, or have a considerable likelihood of becoming, a cause for concern. Intra-group exposures, including servicing agreements, may also have the immediate potential to undermine the operations of companies in the enterprise. Strategic growth plans, weaknesses in the control environment, concentrations, legal or reputational issues, or other types of risk within the enterprise may be of considerable cause for regulatory concern. The weaknesses identified could seriously affect the operation of one or more companies in the enterprise.

Organizational Structure Rating 5. A rating of 5 indicates that there are substantial weaknesses in the organizational structure of the enterprise, and/or the nature and level of risks associated with the activities are, or pose a high likelihood of becoming, a significant concern. Strategic growth plans, a deficient control environment, concentrations, legal or reputational issues, or other types of risk within the enterprise may be of critical concern to one or more companies in the enterprise. The weaknesses identified seriously jeopardize the continued viability of one or more companies in the enterprise.

Risk Management (R) Component Rating

R represents OTS's evaluation of the ability of the directors and senior management, as appropriate for their respective positions, to identify, measure, monitor, and control risk. The R rating underscores the importance of the control environment, taking into consideration the complexity of the enterprise and the risk inherent in its activities.

The R rating includes an assessment of four areas: board and senior management oversight; policies, procedures, and limits; risk monitoring and management information systems; and internal controls. These areas are evaluated in the context of inherent risks as related to the size and complexity of the holding company's operations. They provide a consistent framework for evaluating risk management and the control environment. Moreover, a consistent review of these four areas provides a clear structure and basis for discussion of the R rating.

Risk management element	Description
Governance/Board and Senior Management Oversight.	This area evaluates the adequacy and effectiveness of board and senior management's understanding and management of risk inherent in the holding company enterprise's activities, as well as the general capabilities of management. It also considers management's ability to identify, understand, and control the risks within the holding company enterprise, to hire competent staff, and to respond to changes in risk profile or changes in the holding company's operating sectors.
Policies, Procedures, and Limits	This area evaluates the adequacy of policies, procedures, and limits given the risks inherent in the activities of the consolidated enterprise and its stated goals and objectives. OTS's analysis considers the adequacy of the enterprise's accounting and risk disclosure policies and procedures.
Risk Monitoring and Management Information Systems.	This area assesses the adequacy of risk measurement and monitoring, and the adequacy of the holding company's management reports and information systems. Include a review of the assumptions, data, and procedures used to measure risk and the consistency of these tools with the level of complexity of the enterprise's activities.
Internal Controls	This area evaluates the adequacy of internal controls and internal audit procedures, including the accuracy of financial reporting and disclosure and the strength and influence of the internal audit team. Include a review of the independence of control areas from management and the consistency of the scope coverage of the internal audit team with the complexity of the enterprise.

Risk Management Rating 1. A rating of 1 indicates that management effectively identifies and controls all major enterprise risks. Management is fully prepared to address risks emanating from new products and changing market conditions. The board and management are forward-looking and active participants in managing risk. Management ensures that appropriate policies and limits exist and that the board understands, reviews, and approves them. Policies and limits are supported by risk monitoring procedures, reports, and management information systems that provide management and the board with the information and analysis necessary to make timely and appropriate decisions in response to changing conditions. Risk management practices and the enterprise's infrastructure are flexible and highly responsive to changing industry practices and current regulatory guidance. Staff has sufficient expertise and depth to manage the risks assumed. Internal controls and audit procedures are sufficiently comprehensive and appropriate to the size and activities of the holding company. There are few noted exceptions to the enterprise's established policies and procedures, and none is material. Management effectively and accurately monitors and manages the enterprise consistent with applicable laws, regulations, and guidance, and in accordance with internal policies and procedures. Risk management processes are fully effective in identifying, monitoring, and controlling risks.

Risk Management Rating 2. A rating of 2 indicates that the enterprise's management of risk is largely effective, but exhibits some minor weaknesses. Management and the board demonstrate a responsiveness and ability to cope successfully with existing and foreseeable risks in the business plans. While the enterprise may have some minor risk management weaknesses, management and the board have recognized and are resolving these problems. Overall, board and senior management oversight, policies and limits, risk monitoring procedures, reports, and management information systems are satisfactory and effective. Risks are controlled and do not require additional supervisory attention. The holding company enterprise's risk management practices and infrastructure are satisfactory, and management makes appropriate adjustments in response to changing industry practices and current regulatory guidance. Staff expertise and depth are generally appropriate to manage the risks assumed. Internal controls may display modest weaknesses or deficiencies, but they are correctable in the normal course of business. The examiner may have recommendations for improvement, but the weaknesses noted should not have a significant effect on the condition of the enterprise.

Risk Management Rating 3. A rating of 3 signifies that there are moderate deficiencies in risk management practices and, therefore, there is a cause for additional supervisory attention. One or more of the four elements of sound risk management is not acceptable, which precludes the enterprise from fully addressing one or more significant risks to its operations. Certain risk management practices need improvement to ensure that management and the board are able to identify, monitor, and control all significant risks. In addition, the risk management structure may need improvement in areas of significant business activity, or staff expertise may not be commensurate with the scope and complexity of business activities. Management's response to changing industry practices and regulatory guidance may not be sufficient. The internal control system may be lacking in some important aspects, leading to continued control exceptions or failure to adhere to written policies and procedures. The risk management weaknesses could have adverse effects if management does not take corrective action.

Risk Management Rating 4. A rating of 4 represents deficient risk management practices that fail to identify, monitor, and control significant risk exposures in material respects. There is a general lack of adequate guidance and supervision by management and the board. One or more of the four elements of sound risk management is deficient and requires immediate and concerted corrective action by the board and management. The enterprise may have serious identified weaknesses that require substantial improvement in internal control, accounting procedures, or adherence to laws, regulations, and supervisory guidance. The risk management deficiencies warrant a high degree of supervisory attention because, unless properly addressed, they could seriously affect the condition of the holding company enterprise.

Risk Management Rating 5. A rating of 5 indicates a critical absence of effective risk management practices in identifying, monitoring, or controlling significant risk exposures. One or more of the four elements of sound risk management is wholly deficient, and management and the board have not demonstrated the capability to address these deficiencies. Internal controls are critically weak and could seriously jeopardize the continued viability of the enterprise. If not already evident, there is an immediate concern about the reliability of accounting records and regulatory reports and the potential for losses if corrective measures are not taken immediately. Deficiencies in the enterprise's risk management procedures and internal controls require immediate and close supervisory attention.

Earnings (E) Component Rating

E reflects the consolidated holding company enterprise's overall financial performance, including measures such as the quality of consolidated earnings, profitability, and liquidity. OTS's review of this area considers the level, trend, and sources of earnings on a consolidated level as well as for material legal entities or business lines. OTS also assesses the ability of earnings to augment capital and to provide ongoing support for an enterprise's activities.

Within this component, OTS also considers the liquidity of the enterprise. This rating reflects the consolidated holding company enterprise's ability to attract and maintain the sources of funds necessary to achieve financial efficiency, support operations, and meet obligations. OTS evaluates the funding conditions for each of the material legal entities in the holding company structure to determine if any weaknesses exist that could affect the funding profile of the consolidated enterprise.

Earnings Rating 1. A rating of 1 indicates that the consolidated holding company enterprise's overall financial performance is solid. The quantity and quality of earnings for material business lines and subsidiaries are sufficient to make full provision for the absorption of losses and/or accretion of capital in light of asset quality and business plan objectives. The enterprise has strong liquidity levels along with well-developed funds management practices. The parent company and subsidiaries have reliable and sufficient access to sources of funds on favorable terms to meet present and anticipated liquidity needs.

Earnings Rating 2. A rating of 2 indicates that the consolidated holding company enterprise's financial performance is adequate. The quantity and quality of the earnings for major business lines and subsidiaries are

generally adequate to make provision for the absorption of losses and/or accretion of capital in light of asset quality and business plan objectives. The enterprise maintains satisfactory liquidity levels and funds management practices. The parent company and subsidiaries have access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs. Modest weaknesses in funds management practices may be evident, but management and the board can correct those weaknesses in the normal course of business.

Earnings Rating 3. A rating of 3 indicates that the consolidated holding company enterprise's financial performance exhibits modest weaknesses. Major business line and subsidiary earnings are not fully adequate to make provisions for the absorption of losses and the accretion of capital in relation to the business plan objectives. The financial performance of this enterprise may reflect static or inconsistent earnings trends, chronically insufficient earnings, or less than satisfactory asset quality. This enterprise's liquidity levels or funds management practices may need improvement. The enterprise may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices at the parent company or subsidiary levels. However, these deficiencies are correctable in the normal course of business with sufficient board and management attention.

Earnings Rating 4. A rating of 4 indicates that the consolidated holding company enterprise's financial performance is weak. Major business line or subsidiary earnings are insufficient to provide for losses and the necessary accretion of capital. The enterprise may exhibit erratic fluctuations in net income, poor earnings (and the likelihood of a further downward trend), intermittent losses, chronically depressed earnings, or a substantial drop from previous performance. The liquidity levels or funds management practices of this holding company enterprise may be deficient. The enterprise may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs at the parent company or subsidiary levels.

Earnings Rating 5. A rating of 5 indicates that the consolidated holding company enterprise has poor financial performance and one or more business lines or subsidiaries are experiencing losses. Such losses, if not reversed, represent a distinct threat to the enterprise's solvency through erosion of capital. In addition, the liquidity levels or funds management practices are critically deficient and may threaten continued viability. The enterprise requires immediate external financial assistance to meet maturing obligations or other liquidity needs.

Dated: April 3, 2007.

By the Office of Thrift Supervision.

Scott M. Polakoff,

Deputy Director & Chief Operating Officer.

[FR Doc. E7–6602 Filed 4–6–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0222]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to obtain a government headstone or grave marker.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: mechelle.powell@va.gov.* Please refer to ''OMB Control No. 2900–0222'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 501–1960 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40–1330.

OMB Control Number: 2900–0222.

Type of Review: Extension of a currently approved collection.

Abstract: The next of kin or other responsible parties of deceased veterans complete VA Form 40–1330 to apply for Government provided headstones or markers for unmarked graves. VA uses the data collected to determine the veteran's eligibility for headstone or marker.

Affected Public: Individuals or Households.

Estimated Annual Burden: 83,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 334,000.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6513 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0051]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to accurately reimburse State Approving Agencies (SAAs) for expenses incurred in the approval and supervision of education and training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0051'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Quarterly Report of State Approving Agency Activities.

OMB Control Number: 2900–0051.

Type of Review: Extension of a currently approved collection.

Abstract: VA reimburses State Approving Agencies (SAAs) for necessary salary, fringe and travel expenses incurred in the approval and supervision of education and training programs. SAAs are required to report their activities to VA quarterly and provide notices regarding which courses, training programs and tests were approved, disapproved or suspended.

Affected Public: Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 37,647 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 59.

Estimated Number of Responses: 3,637.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6514 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0697]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to approve licensing and certification tests for payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0697'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Approval of a Licensing or Certification and Organization Entity: 38 CFR 21.4268.

OMB Control Number: 2900–0697.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected will be used to determine whether licensing and certification tests, and the organizations offering them, should be

approved for VA training under education programs VA administers.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Frequency of Response: On occasion.

Estimated Average Burden Per Respondents: 3 hours.

Estimated Annual Responses: 1,000.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6515 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to service delinquent home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0249'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Loan Service Report, VA Form 26–6808.

OMB Control Number: 2900–0249.

Type of Review: Extension of a currently approved collection.

Abstract: VA personnel complete VA Form 26–6806 during personal contact with delinquent obligors. VA will use the information collected to determine whether a loan default is insoluble or whether the obligor has reasonable prospects for curing the default and maintaining the mortgage obligation in the future. The information will also be used to intercede with the holder of the loan to accept a specially arrange repayment plan or other forbearance aimed at assisting the obligor in retaining his or her home.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,250 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,000.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6516 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to authorize advance payment of educational assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0325'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of

information; (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 or the use of other forms of information technology.

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

OMB Control Number: 2900–0325.

Type of Review: Extension of a currently approved collection.

Abstract: VA will make payments of educational assistance in advance when the veteran, servivcemember, reservist, or eligible person has specifically requested such payment. The school in which a student is accepted or enrolled delivers the advance payment to the student and is required to certify the deliveries to VA. VA Form 22–1999V serves as the certificate of delivery of advance payment and to report any changes in the student's training status. The schools are required to report the following to VA: the failure of the student to enroll; an interruption or termination of attendance; or a finding of unsatisfactory attendance, conduct or progress.

Affected Public: State, Local or Tribal Government, Business or other for-profit, and Not-for-profit institutions.

Estimated Annual Burden: 1,551 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,807.

Estimated Total Number of Respondents: 18,614.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6518 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether surviving spouses are entitled to dependency and indemnity compensation (DIC) benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0495'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Titles: Marital Status Questionnaire, VA Form 21–0537.

OMB Control Number: 2900–0495.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0537 is used to confirm the marital status of a surviving spouse receiving dependency and indemnity compensation benefits (DIC). If a surviving spouse remarries, he or she is no longer entitled to DIC unless the marriage began after age 57 or has been terminated.

Affected Public: Individuals or households.

Estimated Annual Burden: 189 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,270.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6520 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0695]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for reimbursement of licensing and certification test fees.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0695'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Reimbursement of Licensing or Certification Test Fees, 38 CFR 21.1030(b), 21–7140(c)(4).

OMB Control Number: 2900–0695.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,590 hours.

Frequency of Response: On occasion.

Estimated Average Burden Per Respondents: 15 minutes.

Estimated Annual Responses: 6,361.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6521 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the number of interments conducted at State veterans' cemeteries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mechelle.powell@va.gov.* Please refer to ''OMB Control No. 2900–0559'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 501–1960 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: State Cemetery Data, VA Form 40–0241.

OMB Control Number: 2900–0559.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 40–0241 is used to provide data regarding number of interments conducted at State veterans' cemeteries each year. The State Cemetery Grants Services use the data collected to project the need for additional burial space and to demonstrate to the States (especially those without State veterans' cemeteries) the viability of the program.

Affected Public: Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden Hours: 65.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 65.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6522 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public

comment in response to the notice. This notice solicits comments on the information needed to determine a claimant entitlement to disinter the remains of a loved one from or within a national cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mechelle.powell@va.gov.* Please refer to ''OMB Control No. 2900–0365'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 273–5181 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. All immediate family members of the decedent, including the person who initiated the interment, (whether or not he/she is a member of the immediate family) must provide a written consent before disinterment is granted. VA will accept an order from a court of local jurisdiction in lieu of VA Form 40–4970.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 55.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 329.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Records Management Service.

[FR Doc. E7–6524 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0600]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to request an informal review of veterans' denied healthcare benefits claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 8, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–0600'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 273–8664.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Regulation for Reconsideration of Denied Claims.

OMB Control Number: 2900–0600.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans who disagree with the initial decision denying their healthcare benefits in whole or in part may obtain reconsideration by submitting a request in writing within one year of the date of the initial decision. The request must state why the decision is in error and include any new and relevant information not previously considered. This process reduces both formal appeals and allows decision making to be more responsive to veterans using the VA healthcare system.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 50,826 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 101,652.

Dated: March 29, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–6526 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of new system of records; reopen comment period.

SUMMARY: The Privacy Act of 1974, 5 U.S.C. 552(e)(4), requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. On October 24, 2006, the Department of Veterans Affairs (VA) published a notice of a new system of records entitled ''Automated safety Incident Surveillance and tracking System—VA'' (99VA13). 71 FR 62347–62350. The system notice provided for a comment period ending November 24, 2006, and if no comments were received during that period of time, the system of records was to be effective on that date. 71 FR 62347. On November 24, 2006, the comment period was extended until December 26, 2006. In response to a request for additional time in which to submit comments, the Department of Veterans Affairs is hereby reopening the comment period until October 9, 2007. All written comments previously received will be considered and need not be resubmitted.

DATES: The comment period is reopened to October 9, 2007. Comments must be received on or before October 9, 2007. If no public comment is received, the new system will become effective October 9, 2007.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration Privacy Officer, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, telephone (727) 320–1839.

Approved: April 3, 2007.

Robert C. McFetridge,

Assistant to the Secretary for Regulation Policy and Management.

[FR Doc. 07–1738 Filed 4–6–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
April 9, 2007

Part II

Department of Justice

Antitrust Division

Public Comment and Response on Proposed Final Judgement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Mittal Steel Company*, No. 1:06–CV–1360–ESH, which were filed in the United States District Court for the District of Columbia, on February 13, 2007.

Copies of the comments and the response are available for inspection at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 200, Washington, DC 20530, (telephone (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. Mittal Steel Company N.V., Defendant

[Civil Action No. 1: 06CV01360–ESH]

Response of Plaintiff United States to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comments received regarding the proposed final Judgment in this case. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register,** pursuant to 15 U.S.C. section 16(d).

On August 1, 2006, the United States filed the Complaint in this matter alleging that the proposed acquisition of Arcelor S.A. (''Arcelor'') by defendant Mittal Steel Company N.V. (''Mittal Steel'') would violate Section 7 of the Clayton Act, 15 U.S.C. section 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Hold Separate Stipulation and Order (''HSSO'') signed by plaintiff and Mittal Steel consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. section 16. Pursuant to those requirements, the United States filed its Competitive Impact State (''CIS'') in this Court on August 1, 2006; published the proposed Final Judgment and CIS in the **Federal Register** on August 24, 2006, *see United States* v. *Mittal Steel Company N.V.,* 71 Fed. Reg. 50084, 2006 WL 2431068; and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Post* for seven days beginning on September 10, 2006 and ending on September 16, 2006. The 60-day period for public comments ended on November 15, 2006, and three comments were received as described below and attached hereto.

I. The Investigation and Proposed Resolution

On January 27, 2006, Mittal Steel announced its intention to commence a tender offer to acquire control of Arcelor. At the same time, Mittal Steel announced that it would subsequently sell Arcelor's recently acquired Canadian subsidiary, Dofasco Inc. (''Dofasco'') to ThyssenKrupp A.G. (''ThyssenKrupp'') if it acquired control of Arcelor. For six months following the announcement of the tender offer, the United States Department of Justice (''Department'') conducted an extensive, detailed investigation into the competitive effects of the Mittal/Arcelor transaction. As part of this investigation, the Department obtained substantial documents and information from Mittal Steel and issued eight Civil Investigative Demands to third parties. The Department received and considered more than 45,000 pages of material. More than fifty interviews were conducted with customers, competitors, and other individuals with knowledge of the industry. The investigative staff carefully analyzed the information provided and thoroughly considered all of the issues presented. The Department considered the potential competitive effects of the transaction with respect to a number of steel products, obtaining information about these products from customers, competitors, and other knowledgeable parties. The Department concluded that the combination of Mittal Steel and Arcelor likely would lessen competition in one market—Tin Mill Products (''TMP'') sold to customers in the United States, east of the Rocky Mountains (''Eastern United States''.) TMP are finely rolled steel sheets, usually coated with a thin protective layer of tin or chrome. TMP include black plate, electrolytic tin plate (''ETP''), and tin free steel (''TFS''). Black plate is a light-guage cold-rolled bare steel sheet that serves as a substrate for production of ETP and TFS. Black plate is coated with tin to produce ETP and with chrome to produce TFS. Both ETP and TFS are used primarily in manufacturing steel cans for packaging a wide range of food products, such as soup, fruits, and vegetables, and non-food products, such as paints, aerosols, and shaving cream. For most TMP purchasers, particularly food can makers, there are no close substitutes for TMP. Packaging alternatives, such as plastic containers, are not viewed as close product substitutes. A small but significant increase in price would not likely cause sufficient TMP can customers to switch products or otherwise curtail their TMP usage so as to render the increase unprofitable.

More than 89 percent of TMP sold in the Eastern United States is manufactured by firms located either in the Eastern United States or eastern Canada. A small but significant increase in price for TMP would not cause TMP customers in the United States to substitute purchases from outside the Eastern United States in sufficient quantities to make such a price increase unprofitable. Mittal Steel, Arcelor, and Arcelor's subsidiary Dofasco sell TMP to customers in the Eastern United States.

As explained more fully in the Complaint and CIS, the acquisition of Arcelor and Dofasco by Mittal Steel would substantially increase concentration and lessen competition in the production and sale of TMP in the Eastern United States, giving the top two TMP producers, including Mittal Steel, a market share of more than 81 percent of sales. Therefore, the Department filed its Complaint alleging competitive harm in the TMP market in the Eastern United States and sought a remedy that would ensure that such harm is prevented.

The proposed Final Judgment in this case is designed to preserve competition in the production, manufacture, and sale of TMP in the Eastern United States. The proposed Final Judgment requires the divestiture of sufficient assets to prevent the increase in concentration that resulted from the combination of Mittal Steel's capacity and Arcelor's capacity to supply TMP to the Eastern United States market. The proposed Final Judgment requires the

divestiture of a significant steel mill that manufactures TMP for sale in the Eastern United States. Specifically, it directs a sale of Dofasco to ThyssenKrupp or an alternative purchaser acceptable to the United States. At the time the proposed Final Judgment was filed with the Court, Mittal Steel already had executed a letter of intent to sell Dofasco to ThyssenKrupp when and if Mittal Steel acquired Arcelor, at a price comparable to the price Arcelor itself paid to acquire Dofasco in early 2006. Dofasco, which has a history of successful operation as an independent entity, has not been integrated into Arcelor and thus remains a viable divestiture candidate.

Mittal Steel's announced plan to sell Dofasco to ThyssenKrupp upon its acquisition of Arcelor would have mitigated the increase in post-merger concentration in the Eastern United States that would have resulted from its acquisition of Arcelor. As part of an effort by Arcelor's Board of Directors to impede the tender offer, however, Arcelor sought to prevent any figure effort by Mittal Steel to divest Dofasco by transferring Arcelor's Dofasco legal title to an independent Dutch foundation, known as the Strategic Steel Stichting (''S3''). Since Mittal completed its acquisition of Arcelor, Arcelor and Mittal Steel have requested that the S3 dissolve itself so as to permit the sale of Dofasco to ThyssenKrupp. The board of the S3 nevertheless has decided not to dissolve itself.

In negotiating the proposed Final Judgment, the parties recognized that the existence of the S3 could prevent Mittal Steel from divesting Dofasco in a timely manner. For this reason, the Department determined that alternative assets, owned by Mittal Steel and not burdened with any restrictions on sale, should be designated to accomplish the intended preservation of TMP competition in the event that Mittal Steel was unable to divest Dofasco within the time allowed by the decree. The proposed Final Judgment requires Mittal Steel to divest one of two steel mills—Sparrows Point or Weirton—if, despite its best efforts to do so, it has not been able to carry out the divestiture of Dofasco within the period allowed by the decree. Sparrows Point is a fully integrated steel mill located near Baltimore, Maryland, which produces a diversified portfolio of products, including hot-rolled sheet, cold-rolled sheet, galvanized sheet, Galvalume, and TMP, for construction, steel service center, container, appliance, and other end-use markets. Weirton, located in Weirton, West Virginia, operates primarily as a TMP finishing facility, converting steel slabs obtained from Mittal's Sparrows Point and Cleveland plants.

In the Department's judgment, divestiture of Dofasco to ThyssenKrupp or another qualified purchaser would remedy the violation alleged in the Complaint because Dofasco is an integrated steel mill that has the demonstrated capacity to make significant TMP sales in the Eastern United States. In the event that Mittal fails to sell Dofasco in a timely manner due to legal impediments arising from its control by the S3 and the S3's refusal to permit its sale, the proposed Final Judgment provides that the Department will determine whether Sparrows Point or Weirton should be divested to remedy the violation alleged in the Complaint. The Department is confident that these options allow it to select an alternate facility the divestiture of which to a viable qualified purchaser would remedy the violation. Each mill currently makes substantial TMP sales in the Eastern United States, and the successful continued operation of either mill by a viable qualified purchaser would remedy the violation. The Department is currently assessing which of these two mills is most likely to continue as an on-going vigorous competitor for TMP sales in the event that Dofasco cannot be divested. Sparrows Point is an integrated facility that produces a variety of steel products in addition to TMP, and it manufactures its own steel slabs, which are the basic raw material for TMP fabrication. Weirton currently operates as a TMP finishing facility that converts slabs obtained from Mittal Steel's Sparrows Point and Cleveland mills. Mittal recently idled Weirton's slab-making facilities because they were considered to be less efficient than other slab manufacturing locations within the Mittal Steel organization, and the Department is assessing whether those facilities could be reactivated to produce slabs at Weirton on a cost-effective basis in the event of Weirton's divestiture. Even if the Department concludes that cost-effective slab production at Weirton is not likely to be feasible, there still may be sources from which Weirton could obtain slabs with a degree of consistency and reliability, and at a cost that would enable it to compete successfully as an independent supplier of TMP to the Eastern United States market. The Department will consider the availability of slabs to Weirton and other relevant considerations in determining whether Sparrows Point or Weirton should be divested to remedy the violation alleged in the Complaint, and it will select the mill that is most likely to continue to compete successfully for TMP sales in the Eastern United States following its divestiture by Mittal Steel. The proposed Final Judgment would permit this process to go forward if Dofasco cannot be sold in a timely manner. Although entry of the proposed Final Judgment would terminate this action, the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.[1]

II. Summary of Public Comments and Responses

During the 60-day public comment period, the United States received comments from Silgan Containers Corporation (''Silgan''), ThyssenKrupp, and DaimlerCyrysler Corporation (''DaimlerChrysler''). Upon review, the United States believes that nothing in the comments warrants a change in the proposed Final Judgment or is sufficient to suggest that the proposed Final Judgment is not in the public interest. The comments include concerns relating to whether the proposed Final Judgment adequately remedies the harms alleged in the Complaint. The United States addresses these concerns below and explains how the remedy is appropriate.

A. Public Comment Submitted by Silgan

1. Summary of Silgan's Comment

Silgan, the largest food can producer and the largest consumer of TMP in the United Stats, submitted a 42-page comment with 44 attachments (attached hereto as Exhibit 1). Silgan's submission asserts that only the divestiture of Dofasco has any prospect for success, and that neither the divestiture of Weirton nor the divestiture of Sparrows Point will be effective.

[1] The merger closed on August 1, 2006. In keeping with the United States's standard practice, neither the HSSO nor the proposed Final Judgment prohibited closing the merger. See ABA Section of Antitrust Law, Antitrust Law Developments 387 (5th ed. 2002) (noting that ''[t]he Federal Trade Commission (as well as the Department of Justice) generally will permit the underlying transaction to close during the notice and comment period''). Such a prohibition could interfere with many time-sensitive deals and prevent or delay the realization of substantial efficiencies. In consent decrees requiring divestitures, it is also standard practice to include a ''preservation of assets'' clause in the decree and to file a stipulation to ensure that the assets to be divested remain competitively viable. That practice was followed here. Proposed Final Judgment § VIII. In addition, the HSSO has been filed and entered by the Court in this case. That Order requires Mittal Steel to preserve Weirton and Sparrows Point and to hold separate Dofasco, pending the divestiture contemplated by the proposed Final Judgment.

Silgan's comments may be summarized in three points. First, Silgan argues that Weirton cannot long survive as an independent producer of TMP, because it cannot produce slabs—the essential TMP substrate—at a competitive cost and cannot obtain slabs from elsewhere at a competitive cost. Thus, Weirton should not be divested.

Second, Silgan further asserts that, although Sparrows Point is capable of surviving as a stand-along producer of TMP, it currently provides 45 percent of the slabs used by Weirton. If Sparrows Point is divested, Weirton will be separated from a significant portion of its supply of slabs and will be unable to obtain a sufficient number of slabs from other sources. Thus, if Sparrows Point is divested, Weirton may cease TMP production even if it is kept in the Mittal Steel group.

Finally, Silgan concludes that since divestiture of either Weirton or Sparrows Point likely will lead to the demise of Weirton as a TMP producer, neither Mittal Steel mill should be divested. Instead, Silgan argues that Dofasco should be divested even if accomplishing that objective must await the expiration of the S3, and that the Final Judgment should be modified to extend the period for divesting Dofasco by several years. This would require that the stipulated HSSo, under which Dofasco now is operating, be modified to extend for the entire duration of the S3.[2]

2. Response of United States to Silgan's Comment

The United States has carefully considered Silgan's concern that Weirton will go out of business if the United States chooses Weirton or Sparrows Point as an alternative divestiture, but disagrees.

Silgan's conclusion rests crucially on an assumption that slabs suitable for use in TMP production would be readily or economically available to Weirton from sources other than Sparrows Point. The United States agrees that the supply of slabs is an important issue, but the concerns raised by Silgan are overstated. If Sparrows Point is divested, and Weirton remains part of Mittal Steel, for example, there would be no concern about the availability to the divested mill. Sparrows Point is a fully integrated steel mill that does not depend on other Mittal Steel facilities for significant operational resources or supplies and indeed, in recent years has produced more slabs than it consumes. With respect to Wierton, even if the new owner of Sparrows Point refused to sell slabs on reasonable terms to Mittal Steel for use at Weirton, Mittal Steel would still own even blast furnaces in North America, five of which are now operating, giving it ample ability to supply Wierton with slabs. Further, Mittal could obtain additional slabs for Weirton on the open market. If Weirton were divested from Mittal and sought to acquire all of its slabs from other sources, the supply of slabs would be somewhat less certain, but there is some indication that Weirton could obtain sufficient slabs, including from imports. Dofasco, as Silgan points out, obtains about 750,000 tons of slabs per year from other firms, 400,000 tons of which comes from CST in Brazil. Some of those slabs are used to make tin mill products. The fact that Dofasco itself successfully imports a significant volume of tin-quality slabs suggests that an independent Weirton might have sufficient alternative sources for such slabs. The Department continues to investigate the likelihood that a divested Weirton would be able to manufacturer or purchase tin-quality slabs on a cost-efficient basis. If the Department concludes for any reason that the lack of certainty regarding Weirton's viability makes divestiture of Sparrows Point preferable, the Final Judgment permits the Department to direct Mittal Steel to divest Sparrows Point.

Silgan proposes that, in lieu of diverting Weirton or Sparrows Point, the proposed Final Judgment be amended to provide that Dofasco be held separate for five years, which Silgan asserts is the duration of the S3, after which it could and should be sold.[3] This proposal presents significant problems. To ensure Dofasco's operation separately from Mittal Steel for such an extended period of time would be difficult, if not impossible. Moreover, under the HSSO, ordinary and customary business decisions that would be made promptly by an independent entity cannot be made by Dofasco without certain notices and approvals and, in some circumstances, Court permission. This situation is tolerable as a temporary solution to effectuate a prompt divestiture and to limit interference or collusion pending that divestiture. As a long-term operating arrangement, however, it could adversely affect the ability of Dofasco to operate efficiently. Given that a prompt remedy is in the public interest and that the Final Judgment provides a mechanism by which the Department can assure that adequate and viable Mittal Steel assets are divested, there is no reason to require the extraordinary and unprecedented imposition of a long-term HSSO.

B. Public Comment Submitted by ThyssenKrupp

1. Summary of ThyssenKrupp's Comment

ThyssenKrupp is a large German steel manufacturer that has an agreement in principle with Mittal Steel to purchase Dofasco. ThyssenKrupp currently exports TMP to customers in the United States. In its comment, attached hereto as Exhibit 2, ThyssenKrupp states that only the divestiture of Dofasco will adequately remedy the alleged anticompetitive effects set forth in the Complaint and that divestiture of Weirton or Sparrows Point cannot remedy those anticompetitive effects. ThyssenKrupp asserts that the proposed Final Judgment and CIS ''make clear that divestiture of Dofasco to ThyssenKrupp is the preferred remedy for the competitive harm alleged to arise from Mittal [Steel]'s acquisition of Arcelor[.]'' Ex. 2, ThyssenKrupp Comment at 3. ThyssenKrupp's comment, however, does not address the question of what should be done if Dofasco cannot be divested due to the existence of the S3. ThyssenKrupp claims that neither Weirton nor Sparrows Point has sufficiently modern and efficient facilities to compete in the TMP market in a manner that would replace competition lost as a result of the challenged acquisition. In this respect, ThyssenKrupp's comments mirror those of Silgan.

2. Response of United States to ThyssenKrupp's Comment

The response of the United States to the Silgan Comment is equally applicable to the comments made by ThyssenKrupp. In sum, for the reasons given in Part II.A.2 above, the United States believes that the Final Judgment provides a mechanism to ensure that assets sufficient to remedy the violation alleged in the Complaint will be divested.

Notwithstanding ThyssenKrupp's evaluation of the equipment and facilities at Weirton and Sparrows Point, the Weirton and Sparrows Point assets have proved adequate consistently to supply large quantities of TMP to the Eastern United States market. In 2005, Weirton and Sparrows Point sold more

[2] Silgan assets in its comment that the S3 has a 5-year term. Although the actual term of the S3 is not public information, it is many times longer than the period the proposed Final Judgment gives Mittal Steel to effect the divestiture of one of the three mills.

[3] The Department understands that Silgan's objective would require an extension only for the duration of the S3, but Silgan is correct that this would require an extension of multiple years.

TMP in the Eastern United States than Arcelor and Dofasco combined. While capacity to manufacture TMP for sale in the Eastern United States is not the only factor, it is certainly a highly relevant factor in assessing the competitive significance of mill assets. In determining which alternate mill should be divested pursuant to the Final Judgment, the Department will focus on questions relating to the relative ability of Sparrows Point and Weirton to operate independently of Mittal Steel as future suppliers of TMP to the Eastern United States market. The fact that both mills have successfully supplied substantial quantities of TMP to the market with their current equipment supports the conclusion that the alternate mill that the United States selects to be divested would accomplish the objectives of the Final Judgment.

As to ThyssenKrupp's statement that divestiture of Dofasco is the ''preferred'' remedy, we agree. As discussed above, Dofasco is an attractive divestiture candidate for a number of reasons, and the proposed Final Judgment requires Mittal Steel in the first instance to use its best efforts to divest Dofasco. However, nothing in the proposed Final Judgment or the Competitive Impact Statement indicates that Dofasco is the *only* suitable divestiture candidate. Both Mittal Steel and the Department realized that Mittal Steel might be unable to accomplish the divestiture of Dofasco in a timely manner because the S3 might prevent its sale. Accordingly, the parties crafted alternative relief—the divestiture of Sparrows Point or Weirton—that also would preserve competition. Although the United States is satisfied that divestiture of Dofasco would remedy the violation alleged in the Complaint, if Dofasco cannot be sold within the period prescribed by the proposed Final Judgment, the United States will decide which of the two alternatives should be divested.

C. Public Comment Submitted by DaimlerChrysler

1. Summary of DaimlerChrysler's Comment

DaimlerChrysler is an automobile manufacturer in North America that sources its steel from a number of North American steel producers, including Mittal Steel and Dofasco. *See* DaimlerChrysler Comment (attached hereto as Exhibit 3). DaimlerChrysler does not use TMP in the production of automobiles and does not purchase TMP. It does, however, use another type of flat steel product called hot dipped galvanized steel, which it buys from Mittal Steel and Dofasco, and DaimlerChrysler claims that the proposed acquisition will adversely affect competition for that product. DaimlerChrysler asserts that consolidation in the steel industry since 2001 has reduced the number of North American manufacturers of hot dipped galvanized steel from nine to five, and that after the acquisition of Dofasco, Mittal Steel will have approximately 47 percent of North American capacity for this product. DaimlerChrysler also states that there are no adequate substitutes for this product, and that foreign producers are not suitable suppliers. DaimlerChrysler asserts that the alleged harm to competition would be alleviated if Mittal Steel were required to divest Dofasco, but that the divestiture of either Sparrows Point or Weirton would not remedy the harm because neither facility produces hot dipped galvanized steel suitable for automotive purposes.

Although DaimlerChyrsler has no direct interest in the TMP market, the company nevertheless asserts that the divestiture of Weirton or Sparrows Point will not restore competition in TMP because neither facility is capable of operating as a stand-alone facility. DaimlerChrysler cites past financial troubles of Weirton when it was a stand-alone company and Sparrows Point when it was operated by the former Bethlehem Steel Company. DaimlerChrysler asserts that either alternative facility is likely to close after divestiture. The result, according to DaimlerChrysler, would be less competition in the market for TMP.

2. Response of United States to DaimlerChrysler's Comment

DaimlerChrysler's principal argument is that the United States' focus on TMP is misplaced, and that the United States should also have alleged harm to competition for hot dipped galvanized steel. During its investigation, the United States carefully and thoroughly reviewed the competitive implications of Mittal Steel's acquisition of Arcelor (and Dofasco) for a number of different potential relevant geographic and product markets, including hot dipped galvanized products. Upon completion of its review, the United States determined that it should allege a violation and seek relief only with regard to sales to TMP in the Eastern United States, and the Complaint filed in this case reflects that determination. The decision regarding the filing of a complaint as to any particular market lies within the prosecutorial discretion of the United States.

With respect to the market for TMP, the United States disagree with the DaimlerChrysler comments relating to the adequacy of a divestiture of either of the alternative assets. As discussed more thoroughly above, the United States has considered the capabilities and economic viability of each of the alternative facilities and is confident that these options allow it to select an alternate facility the divestiture of which to a viable qualified purchaser would be sufficient to restore competition to the market for the sale of TMP in the Eastern United States.

III. Conclusion

The issues raised in the public comments were among the many considered during the United States' extensive and through investigation. The United States has determined that the proposed Final Judgment as drafted provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comments and response are published.

Dated: February 13, 2007.

Respectfully submitted,

Lowell R. Stern (D.C. Bar #440487), *Attorney, United States Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone: (202) 307–0924, Facsimile: (202) 307–6283.*

Certificate of Service

I hereby certify that on the 13th day of February, 2007, I caused a copy of the foregoing Plaintiff United States's Response to Public Comments to be mailed, by U.S. mail, postage prepaid, to the attorneys listed below and I caused the attachments thereto to be delivered by electronic transmission to the attorneys listed below:

Lowell R. Stern,

For Mittal Steel Company N.V.:
Mark Leddy, Esquire; Brian Byrne, Esquire; Jeremy J. Calsyn, Esquire; Cleary Gottlieb Steen & Hamilton LLP., 2000 Pennsylvania Avenue, NW., Washington, DC 20006.

For Arcelor S.A.:
John M. Nannes, Esquire; Michael V. Sosso, Esquire; Skadden, Arps, Slate, Meagher & Flom LLP., 1440 New York Avenue, NW., Washington, DC 20005.

For Silgan Containers Corporation:
Daniel L. Porter, Esquire; Vinson & Elkins LLP., 1455 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–10009.

For ThyssenKrupp A.G.:
Steven K. Bernstein, Esquire; James F. Lerner, Esquire; Weil, Gotshal & Manges LLP., 767 Fifth Avenue, New York, NY 10153–0119.

A. Paul Victor, Esquire; Dewey Ballantine LLP., 1301 Avenue of the Americas, New York, NY 10019–6092.

For DaimlerChrysler Corporation:

Thomas B. Leary, Esquire; Janet L. McDavid, Esquire; Hogan & Hartson LLP., Columbia Square, 555 Thirteenth Square, NW., Washington, DC 20004.

Exhibit 1

Willkie Farr and Gallagher LLP

Theodore Case Whitehouse, 202 303 1118, *whitehouse@willkie.com,* 1875 K Street, NW., Washington, DC 20006–1238, Tel: 202 303 1000, Fax: 202 303 2000.

23 October 2005

By Hand Delivery

Maribeth Petrizzi, Esq., Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Suite 3000, 1401 H Street, NW., Washington, DC 20530

Re: Comments of Silgan Containers Corp. on Proposed Consent Decree in *United States* v. *Mittal Steel Co., NV,* No. 1:06–CV–01360–ESH (D.D.C.)

Dear Ms. Petrizzi:

Transmitted with this letter, on behalf of Silgan Containers Corporation (''Silgan'') and pursuant to the Antitrust Procedures and Penalties Act (15 U.S.C. 16), are Silgan's comments on the proposed consent decree submitted by the Division to the United States District Court for the District of Columbia in August 2006.

Silgan and its counsel would be pleased to enlarge upon or explain any aspect of Silgan's comments and would be pleased to meet with you and your staff to discuss any issue or concern relating to this matter.

Sincerely,

Theodore Case Whitehouse

cc (w/encl.): Kerrie J. Freeborn, Esq.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. Mittal Steel Company N.V., Defendant

[Civil Action No. 1: 06CV01360–ESH]

Comments of Silgan Containers Corporation on the Proposed Final Judgment and Competitive Impact Statement Regarding Competition in the Tin Mill Products Market

Willkie Farr and Gallagher LLP., 1875 K Street, NW., Washington, DC 20006–1238, (202) 303–1000.

Thomas Prusa, Ph.D., Professor of Economics, Rutgers University, New Brunswick, New Jersey.

October 23, 2006

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Introduction and Summary of Comments

Silgan Containers Corporation, the largest U.S. food can producer and single largest consumer of tin mill steel products in the United States, hereby provides comments on the proposed final judgment in *United States* v. *Mittal Steel Company,* the civil action concerning the effects of Mittal Steel's acquisition of Arcelor in the tin mill steel market in the Eastern United States. These comments are submitted in response to the invitation of the Antitrust Division of the United States Justice Department set forth in the August 24, 2006 edition of the **Federal Register.** Silgan appreciates the opportunity to submit comments.

Silgan wholeheartedly agrees with the Department's conclusions that (1) Mittal Steel's acquisition of Arcelor ''further consolida[tes] an already highly concentrated market'' and (2) ''the likely effect of this acquisition would be to lessen competition substantially'' among suppliers of tin mill steel products in the Eastern United States, and (3) ''this loss of competition would likely result in higher prices, lower quality, less innovation and less favorable delivery terms to customers'' of tin mill steel.[1] Silgan submits that such conclusions are amply supported by the evidence.

The proposed decree provides for two alternative divestiture scenarios. The first is to require divestiture by Mittal of Dofasco, a Canadian integrated steel producer. The alternative remedy, to be available only if Mittal is ''unable'' despite ''best efforts'' to accomplish the divestiture of Dofasco, would be divestiture of either the Sparrows Point integrated steel operation or the Weirton steel mill operation (which includes only a rolling mill capability at this time). Silgan wholeheartedly agrees with the Department that the preferred remedy to address this lessening of competition in the tin mill steel market is to require the divestiture of Dofasco. Indeed, Silgan submits that a proper understanding of both the market participants and the competitive dynamics affecting the market participants demonstrates the following:

• *Weirton would not be able to survive as an independent operation.*

Given its location, its old, small, and currently inoperative blast furnaces, and the limited capabilities of Weirton's rolling facilities, Weirton cannot survive as an independent producer. Neither

[1] See *United States* v. *Mittal Steel Company,* Proposed Final Judgment and Competitive Impact Statement, 71 Fed. Reg. 50084, 50085, 50093 (August 24, 2006) (Attachment 1).

running Weirton's ironmaking and steelmaking operations nor purchasing slab in the merchant market would be a viable strategy. Consequently, a remedy allowing the divestiture of Weirton would simply cause substantial tin mill steel capacity to exit the market, which would make the available tin mill steel supply even more concentrated.

• *No existing integrated steel mill has a serious interest in acquiring Weirton, because it makes no economic sense.*

Weirton's only realistic hope of surviving is to operate as one facility within a large, diversified enterprise capable of supplying Weirton with key inputs and averaging costs across a larger production base. Weirton currently enjoys that status as part of Mittal. No viable alternative integrated steel mill is likely to come forward to replace Mittal.

• *Although Sparrows Point Is a Superior Mill to Weirton, It Is Uncertain Whether Divesting Sparrows Point Would Preserve Competition Over the Mid- to Long-Term.*

Within the Mittal system, Sparrows Point is a key supplier of slab for Weirton. A Sparrows Point facility operating outside the Mittal system would eliminate a guaranteed supply of this key feedstock to Weirton and thereby threaten the ongoing viability of Weirton. Without Sparrows Point's slab capacity, the likelihood that Mittal will ration Weirton's slab supply is greatly increased because Weirton will not be the best use of Mittal's limited slab supply in the Midwest that can be used in more profitable operations. Such fact is evidenced by the statements of Mittal Steel officials that Weirton is the least desirable facility among Mittal Steel's North American operations. In short, divesting Sparrows Point would almost certainly lead to Weirton's demise even within the Mittal enterprise, thereby diminishing overall capacity to the detriment of consumers and frustrating the goal of the decree.

In the pages below, Silgan discusses and documents these factual conclusions in considerable detail. Silgan submits that these factual conclusions require the Department to adopt the following approach in designing an appropriate remedy to address the reduced competition in the tin mill steel market. First, the Department should make every effort to accomplish the divestiture of Dofasco. Press reports immediately after publication of the consent decree suggest a lack of interest by Mittal-Arcelor of seriously pursuing divesting Dofasco. The Department needs to push Mittal-Arcelor to accomplish the divestiture of Dofasco.

Second, if immediate divestiture is not possible, Silgan strongly recommends the consent decree be modified to wait the five years reportedly necessary to eliminate any existing legal impediments to the divestiture of Dofasco. An independent Dofasco in five years is better than any of the other alternatives for preserving competition. A long run solution to the issue is better than a short term fix.

Silgan makes this recommendation because the other options under consideration—divesting Weirton or divesting Sparrows Point—will not accomplish the Department's objective of enhancing competition in the tin mill steel market. These other options will only protect competition if one believes that Weirton has better than a 64% chance of surviving over the next two or three years, either outside or within the Mittal enterprise. However, no knowledgeable industry observer would give Weirton better than a 10–20% chance of surviving if either Weirton or Sparrows Point is divested. Therefore, the only appropriate remedy is to divest Dofasco as soon as possible, even if this means waiting for the alleged legal impediments to such a divestiture to expire.

To summarize:

• Divestiture of Dofasco is the most pro-competitive outcome.

• If divestiture of Dofasco is not possible now (because of the stichting arrangements reportedly engineered by Arcelor), the second best option is continued independent operation of Dofasco for the life of the trust, (reportedly 5 years) followed by divestiture to a firm not a U.S. tin-mill producer.

• A less desirable but feasible outcome would be divestiture of Sparrows Point to a firm not a U.S. tin-mill producer (with appropriate assurance that Sparrows Point's tin-mill activity will be continued).

• Divestiture of Weirton under any scenario would be counterproductive from a competition perspective and would hurt the market because Weirton would not survive and its capacity would be permanently lost.

I. Divestiture of Dofasco Is the Best Option

A combined Mittal-Arcelor would have three tin mill steel production facilities supplying the Eastern United States market, resulting in an excessively concentrated supply situation. To remedy that undesirable outcome, the Department has determined that Dofasco should be divested.[2] The Department is correct in that determination: Divesting Dofasco remains the preferred remedy to address the loss of competition in the tin mill steel market resulting from the Mittal-Arcelor merger.

In assessing divestiture options the Department must consider whether the divested firm can operate independently and serve the changing needs of consumers. Any divested tin mill steel entity must be viable on its own, making Dofasco the most logical choice for divestiture.

A. Dofasco Has a Proven Track Record of Operating as a Highly Profitable, Independent Company

In sharp contrast to Weirton or Sparrows Point (both of which are discussed below), Dofasco is recognized as one of the best steel mills in the world. A leading steel consultancy and benchmarking firm, World Steel Dynamics (''WSD''), ranked Dofasco in the Top 25 of all global steelmakers. The same assessment ranked Dofasco the highest of all North American producers.[3] Dofasco scored a remarkable 9 out of 10 in the WSD analysis for profitability over the 2000–04 period.[4]

The WSD analysis, which covers the period through June 2005, presents an independent, expert assessment of Dofasco prior to its acquisition by Arcelor, when the facility stood as a fully independent entity. Dofasco's performance during that period provides a strong indication of its likely performance if separated from Mittal.

B. Dofasco Is Far Better Suited To Operate as a Stand-Alone Facility Than Either Weirton or Sparrows Point

Compared to either Weirton or Sparrows Point, Dofasco is far better suited to survive and thrive as a stand-alone facility. Four differences stand out: (1) Dofasco has a much deeper product line, (2) Dofasco has a larger scale operation, (3) Dofasco owns its own raw materials, and (4) Dofasco has much more cold-rolled capacity to feed its tin mill steel production. Silgan discusses these below.

First, Dofasco has production capability that covers the full spectrum of flat-rolled products, from hot-rolled steel to cold-rolled and galvanized, as well as tin mill steel. Dofasco also produces tubular products in operations that consume the hot-rolled and cold-rolled steel it produces. Indeed, Dofasco Tubular Products is the largest and most diversified producer of tubular products in North America.[5] Finally, Dofasco is a significant player in the high margin auto sheet market, in which there are

[2] Id.

[3] World Steel Dynamics (2005) (Attachment 2).

[4] Id.

[5] See *http://www.dofascotube.com/Default.htm* (Attachment 3).

few significant North American suppliers.[6]

This breadth of production capability allows Dofasco to remain viable even if the tin mill steel market turns down. Neither Weirton nor Sparrows Point has the same breadth of production. Weirton's product line is quite limited. Indeed, Silgan's understanding is that the vast majority of Weirton's total steel production is just tin mill steel. Sparrows Point is not much better. Other than tin mill steel, Sparrows Point predominantly focuses on commodity grades of cold-rolled and galvanized flat-rolled steel.

Second, Dofasco is also a larger scale operation, with just over 4 million of tons of steelmaking capacity compared to 3.4 million tons at Sparrows Point and zero operating steelmaking capacity at Weirton. Dofasco also has larger rolling assets, with 4.9 million tons of hot strip capacity available compared to 3 million tons at Sparrows Point and 3.8 million tons at Weirton.[7] This larger scale allows Dofasco to operate more efficiently and profitably than either Weirton or Sparrows Point.

Third, Dofasco has access to captive supplies of both coke and iron ore, reducing its exposure to price volatility in raw material markets. Neither Weirton nor Sparrows Point has any such assets. Like the larger scale, these captive supplies of key feedstock allow Dofasco to operate more cost effectively and profitably than Weirton or Sparrows Point.

Finally, as detailed in the chart below, Dofasco has a much more favorable ratio of tin mill steel capacity to cold-rolled capacity.

FIGURE 1.—RATIO OF TIN MILL CAPACITY TO COLD-ROLLED CAPACITY

	Dofasco	Sparrows Point	Weirton
Cold-Rolled Capacity (000 tons)	3100	1580	1000
Tin steel production (000 tons)	418	828	800
Fraction of tin mill capacity to cold-rolled	13.5%	52.4%	80%

The ratio of tin mill capacity to cold-rolled capacity at Dofasco is just 13.5 percent. In contrast, the ratio of tin mill steel capacity to cold-rolled capacity at Sparrows Point is greater than 50%, and is roughly 80% at Weirton. Dofasco's more limited tin mill steel capacity relative to its cold-rolled capacity means a much larger portion of its cold-rolled capacity is immediately available for sale in often more profitable cold-rolled or galvanized markets. Weirton and Sparrows Point, on the other hand, have limited opportunity to serve cold-rolled and galvanized markets while at the same time keeping their more substantial tin mill steel lines operating at efficient capacity utilization rates.

C. Dofasco Is More Committed to Investing in the Future of the Tin Mill Steel Market

A key factor for the Department's consideration should be which entity will support the tin mill steel market for the long term. It is Silgan's opinion that Mittal is not interested in this product and will not support the tin mill steel market, whereas Dofasco has demonstrated a concrete willingness to support the product.

Prior to its acquisition of International Steel Group, Mittal had no significant involvement in the tinplate market from any of its worldwide operations. With ISG, Mittal acquired the former Bethlehem Steel tinplate operations at Sparrows Point, MD and the former Weirton Steel tinplate operations in Weirton, WV. Since the acquisition of ISG, these operations have been scaled back, not expanded, and Mittal has shown little or no interest in their long-term viability. As importantly, since its acquisition of ISG, Mittal has met is contractual volume commitment to Silgan, but has declined to ship additional volumes requested by Silgan. Efforts to engage Mittal in discussions toward extending the current supply commitment to Silgan have not been successful.

The experience with Dofasco has been much different. Time and again Dofasco has demonstrated a willingness to commit to the long term production and supply of tin mill steel. For example, Dofasco understood the desire of can companies for wider and wider coils to enhance can making productivity. Dofasco, unlike other suppliers, decided to invest in additional wide coil capacity, and now is one of the few suppliers in the world to offer extra-wide coils. Another example is Dofasco's willingness to talk about and agree to longer-term supply arrangements. There is no question that producing tin mill steel is in Dofasco's long term plans.

D. The Decree Should Be Amended if Necessary To Require Divestiture of Dofasco on the Earliest Date on Which It May Legally Be Divested Free of the Stichting Arrangements, and the Hold-Separate Order Should Continue in Effect Until That Divestituture Is Accomplished

Because of the obvious superiority, from the standpoint of competitive supply of tin mill steel products, of a divstiture of Dofasco over either alternative divestiture contemplated by the proposed decree, the Decree should be amended to ensure that Dofasco is divested and that any short-term impediment to that divestiture arising from the *stichting* arrangements erected by Arcelor to frustrate Mittal's efforts to acquire Arcelor does not wind up producing long-term harm to the tin mill steel market in the Eastern United States. Dofasco's long history of successful operation as a stand-alone entity and its modern plant and facilities make it highly likely that Dofasco could exist and prosper under the hold-separate order now in place for at least five years and remain a viable and attractive divestiture candidate at the end of that period. Thus, there is no reason for the Department or the Court to accept the plainly less effective—and potentially counterproductive—alternatives of divesting either Sparrows Point or Weirton.

[6] The leading North American suppliers are Mittal (non-Sparrows Point production), U.S. Steel, AK Steel and Dofasco. See Peter Marsh, Massive Bids on Table as Giants Fight for Dofasco, Financial Times (January 13, 2006) (Attachment 4). According to long-time steel analyst Charles Bradford, Sparrows Point ''doesn't have those (automotive) grades.'' Scott Robertson, Mittal Sparrows Point Mill May Be On Auction Block, American Metal Market (June 2, 2006) (Attachment 5).

[7] See generally 2005 Directory of Iron and Steel Plants, Association for Iron and Steel Technology (2005) (Attachment 6).

II. A Stand-Alone Weirton Operation Will Fail in the Immediate Future and Undermine the Department's Objective of Preserving Competition in the Market

There is no viable business model for a stand-alone Weirton operation that ensures even the intermediate term survival of the company. As a fully-integrated steel producer making raw steel through to tin mill products (''tin mill steel''), Weirton is not competitive. The Weirton facility's ironmaking and steelmaking assets are antiquated and effectively unusable. Indeed, the ironmaking and steelingmaking assets are currently not operating for this very reason.[8] The lack of any captive raw material assets and the costs associated with transporting bulk raw materials such as iron ore to the Weirton site only make the prospects for restarting the ironmaking and steelmaking assets in a stand-alone configuration that much more untenable.

As a finishing operation consuming either slab or more advanced downstream inputs (*i.e.,* hot-rolled band or black plate), it is also highly doubtful that Weirton would survive as a stand-alone entity. First, the proposition that a stand-alone Weirton operation would have access to the quality or volume of steel inputs at the cost necessary to run the facility efficiently is highly speculative. Second, limitations at Weirton's rolling operations would further hinder the facility's ability to operate a flexible production base or meet the ever-increasing quality demands of tin mill steel consumers.

A. Weirton's Ironmaking and Steelmaking Assets Are Not Competitive

1. Weirton Has Small, Inefficient Blast Furnaces

It is generally agreed within the steel industry that blast furnaces with an annual production capacity of less than 1.5 million tons per year are not of efficient scale. Most, if not all, world-class blast furnaces exceed 3 million tons in annual capacity. While blast furnace size is not necessarily dispositive with respect to cost competitiveness, it is considered among the most important factors.[9]

The U.S. Domestic steel industry's own trade association acknowledges the weaknesses and fate of small blast furnaces, as does the U.S. Department of Energy (''DOE''). According to an article posted on the American Iron and Steel Institute's web page, ''[b]last furnaces will survive into the next millennium because the larger, efficient furnaces can produce hot metal at costs competitive with other iron making technologies.'' [10] Similarly, a study of alternative ironmaking technologies funded by DOE concluded that ''the primary problem (sic) the Blast Furnace approach is that many of these Blast furnaces are relatively small, as compared to newer larger furnaces; thus are relatively costly and inefficient to operate.'' [11]

Weirton's blast furnaces—none of which is currently in operation—are among the smallest blast furnaces in North America. Weirton's primary No. 1 furnace has a rated annual capacity of 1.46 million tons. The facility's No. 4 furnace, the only other furnace at the Weirton site in any condition to be restarted,[12] has a rated capacity of just 1 million tons.[13] By contrast, the would-be competitors of a stand-alone Weirton enterprise operate the largest blast furnaces in North America.[14]

FIGURE 2.—COMPARISON OF BLAST FURNACE SIZE

Company/operation	Blast furnace	Year built	Annual capacity (million tons)
Mittal, Indiana Harbor	No. 7	1980	4.0
U.S. Steel, Gary Works	No. 14	1974	3.4
Mittal, Sparrows Point	"L"	1977	3.2
Weirton	No. 1	1919	1.5
Weirton	No. 4	1953	1.0

Weirton's furnace limitations have long been known; in 1982, National Steel proposed shutting down Weirton's furnaces and operating Weirton as a rolling mill.[15]

In any case, assessing the competitiveness of the Weirton blast furnaces is strictly an academic exercise. Both the Weirton No. 1 and No. 4 furnaces are no longer hot banked, but now sit completely cold. The costs of restarting the furnaces from a cold state are uncertain, but could be significant depending on any damage resulting from the cool down. Such costs may in fact be prohibitive to any would-be investor.

2. Weirton's Steelmaking Operations Are Also Antiquated and High Cost

Weighed down by the high cost of its ironmaking operations, the Weirton facility inherently is a high cost steel

[8] See Mark Reutter, The Strange Case of Weirton Steel, MakingSteel.Com (April 25, 2006) (emphasis aded) (Attachment 7).

[9] Other competitiveness factors one might consider include the coking rate of the furnace and any alternative charging technologies utilized by the furnace to reduce that rate and increase productivity. For a discussion of these alternative techniques, see William T. Hogan and Frank T. Koelbe, Fewer Blast Furnaces, But Higher Productivity, New Steel (November 1996) (Attachment 8). Note, however, that reliance on alternative charging techniques has presented new cost problems for some blast furnace operations. In particular, for those blast furnaces relying on natural gas injection to reduce coking rates (including Weirton), they successfully lowered their coking rates and boosted productivity, but were later hit with heavy costs as natural gas prices rose dramatically.

[10] See How a Blast Furnace Works, AISI (emphasis added) (Attachment 9).

[11] Ironmaking Process Alternative Screening Study—Volume I, Summary Report, Lockwood Greene study for the Department of Energy (Oct. 2000) at 1–1 (Attachment 10).

[12] Weirton's No. 4 furnace needs repairs before being restarted. Weirton's former owner ISG intended to make such repairs. See Jim Leonard, ISG To Repair, Restart Second Blast Furnace at Weirton Unit, American Metal Market (July 12, 2004) (Attachment 11). With Mittal's acquisition of Weirton, it was determined that Weirton would no longer produce raw steel and the repair work was never initiated. See Mark Reutter, The Strange Case of Weirton Steel, MaingSteel.Com (April 25, 2006) (Attachment 7).

[13] While age is less indicative of the efficiency of a furnace, Weirton's furnaces are very old. The No. 1 furnace was built in 1919; the No. 4 furnace was built in 1953. Through rebuilds and modifications, these furnaces have been made more efficient, but they remain high cost. Indeed, by Mittal's own admission, Silgan knows they are at least the highest cost furnaces in the Mittal USA system. See Mark Reutter, The Strange Case of Weirton Steel, MakingSteel.Com (April 25, 2006) (Attachment 7).

[14] Capacity data for the Weirton blast furnaces derived from 2005 Directory of Iron and Steel Plants, Association for Iron and Steel Technology (2005) (Attachment 6). Capacity data for Mittal, Sparrows Point ''L'' furnace derived from Mittal Steel USA Works to Restore Furnace at Sparrows Point, PRNewswire (July 14, 2006) (Attachment 12). Capacity data on Mittal, Indiana Harbor No. 7 furnace derived from Ispat Inland Accelerates Maintenance Outages, Ispat Inland Press Release (March 7, 2005) (Attachment 13).

[15] Weirton Workers Buyout from Online NewsHour, September 23, 1983; *http://www.pbs.org/newshour/bb/business/july-dec83/steel_9-23-83.html.* (Attachment 14).

producer. Leaving no doubt, Weirton's slab costs have been rated by a leading steel consultancy as the highest in the world.[16] These results are consistent with Mittal's own top-down review of the Mittal USA system, which found the Weirton steelmaking assets to be the least economical among its many U.S. facilities.[17]

Weirton's continuous caster is also an old, four-strand caster.[18] A new, single strand caster is necessary to achieve better yield loss and quality control in important tin mill grades of steel.

3. An Independent Weirton Operating Its Ironmaking Facilities Would Lack Any Captive Raw Material Supplies

A stand-alone Weirton enterprise utilizing its ironmaking assets does not fit the paradigm of successful integrated steel makers (*i.e.*, those operating blast furnaces and basic oxygen furnaces to produce steel) operating in the U.S. market. That paradigm includes access to captive supplies of at least some raw material requirements (coal, coke, or iron ore).

Integrated steel producers consume massive amounts of raw materials in the form of coal, coke, and iron ore to run their blast furnaces. To insulate themselves from volatility in raw material markets, integrated producers tend to maintain captive supplies of at least some of their raw material needs. Although all U.S. mills have largely divested themselves of their U.S. coal assets, maintaining captive coke supplies remains a common practice among integrated producers. This practice continues given the high costs associated with building new coke plants in today's regulatory environment and the fact that the coke market tends to be in very tight supply. The largest producers also maintain captive iron ore assets.

FIGURE 3.—INTEGRATED MILL RAW MATERIAL ASSETS [19]

Company	U.S. coke assets	U.S. iron ore assets
U.S. Steel	Yes	Yes.
Mittal Steel	Yes	Yes.
AK Steel	Yes	No.
Wheeling-Pittsburgh Steel	Yes	No.
WCI Steel	No	No.
Severstal-Rouge Steel	Yes	No.
Sparrows Point	No	No.
Dofasco [20]	Yes	Yes.
Weirton	No	No.

The Weirton facility does not operate coke ovens, nor does it own any iron ore assets. As a stand-alone enterprise operating its blast furnaces, Weirton's lack of raw materials assets would leave it dependent on outside supply, including supply from other U.S. tin mill steel producers.

With respect to coke, the implication of Weirton's outside supply dependency is documented in Weirton's recent past. In 2004, Weirton experienced a coke supply disruption when U.S. Steel (a tin mill steel producer) declared *force majeure* on a supply contract with Weirton in a very tight market for coke, forcing Weirton to limit operations in that year.[21]

Although the first new coke ovens built in the United States in seven years were completed in 2005, shipments of metallurgical coal to U.S. coke plants show a decline over the last 5 years due to the tight specifications needed for coal to produce coke.[22] Key sources of imported coke, such as China, now consume a larger portion of that supply in their own domestic markets.[23] With a tight world market for metallurgical coal coupled with U.S. supply disruptions that occurred in 2005, the average delivered price of coal to U.S. coke plants increased by 36.2 percent to reach an average price of $83.79 per short ton in 2005. This, in turn, caused coke prices to skyrocket.[24]

FIGURE 4.—U.S. METALLURGICAL COAL SUPPLY AND PRICES TO U.S. COKE PLANTS

[Million short tons and nominal dollars per short ton]

	2001	2002	2003	2004	2005
Consumption Average	26.1	23.7	24.2	23.7	23.4
Delivered Price	$46.42	$50.67	$50.63	$61.50	$83.79

Even Weirton's union representatives acknowledge the coke problem: ''Union spokesman David Gosset said raw materials are the root of Weirton's problem. Weirton does not have a coke plant and must buy it at a high cost on the open market.'' [25]

[16] High Production Costs Hamper AK Steel's Middletown Works, Steel Business Briefing (Aug. 10, 2006) (Attachment 15).

[17] See Mark Reutter, The Strange Case of Weirton Steel, MakingSteel.Com (April 25, 2006) (Attachment 7).

[18] 2005 Directory of Iron and Steel Plants, Association for Iron and Steel Technology (2005) at 130 (Attachment 6).

[19] See Various Annual Reports from producers listed in the above table below.

[20] Dofasco has iron ore assets in Canada. See Maria Guzzo, Dofasco seals $251m purchase of Canadian iron ore miner QCM, American Metal Market (July 26, 2005) (Attachment 16).

[21] Scott Robertson, Force Majeure Clobbers Coke-Short Steelmakers: Weirton Eyes Options, Blast Furnace Closure, American Metal Market (Jan. 9, 2004) (Attachment 17).

[22] U.S. Coal Supply and Demand: 2005 Review, Department of Energy, Energy Information Administration.

[23] For a discussion of the tight market for coke during 2004 and the factors that drive tight coke supplies, see Peter Krouse, Heat Back on Steel Makers, The Plain Dealer (February 26, 2004) (Attachment 18).

[24] U.S. Coal Supply and Demand: 2005 Review, Department of Energy, Energy Information Administration.

[25] Vicki Smith, Furnace Will Stay Idle at Weirton Steel Mill, Associated Press (Dec. 2, 2005) (Attachment 19).

The raw material paradigm bears out in the experience of other integrated steel producers. Operations with no captive supplies are vulnerable and tend to have poorer operating performance. WCI Steel, for example, also retains no raw material assets. Not surprisingly, like Weirton, it was also the victim of the coke supply disruption that occurred in 2004.[26] WCI emerged from nearly three years of bankruptcy only this year.

4. Weirton's Geographic Location Guarantees Higher Costs for Basic Inputs

Unlike competitors along the Great Lakes and elsewhere, which have access to water transportation to bring in raw materials, Weirton must resort to more expensive truck and rail options to supply such basic bulk inputs as iron ore.[27] As a stand-alone enterprise not affiliated with a larger integrated steel operation, Weirton would have no ability to average higher transportation costs over a broader asset base or leverage lower transportation prices with service providers serving more than the Weirton facility.

5. Weirton's Limitations as a Fully-Integrated Steel Maker Producing Tin Mill Steel Are Recognized by Mittal and Outside Observers

There is no dispute that Weirton suffers from severe limitations as a fully-integrated steel producer, even among those parties with an immediate interest in, or who are otherwise knowledgeable about, the facility. Consider the comments of Mittal USA CEO Leo Schorsch shortly after Mittal acquired Weirton and made the decision to shut down its steelmaking operations:

> This was a very difficult decision, since the Independent Steelworkers Union and all employees have worked so hard to beat the odds trying to maintain steelmaking at Weirton,'' said Louis L. Schorsch, chief executive of Mittal Steel USA. ''However, the structural disadvantages of Weirton for these processes entail costs that are too high to support competitive downstream facilities.[28]

At the same time, noted industry analyst and expert on ironmaking/steelmaking assets Michael Locker stated:

> The negative of the consolidation process is that you have a comparison going on of plants * * * within the Mittal family.
>
> If they come out on the short end of the stick, they can't justify standing alone—even with all the hopes of cost reduction and efforts by the union, which were mighty.[29]

Other commentary from the period is consistent with that above concerning Mittal's own internal assessment of the Weirton facility:

> Unknown to Weirton workers as well as to many ISU officers, Mittal Steel kept obsessive track of all financial aspects of its five integrated mills (Burns Harbor and Indiana Harbor in addition to Cleveland, Sparrows Point, and Weirton). The mills were compared and ranked according to their raw material inputs, manufacturing costs, and product profit margins. At the bottom of the list lay the ''swing'' plant—the facility that, in times of low demand, didn't generate enough money to please the steelmasters in London.
>
> Weirton was the ''swing'' plant.
>
> It was hobbled by higher raw material costs, especially for coke, than the other mills.[30]

Based on this commentary, it is clear that Weirton, even as part of a vast integrated steel enterprise, is incapable of being competitive running its ironmaking and steelmaking assets. As an independent enterprise running those assets, prospects would only diminish from bad to worse.

B. Prospects for a Stand-Alone Weirton Enterprise Operating as a Rolling and Finishing Operation Are Limited

Even if Weirton's ironmaking and steelmaking assets remain closed and the facility continues operating as a rolling and finishing operation, the viability of such an operation on a stand-alone basis is doubtful. The Weirton rolling operations—long neglected by its previous and current owners—require substantial investment to remain competitive. Moreover, the production emphasis on tin mill steel, as well as the configuration and limitations at the mill, mean that it would have limited production flexibility to maximize profitability by reacting to changes in up- and down-stream flat-rolled steel markets. Finally, the prospect of limited availability of merchant slab or black plate substrate could lead to supply disruptions and limit capacity utilization at the mill, such that it could not generate sustainable profits.

1. Weirton's Rolling and Finishing Assets Require Substantial Investment To Be Competitive

The Weirton facility, both as an independent entity and as part of the International Steel Group and Mittal Steel, has been a consistent industry laggard. Years of losses have led to years of neglect at the mill.[31] At the tin line, alone, Mittal has publicly identified the need for in-line edge-cutting and tension leveling equipment to keep the mill competitive.[32] Mittal, however, has not committed to that investment, which it identified as important shortly after it acquired the Weirton assets from the International Steel Group.[33]

Given Weirton's historically poor financial performance, it is likely that other major maintenance at the mill has been severely neglected. If Weirton has any chance at all of being a viable, stand-alone operation, any new investor would have to be committed to substantial new capital spending to improve the competitive position of the mill. The rolling and finishing lines as they currently exist are not ''turn-key'' operations that would be immediately competitive in today's market.

2. Weirton Would Be Committed to Producing Primarily Tin Mill Steel, Limiting Production Flexibility

In today's steel industry, few mills consistently make money producing only one product. This is particularly true for mills that maintain hot-rolled through galvanizing assets and have to cover the fixed costs associated with each stage of flat-rolled steel production. Large integrated operations such as these seek a balance, shifting production upstream and downstream to adjust to changing market conditions in each segment while also attempting

[26] See Peter Krouse, Heat Back on Steel Makers, The Plain Dealer (February 26, 2004) (Attachment 18).

[27] According to the Minneapolis Federal Reserve ''water transport via inland ports is estimated to be at least five times more efficient than rail and trucks at delivering similar cargo on a fuel cost-per-gallon basis. U.S. inland waterways move about 15 percent of interstate commerce for bulk commodities at only 2 percent of the cost.'' Marcia Jedd, Minneapolis Federal Reserve fedgazette, January 2003, *http://minneapolisfed.org/pubs/fedgaz/03-01/shipping.cfm* (Attachment 20); See also Vicki Smith, Furnace Will Stay Idle at Weirton Steel Mill, Associated Press (Dec. 2, 2005) (Attachment 19) (''Weirton also must buy iron ore and have it shipped by rail. Mittal's mill in Cleveland can get iron ore shipped in cheaper on Lake Erie'').

[28] Mark Reutter, The Strange Case of Weirton Steel, MakingSteel.Com (April 25, 2006) (Attachment 7).

[29] Vicki Smith, Furnace Will Stay Idle at Weirton Steel Mill, Associated Press (Dec. 2, 2005) (emphasis added) (Attachment 19).

[30] Mark Reutter, The Strange Case of Weirton Steel, MakingSteel.Com (April 25, 2006) (Attachment 7).

[31] Weirton filed for Chapter 11 Bankruptcy protection in May 2003 after racking up more than $700 million in losses over the previous five years. Vicki Smith, Weirton Files for Ch. 11; 1,100 Ohio Jobs Affected, Associated Press (May 20, 2003) (Attachment 21). Such financial performance is not conducive to investment in the capital-intensive steel industry.

[32] See Hearing Transcript, In the Matter Of: Tin and Chromium-Coated Steel Sheet from Japan, Inv. No. 731–TA–860 (Review) (April 27, 2006) (testimony of Bill Stephans, Division Manager for TMP at Mittal Steel USA's Weirton Facility) (Attachment 22).

[33] Mark Reutter, The Strange Case of Weirton Steel, MakingSteel.Com (April 25, 2006) (Attachment 7).

to preserve efficient capacity utilization rates at each stage of production. Weirton cannot make similar adjustments.

At the front of the flat-rolled production chain, hot-rolled steel, Weirton would lack the ability to challenge more nimble and cost competitive minimill producers that have long dominated the commodity hot-rolled market. The economics of buying slab dictate that stand-alone Weirton rolling and finishing operation move downstream to higher value-added products in order to capitalize on steel grades that minimills find more difficult to produce.

At the end of the production chain, the Weirton facility is incapable of competing in the galvanized sheet market, whether using a hot-rolled or cold-rolled substrate. Weirton's galvanizing lines were determined to be the highest cost operations in the Mittal system and closed.[34] It is difficult to conceive of a cost environment in which Weirton could reliably purchase slab and produce a sustainable profit running steel through such a high cost facility.

Finally, Weirton's cold-rolling mill, while potentially capable of producing competitive cold-rolled, would have limited capacity to do so since it is dedicated to serving the tin operations, creating constant pressure to keep the tin mill operating at efficient rates to cover costs.

3. Weirton Would Have Difficulty Securing the Quality and Volume of Slab Necessary To Maintain Its Operations

Tin mill steel is a high grade steel product that must meet strict metallurgical and physical tolerances in order to satisfy customer demands. The steelmaking and slab casting phases of production are every bit as critical to achieving these qualities as are the rolling and finishing phases. As a slab roller, it would be necessary for a stand-alone Weirton enterprise to secure tin mill steel-grade slab from as few committed sources as possible in order to control uniformity and quality. Failure to do so would lead to circumstances with which the Weirton facility is all too familiar: Unreliable, quality-deficient supply. This was the outcome in 1999, when Weirton experimented as an independent producer rolling slab acquired from other producers. Delivery and inventory management were poorly handled. Slab arrived late and in inconsistent quality and tolerances.[35] It is unlikely that the Weirton facility could achieve better results in today's market.

A stand-alone Weirton Enterprise rolling purchased slab would find it difficult to secure, on an economic basis, the 800 thousand to 1 million tons of tin mill steel-grade slab necessary for its operations from high quality suppliers. In this regard, Brazil is recognized as the low-cost, high quality producer of merchant slab (*i.e.*, slab produced for sale) in the world and would be the logical supplier to the Weirton facility. However, current Brazilian merchant slab supply is largely allocated among an existing global customer base.[36] Indeed, free supplies will be further limited with CSN's anticipated acquisition of U.S. steelmaker Wheeling-Pittsburgh, which currently maintains 600,000 tons in excess hot-rolling capacity that would be filled by CSN slab.[37] That tonnage could increase substantially if a decision is made to shut Wheeling-Pittsburgh's aging blast furnace.[38]

While the Brazilian slab industry has committed to a substantial expansion of its slab-making capacity, there is little prospect that an economically viable volume of this forthcoming slab capacity would be available to a stand-alone Weirton in the quality required to produce tin mill steel. As documented in the following table, virtually all of the new Brazilian slab would be unavailable to Weirton. Much of the planned slab capacity expansion among Brazilian producers targets either Brazilian domestic demand or other offshore demand (*via* existing business relationships). Timing considerations make it even more improbable that Brazil can source slab for a newly-divested and independent Weirton mill: A significant fraction of Brazil's new slab capacity will ramp up years from now, an unsuitably long period of time.

FIGURE 5.—BRAZILIAN SLAB CAPACITY EXPANSIONS

Producer/project	New slab capacity (million tons)	Expected startup	Comments
CST (Arcelor Brazil)[39]	2.5	End of 2006	Expected to add 2.5 million tons of hot-rolled coil capacity by 2008, which will capture much of this expansion. Also intends to ship substantial additional tonnage to Arcelor-affiliate Dofasco, which is slab-deficient.
Gerdau Acominas SA[40]	3 (initially 1.5)	Mid-2008	Discussions are already underway with "possible clients abroad."
CSA[41] (Thyssen/CVRD)	4.4	2008	Much of this capacity is to be dedicated to Thyssen Steel's offshore operations, including a proposed U.S. greenfield mill expected to produce 4.5 million tons of finished steel.
Ceara Steel[42] (CVRD/Donguk Steel/Danieli & C. SpA).	1.5	2009	Donguk Steel is expected to consume at least 50 percent of the slab produced at the facility.
CSN/Baosteel[43]	4.5	2011	Two projects are envisioned, with feasibility studies to be finalized by the end of 2006. Baosteel is a projected partner in one project, with the expectation that a portion of the production would be directed at Baosteel. Other available capacity would also serve CSN's rolling operations abroad, with the remainder available to third parties.

[34] Sam Kusic, ISU Irked by Mittal Steel's Plan To Shut Weirton Galvanizing Line, American Metal Market (Feb. 3, 2006) (Attachment 23).

[35] Weirton's resort to purchased slabs and the problems created by that strategy were cited in testimony during the 2000 antidumping case on TMP imports from Japan (Attachment 24).

[36] In 2006, Brazilian merchant slab supply became extremely tight, with prices rising to $555 a ton, as Brazilian producer CSN struggled to make up for production losses due to an accident at its No. 3 blast furnace. A looming increase in export taxes on Chinese slab put further pressure on the market as Chinese producers pulled back from export markets. See Diana Kinch, Brazil Slab hits $555/T In Tight Export Market, American Metal Market (June 5, 2006) (Attachment 25).

[37] Wheeling-Pittsburgh Makes Loss, Despite Rising Market, Steel Business Briefing (May 11, 2006) (Attachment 26).

[38] A competitor for the Wheeling-Pittsburgh assets, Esmark, envisions shutting down the last Wheeling-Pittsburgh blast furnace in an indication of the perceived or assessed costs of running that facility. See Esmark To Shut Wheeling-Pitt BF If Bid Succeeds, Steel Business Briefing (August 23, 2006) (Attachment 27).

FIGURE 5.—BRAZILIAN SLAB CAPACITY EXPANSIONS—Continued

Producer/project	New slab capacity (million tons)	Expected startup	Comments
Usiminas/CVRD [44]	5	2010–2012	Usiminas is seeking a partner among companies that already have, or plan to set up, rolling capacity abroad.

The Russian producer Severstal is also a low-cost producer capable of meeting international quality standards and therefore might be an economical option for a stand-alone Weirton facility dedicated to rolling slab. This option, however, is limited. Severstal's acquisition of Rouge Steel limits its ability to supply high volumes of merchant slab while meeting its commitment to Rouge.[45]

In short, the market situation for merchant slab would likely force a stand-alone Weirton to source tin mill steel-quality slab piecemeal from multiple sources. As Weirton's 1999 experience showed, this is precisely the sourcing situation Weirton would want to avoid since it would raise the prospect of supply disruptions and production problems related to uneven slab consistency.

4. Even if a Stand-Alone Weirton Rolling and Finishing Operation Found a Consistent Source of Slab Supply, the Market Dynamics for Tin Mill Steel Would Limit Profitability

Ultimately, even if Weirton could secure an adequate source of slab from third parties, the market dynamics for tin mill steel would create significant profitability problems as the market for flat rolled steel ebbs and flows. In the flat-rolled steel market, the relationship between slab prices and prices for mainstream flat-rolled steel—hot-rolled, cold-rolled and galvanized products—tends to remain more stable. A more consistent pricing spread is maintained as prices for slab rise and fall. A very different pattern emerges for tin mill steel, given the very small and specialized market it serves. The pricing spread between slab and tin mill steel grows or shrinks substantially as the overall market for flat-rolled steel strengthens or weakens. For a tin mill steel producer relying on merchant slab, it is more difficult to preserve profit margins as markets for hot-rolled, cold-rolled, and galvanized steel expand and cause slab prices to rise. This is evidenced in the figure below tracking prices for imported slab, as well as the U.S. market prices for hot-rolled, cold-rolled, galvanized, and tin mill steel.[46]

[39] Diana Kinch, Arcelor Brasil Sets Sights on New Slab Plant, American Metal Market (May 1, 2006) (Attachment 28); Diana Kinch, CST to Hike Slab Sales to Dofasco, American Metal Market (March 22, 2006) (Attachment 29).

[40] Diana Kinch, Gerdau Acominas Charging Into Slab Mart, American Metal Market (June 30, 2006) (Attachment 30).

[41] Diana Kinch, CSA Steel Project Receives License, American Metal Market (July 6, 2006) (Attachment 31); Scott Robertson, North American at Top of TK's Agenda, American Metal Market (August 11, 2006) (Attachment 32).

[42] Diana Kinch, Groundwork Laid For Brazil's Ceara Slab Project, American Metal Market (December 16, 2005) (Attachment 33).

[43] Diana Kinch, CSN May Lift Slab Capacity of Two Projects, American Metal Market (September 1, 2006) (Attachment 34).

[44] Diana Kinch, Brazil's Usiminas Casts Sights Ahead for New Slab Project Partner, American Metal Market (August 29, 2006) (Attachment 35).

[45] At the time of acquisition, Severstal expressed its intent to revitalize the Rouge facility by shipping low-cost slab to Rouge from its Russian production base. See Russia's Severstal Wants to Ship More Steel to U.S., Reuters (February 2, 2004) (Attachment 36).

[46] Slab prices reflect average unit values for carbon steel slab imported from Brazil, tracking U.S. harmonized tariff schedule items 7207.12.0050 and 7207.20.0045. U.S. market prices for hot-rolled, cold-rolled and galvanized sheet were sourced from Steel Business Briefing and are FOB Midwest U.S. mill. U.S. market prices for TMP were sourced from Tin- and Chromium-Coated Steel Sheet from Japan, Inv. No. 731–TA–860 (Review), USITC Pub. 3860 (June 2006) at V–8 (Attachment 37).

Figure 6: U.S. Market Prices For Flat-Rolled Steel and Steel Slab[46]

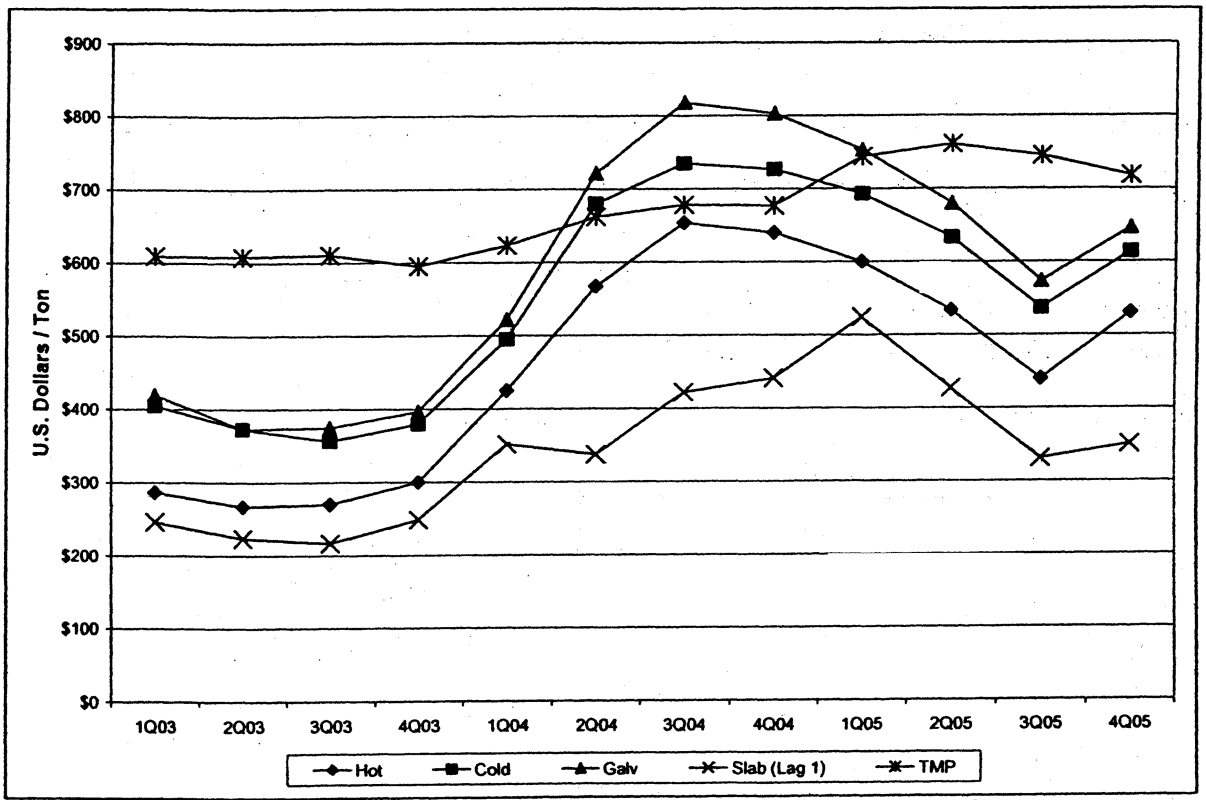

Figure 1 captures both the significantly depressed steel market in 2003 and the extremely strong steel market that followed in 2004 and 2005. The substantial swing in pricing for hot-rolled, cold-rolled, and galvanized sheet is in sharp contrast to the much flatter pricing trajectory of tin mill steel. Indeed, during much of 2004, the market price for commodity grade cold-rolled steel (*i.e.*, the product most similar to tin mill steel substrate) was actually higher than the tin mill steel price, despite the substantial additional value-added associated with tin mill steel production. While the visual depiction of pricing suggests tin mill steel also maintains a manageable pricing spread over time, the reality is very different. Consider that, over the 2000–2005 period, U.S. tin mill steel producers, as an industry, recorded their largest loss in 2003, when it appears from the figure above that their raw material costs would have been the most manageable.[47]

Just as important, the additional overhead and fixed costs associated with running rolling and finishing assets from the very first stage of flat rolled steel production through to tin mill steel production means that margins from tin mill steel production become extremely tight in a strong steel market. Yet, this is precisely when tin mill steel producers would logically seek to recoup losses from weak years. This phenomenon has two important implications. First, a tin mill steel producer reliant on merchant slab is unable to capitalize on a strong market through better margins on a higher volume of steel shipped. Second, a tin mill steel producer reliant on merchant slab is at a competitive disadvantage in the acquisition of slab on the open market against other slab rollers producing traditional flat-rolled products. In particular, because of the pricing spread, these other slab rollers have greater bidding power to secure the volumes necessary for their operations. These two factors combine to produce a very difficult competitive environment for any tin mill steel producer wishing to rely exclusively on merchant slab. Weirton would not be an exception to this reality.

5. A Stand-Alone Weirton Enterprise Running Only Its Tin Line Would Have Difficulty Securing Sufficient Volumes of Black Plate

Real world experience indicates that even if a stand-alone Weirton enterprise reduced its operations to only its tin lines and sourced only the substrate for tin mill steel, black plate, it would be unable to source enough substrate to run its operations on a profitable basis. In this regard, Silgan notes that the Weirton tin lines are substantial, capable of running 800,000 tons of tin mill steel. To achieve economies of scale, it needs to operate those lines at better than 70 percent, meaning it would have to secure as much as 560,000 tons of black plate to run efficiently.

Consider, however, the experience of Ohio Coatings, a tin mill steel producer configured to finish black plate. Despite being owned by, or in close affiliation with, integrated steel producers with the capacity to produce black plate,[48] Ohio Coatings has been unable to secure more than 60 percent of its black plate requirement. This is true even though the mill is capable of producing only 300,000 tons of tin mill steel. The fact that an owner of the facility is unwilling to supply Ohio Coatings with its material requirements speaks volumes about whether a stand-alone Weirton

[47] Tin- and Chromium-Coated Steel Sheet from Japan, Inv. No. 731–TA–860 (Review), USITC Pub. 3860 (June 2006) at Table III–8 (Attachment 38).

[48] Ohio Coatings is a 50–50 joint venture between Wheeling-Pittsburgh Steel and Donguk Steel of Korea. Wheeling-Pittsburgh is a producer of black plate and supplies Ohio Coatings that input. Nippon Steel is Ohio Coatings's exclusive distributor, and is also a major producer of black plate.

finishing black plate into tin mill steel, with far more substantial tin mill steel capacity, could source enough black plate as a stand-alone producer looking to the open market.

Ohio Coatings' problem, which is the same problem a stand-alone Weirton enterprise would face if similarly operated, relates back to the flat-rolled pricing dynamics discussed in the previous section. Steelmakers must make choices regarding the products they choose to market. The decision begins at the raw steel phase, since steel chemistry will dictate what finished steel products can be made. In a strong market for hot-rolled, cold-rolled, or galvanized sheet, the incentive to produce black plate for tin mill steel production is diminished. A steelmaker will seek to maximize profitability and throughput by focusing on those products generating the strongest margins. The difference in profit margins between tin mill steel and the other traditional flat-rolled products can be so great that there is no economic justification for producing black plate. The result is Ohio Coating's dilemma—a 60 percent capacity utilization rate and no ready supply of black plate from either its parent company, companies with close ties to it, or other outside suppliers. There is no expectation that a stand-alone Weirton, similarly configured, would fare better. It would likely fare worse, given the lack of any affiliated supplier of black plate.

C. There Are No Legitimate Suitors for Weirton

Weirton has long been perceived as one of the weakest and least competitive steel producers in the U.S. industry. To Silgan's knowledge, the only individual to surface expressing a desire to acquire the Weirton assets, Mitch Hecht, is not taken seriously by Mittal and has presented no viable business plan.

Mr. Hecht's estimates on start-up costs to get the Weirton blast furnaces running are overly optimistic, including a proposed initial investment of just $10 million, including the purchase price. Hecht has been even more ambiguous about working capital needs and what he sees as necessary longer term investment in the ''several'' tens of millions of dollars.[49] These ''estimates'' apparently do not even consider the necessary investment in the rolling assets, but focus only on the blast furnaces, although Mr. Hecht has expressed interest in acquiring the rolling assets as well.[50]

D. Divesting Weirton Will Have an Adverse Impact on Competition

Given that there is no existing steel entity interested in buying Weirton and since an independent Weirton would be entirely unprofitable, a decision to divest Weirton will result in an increase in the HHI. As detailed in the chart below, using the public data available to us, Silgan estimates that prior to the Mittal-Arcelor merger the HHI for the Eastern U.S. tin industry was 3058. With the Mittal-Arcelor merger, Silgan estimates that the HHI now stands at 3446. Assuming that Weirton is divested and it survives as a standalone entity, the HHI would fall to 2761.[51]

[49] Scott Robertson, Mittal Shows Little Interest in Weirton Furnace Sale, American Metal Market (May 5, 2006) (Attachment 39).

[50] Mittal Steel Plans to Sell Dofasco, Hecht Waits for Weirton, Steel Business Briefing (August 16, 2006) (Attachment 40).

[51] The full analysis is provided at Attachment 41 (''HHI Impact of Alternative Divestiture Scenarios'').

FIGURE 7.—HHI ANLAYSIS: POST-MERGER AND WEIRTON MARKET EXIT

	HHI impact
Pre-merger	3058
Post-merger (no divestiture)	3446
Remedy-Divest Weirton	2761 (if Weirton survives). 3645 (if Weirton fails).

Unfortunately, as the above discussion makes clear, the divestiture of Weirton will almost certainly result in failure and the exit of Weirton from the tin industry. Assuming that Weirton is divested and it does not survive as standalone entity, the HHI will rise to 3645.

It is Silgan's belief that this latter scenario is quite likely; indeed, Silgan knows of no industry expert who would give a stand-alone Weirton more than a 20% chance of surviving. Consequently, this implies that the expected result of a Weirton divestiture is a higher, not lower, HHI. In fact, unless the DOJ believes that a stand-alone Weirton has a better than a two out of three chance of surviving (an unduly optimistic belief in Silgan's opinion), the expected result of a Weirton divestiture is a less competitive market.[52] Given Weirton's poor prospects as a standalone producer, allowing Mittal to divest Weirton runs contrary to the goal of improving competition in tin market.

The increase in HHI is only one probable consequence of a divestiture of Weirton. A failed Weirton would remove more than 800,000 tons of tin-making capacity from the market. With Weirton in the market can-makers are often put on allocation and struggle to get delivery of product. The removal of about 20% of U.S. production capacity will make the current bad situation truly dire.

[52] The full analysis is provided at Attachment 42 (''Probability that Divestiture Will Improve Competition'').

III. A Divestiture of Sparrow's Point Would Also Be a Far Less Effective Remedy Than Divesting DoFasco

A. Divestiture of Sparrows Point Is Unlikely To Enhance Competition Over the Long Term

As discussed above, Weirton does not have the ability to survive on its own. And, without Sparrows Point, Weirton is unlikely to survive as part of the Mittal-Arcelor enterprise. The reason is straightforward: Without Sparrows Point, Weirton will not be able to secure sufficient volumes of feedstock to produce tin mill steel.

Within the Mittal system, Sparrows Point is a key supplier of slab for Weirton. For example, Silgan's understanding is that *all* the tin free steel (''TFS'') originating at the Weirton facility is produced using Sparrows Point slab. A Sparrows Point facility operating outside the Mittal system would limit the supply of this key feedstock to Weirton and thereby threaten the ongoing viability of Weirton.

And, as importantly, all indications are that other slab producers within Mittal Steel's collection of facilities either cannot or are unlikely to become reliable suppliers to Weirton's tin mill steel operations. Specifically, (1) Dofasco's current product mix and sales make Dofasco an unlikely replacement for Sparrows Point as a supplier of feedstock to Weirton, (2) given lower tin mill steel profitability compared to other flat-rolled products, it is unlikely that Mittal Steel's other U.S. slab producers will divert scarce feedstock to Weirton, and (3) it would make no economic sense for Mittal's Brazilian affiliate, CST, to supply slabs to Weirton.

Silgan discusses these points below.

1. Dofasco Is an Unlikely Replacement for Sparrows Point in Supplying Slabs to Weirton

As discussed above, if Sparrows Point is divested, it is unlikely that Dofasco would replace Sparrows Point as a key supplier of slab to Weirton. First, Dofasco is already a producer of tin mill steel and, while Sparrows Point may claim the same status, Dofasco is also a key supplier to the auto sheet market,[53] where profit margins are among the strongest in the industry. Sparrows Point is not a significant player in that market.[54] There would be virtually no economic incentive for Mittal to divert slabs from Dofasco and reduce production in the high margin auto sheet segment. Dofasco's slab production must also support other Dofasco downstream operations, including its hot-rolled, cold-rolled and pipe facilities.[55]

More importantly, Dofasco is not self-sufficient in slabs, but itself requires as much as 750,000 tons in purchased slab to feed its rolling and finishing operations.[56] Thus, to maintain efficient capacity utilization rates at all of its production lines, Dofasco needs every ton of slab it produces and acquires.

2. It Is Unlikely That Mittal Steel's Other North American Slab Producers Will Divert Scarce Feedstock to Weirton

Divesting Sparrows Point will cause Mittal Steel to have one fewer steel-making facility. With one less blast furnace operating to support its operations, Weirton becomes more vulnerable to blast furnace outages—some planned, some unplanned—that aer a regular occurrence in the steel industry. Blast furnace relines as well as accidents can cause significant supply disruptions, particularly if slab supply is already tight. Any problem at Mittal's other steel-making facilities in Burns Harbor, Cleveland, or Indiana Harbor will result in a reduction of slab supplied to Weirton's tinning lines. Facing a supply shortage, Mittal USA would have a strong incentive to divert its limited supply of slabs away from the downsized tin mill steel market in order to maintain production volumes in the more robust galvanized and cold-rolled markets. The result would be significant production delays at Weirton. Given the tight timing requirements for tin mill steel, where can-makers demand just-in-time delivery, such delays would be devastating to Weirton's customers.

Without Sparrows Point's slab capacity, the likelihood that Mittal will ration Weirton's slab supply is greatly increased. As the chart below makes clear, the difference in profit margins between other flat-rolled products and tin mill steel is just too great to justify sending scarce feedstock to Weirton.

FIGURE 8.—COMPARISON OF U.S. INDUSTRY PROFITABILITY FOR FLAT-ROLLED PRODUCTS

[Operating margin]

	2004	2005
Galvanized[57] ...	10.9%	5.4%
Plate[58]	22.0%	25.4%
Hot-Rolled[59]	22.1%	Not available.
Tin Mill[60]	−0.9%	−0.7%

Very simply,Weirton will not be the best use of Mittal's limited slab supply in the Midwest that services more profitable operations.

3. It Would Make No Economic Sense for Mittal's Brazilian Affiliate CST To Supply Slabs to Weirton

Within Mittal's global steel operations, its Brazilian affiliate CST (Arcelor/Brazil) is a significant producer of slab for sale in export markets. CST also has plans to expand its slab capacity in the very near term, with the introduction of some 2.5 million tons of new slab capacity at the close of this year. CST, however, is an unlikely candidate to ship a significant tonnage of slab to Weirton.

CST is already a major supplier of slab to Dofasco, shipping some 400,000 tons with plans to increase that amount, perhaps to meet all of Dofasco's merchant slab requirements (750,000 tons).[61] It would make more economic sense to ship this slab to Dofasco, a high profit margin producer that needs the slab to fill capacity in high demand, than to Weirton.

The window in which CST might ship to Weirton is also limited since it has plans to increase its own hot-rolled sheet capacity by 2.5 million tons by 2008, the same amount as its slab

[53] Dofasco is the fourth-largest producer of auto sheet in the North American market, at roughly 1 million tons, behind the multi-site operations of Mittal Steel, U.S. Steel and AK Steel. See Peter Marsh, Massive Bids on Table as Giants Fight for Dofasco, Financial Times (January 13, 2006) (Attachment 4).

[54] According to long-time steel analyst Charles Bradford, Sparrows Point (''doesn't have those (automotive) grades.'' Scott Robertson, Mittal Sparrows Point Mill May Be On Action Block, American Metal Market (June 2, 2006) (Attachment 5).

[55] 2005 Directory of Iron and Steel Plants, Association for Iron and Steel Technology (2005) at 98–101 (listing flat-rolled assets) (Attachment 6). Dofasco Tubular Products is the largest and most diversified producer of tubular products in North America. See *http://www.dofascotube.com/Default.htm* (Attachment 3).

[56] Diana Kinch, CST to Hike Slab Sales to Dofasco, American Metal Market (March 22, 2006) (Attachment 29).

[57] ITC Prehearing Staff Report, Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Inv. Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–328, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review) (September 25, 2006) at Table CORE–III–8 (Attachment 43).

[58] Id. at Table CTL–III–9.

[59] Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia, Inv. Nos. 701–TA–384 and 731–TA–806–808 (Review), USITC Pub. 3767 (April 2005) at Table III–11 (Attachment 44).

[60] Tin and Chromium Coated Steel Sheet from Japan, Inv. No. 731–TA–860, USITC Pub. 3860 (June 2006) at Table III–8 (Attachment 38).

[61] Id.

capacity expansion.[62] Between servicing this new hot-rolled capacity and other profitable global accounts, CST would be very reluctant to allocate slab for supply to Weirton. Under the circumstances, as a rational economic actor seeking to maximize profits, there is no justification for Mittal to ship slabs from CST to Weirton.

B. Divesting Sparrows Point Will Have an Adverse Impact on Competition in the Medium to Long Term

From the standpoint of consumer impact, the divestiture of Sparrows Point is, at best, a highly risky policy option. As detailed in the chart below, Silgan estimates that, prior to the Mittal-Arcelor merger, the HHI for the Eastern U.S. tin industry was 3058; following the merger, Silgan estimates that the HHI will be 3446. Assuming that Sparrows Point is divested and that such divestiture neither adversely impacts Weirton's viability nor alters Sparrow Point's commitment to tin, the HHI would fall to 2836.[63]

FIGURE 9.—WEIRTON AND SPARROWS POINT HHI ANALYSIS

	HHI impact
Pre-merger	3058.
Post-merger (no divestiture)	3446.
Remedy–Divest Sparrows Point	2836 (if both W & SP survive). 3421 (if Weirton fails). 3495 (if SP does not maintain its tin operations).

Regrettably, the necessary conditions for an improvement in the concentration metric (both Weirton and Sparrows Point surviving upon divestiture) are unrealistic and not likely to materialize. As explained above, the divestiture of Sparrows Point will significantly threaten the reliable supply of quality slab to the Weirton facility and hence will jeopardize Weirton's viability. While Weirton would not likely fail immediately, the lack of reliable captive slab supply will result in the exit of Weirton from the tin industry. Such exit from the industry would cause the HHI to rise to 3421. Said differently, if the divestiture of Sparrows Point results in Weirton failing, the Sparrows Point divestiture would be totally ineffectual in restoring competitive balance to the tin industry.

Further weakening the benefits of a Sparrows Point divestiture is the question of Sparrows Point's commitment to the tin market. As discussed, Sparrows Point has never operated as a stand-alone facility and is not only likely to invest insufficiently in making its tin lines world class. If a stand-alone Sparrows Point is not committed to its tin facility, the HHI would be 3495. Again, this implies that the Sparrows Point divestiture would be totally ineffectual in restoring competitive balance to the tin industry.

In sum, the divestiture of Sparrows Point is a risky gambit. The Department of Justice's competition policy should not be based on hope and a prayer. If the DOJ believes that either of the above two scenarios has more than a one in two chance of occurring, the expected result of a Sparrows Point divestiture is a less competitive market.

Conclusion

For all the foregoing reasons, we ask that the Department adopt the following approach in designing an appropriate remedy to address the reduced competition in the tin mill steel market.

- First, the Department should make every effort to accomplish the divestiture of Dofasco.
- Second, if immediate divestiture is not possible, Silgan strongly recommends the consent decree be modified to wait the five years reportedly necessary to eliminate any existing legal impediments to the divestiture of Dofasco. An independent Dofasco in five years is better than any of the other alternatives for preserving competition.

Respectfully submitted,

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List of Attachments

1. *United States* v. *Mittal Steel Company,* Proposed Final Judgment and Competitive Impact Statement, 71 Fed. Reg. 50084, 50085, 50093 (August 24, 2006).
2. World Steel Dynamics (2005).
3. *http://www.dofascotube.com/Default.htm.*
4. *Massive Bids on Table as Giants Fight for Dofasco,* Financial Times (January 13, 2006).
5. *Mittal Sparrows Point Mill May Be On Auction Block,* American Metal Market (June 2, 2006).
6. Excerpts from *2005 Directory of Iron and Steel Plants,* Association for Iron and Steel Technology (2005).
7. *The Strange Case of Weirton Steel,* MakingSteel.com (April 25, 2006).
8. *Fewer Blast Furnaces, But Higher Productivity,* New Steel (November 1996).
9. *See How a Blast Furnace Works,* AISI.
10. *Ironmaking Process Alternative Screening Study*—Volume I, Summary Report, Lockwood Greene study for the Department of Energy (Oct. 2000).
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12. *Mittal Steel USA Works to Restore Furnace at Sparrows Point,* PRNewswire (July 14, 2006).
13. *Ispat Inland Accelerates Maintenance Outages,* Ispat Inland Press Release (March 7, 2005).
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15. *High Production Costs Hamper AK Steel's Middletown Works,* Steel Business Briefing (Aug. 10, 2006).
16. *Dofasco Seals $251m Purchase of Canadian Iron Ore Miner QCM,* American Metal Market (July 26, 2005).
17. *Force Majeure Clobbers Coke-Short Steelmaking: Weirton Eyes Option, Blast Furnace Closure,* American Metal Market (Jan. 9, 2004).
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20. *The shipping news & forecast: District ports face many competitive challenges, but whether they sink or*

[62] Diana Kinch, Arcelor Brasil Sets Sights On New Slab Plant, American Metal Market (May 1, 2006) (Attachment 28)

[63] The full analysis is provided at Attachment 41 (''HHI Impact of Alternative Divestiture Scenarios'').

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22. Testimony of Bill Stephans, Division Manager for TMP at Mittal Steel USA's-Weirton Facility from *Hearing Transcript, In the Matter Of: Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Review) (April 27, 2006).

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25. *Brazil Slab Hits $555/T In Tight Export Market*, American Metal Market (June 5, 2006).

26. *Wheeling-Pittsburg Makes Loss, Despite Rising Market*, Steel Business Briefing (May 11, 2006).

27. *Esmark To Shut Wheeling-Pitt BF If Bid Succeeds*, Steel Business Briefing (Aug. 23, 2006).

28. *Arcelor Brasil Sets Sights On New Slab Plant*, American Metal Market (March 22, 2006).

29. *CST to Hike Slab Sales to Dofasco*, American Metal Market (March 22, 2006).

30. *Gerdau Acominas Charging Into Slab Mart*, American Metal Market (June 30, 2006).

31. *CSA Steel Project Receives License*, American Metal Market (July 6, 2006).

32. *North America at Top of TK's Agenda*, American Metal Market (August 11, 2006).

33. *Groundwork Laid For Brazil's Ceara Slab Project*, American Metal Market (September 1, 2006).

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35. *Brasil's Usiminas Casts Sights Abroad For New Slab Project Partner*, American Metal Market (August 29, 2006).

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37. *Tin and Chromium Coated Steel Sheet from Japan*, No. 731–TA–860 (Review), USITC Pub. 3860 (June 2006) at V–8.

38. *Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Review), USITC Pub. 3860 (June 2006) at Table III–8.

39. *Mittal Shows Little Interest in Weirton Furnace Sale*, American Metal Market (May 5, 2006).

40. *Mittal Plans to Sell Dofasco, Hecht Waits for Weirton*, Steel Business Briefing (August 16, 2006).

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42. ''Probability that Divestiture Will Improve Competition''.

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44. *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia*, Inv. Nos. 701–TA–384 and 731–TA–806–808 (Review), USITC Pub. 3767 (April 2005) at Table III–11.

Attachment 1—*United States* v. *Mittal Steel Company*, Proposed Final Judgment and Competitive Impact Statement 71 FR 50084, 50085, 50093 (August 24, 2006)

The attachment is available in the **Federal Register**, 71 FR 50084.

Attachment 2—World Steel Dynamics (2005)

POSITIONING OF 23 WORLD-CLASS STEELMAKERS AS OF JUNE 2005

[Version A—by Factor Weight]

1=least favorable [1] 10=most favorable [1]

		Arcelor E.U	Anshan Steel China	Bao-Steel China	Blue-Scope Australia	China Steel Taiwan	Corus UK	CSN Brazil	CST Brazil	Dofasco Canada	Gerdau Brazil	JFE Japan
Annual Steel Shipments (million tons)	.....	53	10	19	8	12	23	5	5	5	15	30
Factor	Weight (percent)											
1 Cash operating costs	10	6	8	8	8	7	5	10	10	6	7	6
2 Harnessing technological revolution	10	6	7	8	7	5	4	4	6	6	5	7
3 Profitability in 2000–2004	6	4	8	10	9	8	4	10	8	9	10	6
4 Balance sheet	6	7	4	8	8	10	8	7	5	7	9	7
5 Dominance country/region	6	4	10	10	4	3	2	8	8	3	7	2
6 Domestic market growth	5	6	7	8	7	5	4	4	6	6	5	7
7 Expanding capacity	5	3	10	9	6	3	2	6	10	3	8	3
8 Access to outside funds	4	7	6	10	9	9	5	6	9	9	8	8
9 Cost-cutting efforts	4	10	9	7	7	6	10	6	6	6	6	10
10 Downstream businesses	4	5	3	4	9	3	7	5	3	4	6	10
11 Environment and safety	4	9	9	9	9	9	9	9	9	9	9	9
12 Iron ore and coking coal mines	4	3	7	4	4	3	3	7	3	5	4	3
13 Liabilities for retired workers	4	6	6	8	6	6	10	7	10	7	8	6
14 Location to procure raw materials	4	6	7	8	8	8	8	7	8	6	5	8
15 Alliances, mergers, acquisitions and JVs	4	10	9	9	7	6	4	7	7	7	10	9
16 ''Pricing Power'' with large buyers	4	8	4	8	8	10	8	7	5	7	7	8
17 Threat from nearby competitors	4	5	4	5	8	8	5	7	6	6	7	7

POSITIONING OF 23 WORLD-CLASS STEELMAKERS AS OF JUNE 2005—Continued

[Version A—by Factor Weight]

1=least favorable [1] 10=most favorable [1]

		Arcelor E.U	Anshan Steel China	Bao-Steel China	Blue-Scope Australia	China Steel Taiwan	Corus UK	CSN Brazil	CST Brazil	Dofasco Canada	Gerdau Brazil	JFE Japan
18 Product quality	4	9	5	9	8	8	8	7	8	9	6	10
19 Skilled and productive workforce	4	8	5	7	8	8	8	7	9	10	8	10
20 Stock market performance (3-year)	4	9	9	9	9	9	9	9	9	9	9	9
Average Score		6.55	6.85	7.90	7.45	6.70	6.15	7.00	7.25	6.70	7.20	7.25
Ranking [1]		18	14	4	7	15	23	13	9	15	11	9
Weighted-Average Score		6.07	6.75	7.61	7.05	6.22	5.60	6.80	6.98	6.19	6.81	6.66
Ranking [1]		20	12	4	7	18	23	10	8	19	9	13

[1] Many of these rankings are subjective and some are duplicative.
[2] Plants in many countries, includes Ispat International.
Source: WSD estimates.

POSITIONING OF 23 WORLD-CLASS STEELMAKERS AS OF JUNE 2005

[Version A—by Factor Weight]

1=least favorable [1] 10=most favorable [1]

	Mittal [1] Steel	Maanshan China	Nippon Steel Japan	Nucor USA	POPSO S.K.	SDI USA	Severstal Russia	Shagang China	Tata Steel India	Thyssen/ Krupp Germany	U.S. Steel USA	Wuhan China	Avg.
Annual Steel Shipments (million tons)	62	8	30	20	34	4	13	5	5	19	21	10	18
Factor:													
1 Cash operating costs	7	7	6	8	8	8	10	6	10	5	6	7	7.4
2 Harnessing technological revolution	7	6	7	10	9	9	6	7	7	6	5	6	6.5
3 Profitability in 2000–2004	7	7	6	7	10	9	9	8	10	4	4	8	7.6
4 Balance sheet	8	6	7	6	10	4	8	4	8	6	6	6	7.0
5 Dominance country/region	6	10	2	2	6	2	8	10	10	2	2	10	5.5
6 Domestic market growth	7	6	7	10	9	9	6	7	7	6	5	6	6.5
7 Expanding capacity	8	10	3	10	4	10	9	10	10	5	3	9	6.6
8 Access to outside funds	10	6	8	10	10	9	9	5	10	7	7	6	8.0
9 Cost-cutting efforts	10	9	9	6	6	6	6	6	8	8	8	8	7.5
10 Downstream businesses	5	7	10	10	7	6	7	2	5	10	3	2	6.0
11 Environment and safety	9	9	9	9	9	9	9	9	9	9	9	9	9.0
12 Iron ore and coking coal mines	7	5	3	.....	4	.....	10	3	10	3	7	3	4.9
13 Liabilities for retired workers	7	6	6	10	8	10	8	10	6	6	5	6	7.4
14 Location to procure raw materials	8	6	8	6	8	6	7	8	10	5	8	6	7.2
15 Alliances, mergers, acquisitions and JVs	10	7	7	10	8	10	8	8	9	9	10	8	8.2
16 ''Pricing Power'' with large buyers	8	4	8	4	10	3	9	3	8	7	5	4	6.8
17 Threat from nearby competitors	6	4	7	4	10	4	8	4	7	5	5	4	6.0
18 Product quality	7	5	10	7	10	7	6	5	8	9	9	6	7.7
19 Skilled and productive workforce	8	5	10	10	10	10	7	7	8	9	9	5	8.2
20 Stock market performance (3-year)	10	9	9	9	9	9	10	5	9	9	9	9	8.9
Average Score	7.75	6.70	7.10	7.79	8.25	7.37	8.00	6.35	8.45	6.50	6.25	6.40	7.16
Ranking [1]	6	15	12	5	2	8	3	21	1	19	22	20	.....
Weighted-Average Score	7.21	6.52	6.54	7.10	7.87	6.75	7.65	6.27	8.11	5.93	5.70	6.29	6.76
Ranking [1]	5	15	14	6	2	11	3	17	1	21	22	16	.....

[1] Many of these rankings are subjective and some are duplicative.
[2] Plants in many countries, includes Ispat International.
Source: WSD estimates.

Attachment 3—*http://www.dofascotube.com/Default.htm*

The attachment is available at the following Web site, *http://www.dofascomarion.com/Default.htm*

Attachment 4—*Massive Bids on Table as Giants Fight for Dofasco,* Financial Times (January 13, 2006)

Massive Bids on Table as Giants Fight for Dofasco

Scarcity and an iron ore mine drive the battle between Arcelor and ThyssenKrupp for the Canadian steelmaker, says Peter Marsh.

By Peter Marsh
13 January 2006
Financial Times
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The global steel industry has been through a transformation as spectacular as any to have affected the business world in the past few years.

That is confirmed in the bidding battle between Arcelor and ThyssenKrupp, two giants of the European steel industry, for Dofasco, a mid-sized Canadian steelmaker that both companies are valuing at more than USDollars 4bn.

Luxembourg-based Arcelor is considering whether to make a fresh bid for the Ontario company higher than that tabled by its German rival—and other companies could still enter the fray. Just before Christmas, Lakshmi Mittal, chairman and majority owner of Mittal Steel, the world's biggest steelmaker, indicated he had not ruled out making an offer for Dofasco, even though such a move is considered unlikely. Mr. Mittal has been a prime initiator of steel industry mergers since 2000 that have increased the size of the main players in the sector and put them in a much stronger position to dictate terms to customers. At the same time, steel prices have rocketed due to rapacious demand from China as its economy has expanded to suck in about 30 percent of world steel output.

As a consequence, share prices of quoted steel companies in recent years have been among the best performers on global stock markets, despite a downturn in recent months. Thyssen's most recent January 3 offer of CDollars 63 a share values Dofasco at CDollars 4.9bn (USDollars 4.2bn). It was pitched at the same level as a rival bid by Arcelor—which started the effort to acquire Dofasco through a CDollars 56-a-share bid in November. But the Canadians regard Arcelor as a predator and the Dofasco board is backing the Germans, at least in part because if it sells to another suitor, Dofasco would have to hand Thyssen a CDollars 100m break-up fee.

Mike Locker, of Locker Associates, a US steel consultancy, says the magnitude of both bids is ''eye-popping'', given that Dofasco is a relatively small player with production last year estimated at about 5m tonnes. In the first nine months of 2005, Dofasco turned in net income of CDollars 142.6 m on sales of CDollars 2.69bn, with the earnings figure well down on the CDollars 280.1m net income recorded in the first nine months of 2004, a result of tougher conditions generally in the steel industry in the early part of last year.

But in spite of the earnings drop, Mr. Locker still thinks the high price of the offers can be justified, given Dofasco's strong position in higher-value segments of the steel industry—particularly in flat galvanized sheet used for car bodies. About 75m tonnes of this material—which has to be made using special processes so it is especially shiny and resistant to corrosion—is made each year, with Arcelor being the world leader with about 10m tonnes.

While Thyssen is well behind with 5m tonnes, both are keen to expand in this field in North America—where Dofasco is the fourth biggest producer with output estimated at about 1m tonnes a year. Mittal Steel and US Steel are the two largest producers of automotive sheet steel in the region—with global output of 6m tonnes and 5m tonnes respectively, most of this coming from their US plants.

The third player in North America, with 2m tonnes, is AK Steel—which has been in financial difficulties and is burdened by healthcare and pensions liabilities estimated at Dollars 3.5bn. ''Since neither Mittal nor US Steel is available, and AK is probably ruled out, there is a scarcity value about Dofasco (in automotive steel) which inevitably increases its price,'' says Mr. Locker.

Another attraction of the Canadian company is its ownership of QCM, an iron ore mine in Quebec. This raw material has been in short supply in the past two years, with a consequent big increase in price.

Michelle Applebaum, of Michelle Applebaum Research, an Illinois-based consultancy, says ''roughly a third'' of the money Arcelor and Thyssen are prepared to pay for Dofasco could be linked to ownership of the mine—which produces about 16m tonnes of ore a year, most for sale to other steelmakers.

Attachment 5—*Mittal Sparrows Point Mill May Be On Auction Block,* American Metal Market (June 2, 2006)

Mittal Sparrows Point Mill May Be on Auction Block

By Scott Robertson

PITTSBURGH—Mittal Steel Co. NV reportedly is shopping its integrated steel mill in Sparrows Point, Md., as part of what appears to be a contingency plan if its proposed acquisition of Arcelor SA, Luxembourg, falls through.

Executives from ThyssenKrupp AG, which is in line to buy Dofasco Inc. if Mittal acquires Arcelor, toured the Sparrows Point plant last week and have expressed interest in it, according to Mittal sources.

Mittal reportedly is entertaining a sale of the Sparrows Point plant, formerly owned by Bethlehem Steel Corp. and later by International Steel Group Inc., in an antitrust maneuver.

Mittal is interested in acquiring Arcelor and has reached an agreement to sell Dofasco—currently held in a trust created by Arcelor—to ThyssenKrupp if it succeeds in getting Arcelor.

Arcelor, however, has reached an agreement to acquire Russian steel producer OAO Severstal that could take Mittal out of the picture. The possible sale of the Sparrows Point plant to ThyssenKrupp might be a contingency plan should Mittal be unable to complete the promised sale of Dofasco as part of an Arcelor takeover.

A spokesman for Mittal Steel USA Inc., Chicago, said Thursday that its Rotterdam-based parent expects to complete the Arcelor purchase and to move forward with its sale of the Dofasco mill in Hamilton, Ontario, to ThyssenKrupp. In that case, he said, ''no other moves would be necessary.''

The U.S. Department of Justice already has granted conditional approval to the Mittal merger with Arcelor. The conditions stipulate that it dispose of certain operations—interpreted to be Dofasco.

Calls to managers at the Sparrows Point plant, to Mittal Steel offices in London and to ThyssenKrupp in Dusseldorf, Germany, were not returned by late Thursday.

It is not unusual for representatives of steel producers to tour each other's plants, so in some respects a ThyssenKrupp tour of Sparrows Point could be viewed as something done in the normal course of business. The appearance of ThyssenKrupp representatives at the plant, however, sparked widespread industry chatter that the plant was on the block and

could be part of a Mittal-ThyssenKrupp contingency plan.

When it announced last month it was improving its bid for Arcelor, Mittal Steel said it would consider selling other North American assets if it could not complete the sale of Dofasco to ThyssenKrupp.

Several sources said that while the contingency plan idea might be true, a ThyssenKrupp acquisition of Sparrows Point would not mesh with its goals for the North American market. ThyssenKrupp, which lost out in a bidding war with Arcelor for Dofasco earlier this year, in the past has been rumored to be interested in acquiring AK Steel Corp., Middletown, Ohio, or U.S. Steel Corp., Pittsburgh, in an effort to gain entry to the North American automotive market.

''Sparrows Point doesn't have those (automotive) grades,'' longtime steel industry analyst Charles Bradford said. ''If (Mittal) were going to get rid of something in North America, I don't think it would be Sparrows Point. I think if they had their druthers, they'd sell Weirton, but that does not meet what ThyssenKrupp needs, either.

''I think it would be more likely that they would get rid of Inland,'' he said, referring to the former Ispat Inland plant in East Chicago, Ind. that is now part of Mittal's Indiana Harbor division. ''It used to be said that Inland and Dofasco were like brother and sister in terms of the things they did, so that would make more sense to me. Getting rid of Sparrows Point does not make sense from an antitrust perspective because it is not related to automotive like Inland and Dofasco are.''

Bradford added that ThyssenKrupp's presence in the global stainless steel market and its ownership of ThyssenKrupp Budd Co., an automotive parts manufacturer in Troy, Mich. also make an acquisition of Sparrows Point unlikely.

''They (Budd) are a parts-maker and chassis maker,'' Bradford said. ''Again, that does not fit with what Sparrows Point does. But you always go and take a look whenever a competitor gives you that opportunity, you take advantage of it.''

Another market source close to the Sparrows Point plant said the visit could be nothing more than a smokescreen. ''ThyssenKrupp announced a few days ago it will downsize its steel business,'' he said. ''So while an outpost in North American could be good for ThyssenKrupp, since they won't get Canada's Dofasco (in the case of a Severstal-Arcelor merger), there might be less to this than meets the eye.

''Maybe this was done on behest of Mittal to raise interest among other (potential) investors,'' he said. ''I know ThyssenKrupp and Mittal are pretty tight at the moment.''

Attachment 6—Excerpts from *2005 Directory of Iron and Steel Plants*, Association for Iron and Steel Technology (2005)

IRON AND STEEL PLANT FACILITIES

[CSN USA—Cont'd]

Identification	Capacity, tons/year	Bases	Furnaces	Atmosphere
Batch Annealing				
	308,000	12 4-high stack	6	100% H_2

Identification	Nominal width, in.	Capacity, tons/year	Product size, thickness × width, in.		Configuration
			Low C	Motor Lam.	
Temper/Skinpass Mill					
	Max width: 73 untrimmed, 72 trimmed. Min. width: 34	600,000	0.012 min 0.100 max	0.025 min 0.040 max	Single stand 4-h. Dynamic Shape Roll. 85 in. max OD. 38 in. min OD. 85,000 max. wt.

Type	Capacity tons/year	Product thickness × width, in.			Differential coating
		Cold roll	Hot roll	Width	
Galvanizing					
Hot dip	350,000	min. 0.012 max. 0.080.	min. 0.050 max. 0.130.	min. 34 max. 73.	Yes.

Identification	Unit capacity, tons/year	No. of units	Product size range	Configuration
Slitting				
Pro-Eco	.....	1	0.010–0.175 × 72 85,000 max wt.	Driven slit and slitter assist tension unit Kor-flex leveler.

DOFASCO INC.

Hamilton, Ont., Canada

Battery identification	Type	Battery capacity, tons/year	Ovens per battery	Oven dimensions, ft-in.			Byproducts recovered
				Height	Width, avg.	Length	
Cokemaking							
1	Gun	148,607	25	13–0	17	39–11⅛	Tar, ammonium sulfate, light oil, sulfur.
2	Gun	208,050	35	13–0	17	39–11⅛	
3	Gun	267,493	45	13–0	17	39–11⅛	
4	Gun	322,478	53	13–0	17	39–61⅛	Tar, anhydrous ammonia, light oil, hydrogen.
5	Gun	322,478	53	13–0	17	39–6⅛	
6	Compound/underjet	402,412	35	20–5/32	17	48–1½	

Iron and Steel Plant Facilities

Identification	Capacity		Total height, ft-in.	Hearth dia. ft-in.	Working vol. cu. ft	Injectants	No. of stoves
	tons/day	tons/year					
Blast Furnace							
No. 2	2650*	758,300	108–9**	20–9	32,600	Oil, oxygen	3
No. 3	2750*	846,600	108–10½**	21–6	31,900	Oil, oxygen	2
No. 4	4850*	1.4 million	118–9¾**	28–0	56,320	Oil, oxygen	3

* Instantaneous smelting rate.
** lip ring to foundation pad.

Shop Identification	Process	Capacity, tons/year	No. of vessels	Heat size, tons	Gas cleaning
Steelmaking—Oxygen					
	K–OBM	2.75 million	1	330	Scrubber and screen.

Process	Capacity, tons/year	No. of vessels	Heat size, tons	Gas cleaning	Transformer rating, MVA
Steelmaking—Electric Arc Furnace					
Twin-shell, AC	1.35 million	1	180	Baghouse	120

Type	Total capacity, tons/year	No. of units	Heat size, tons	Injectants
Vacuum Degassing				
Tank	1.5 million	1	290	Aluminum for deoxidation after vacuum.

Total capacity, tons/year	No. of units	Heat size, tons	Injectants	Transformer rating, kVA
Ladle Metallurgy				
2.37 million (aim)	1 reheat furnace, 2 high-flow stirring stations, 2 deslag stations.	330 (avg.)	Nil	40,000
1.35 million	1 reheat furnace to handle two ladle cars (twin-shell).	180	1	20,000

Capacity, tons/year	Strands	Ladle capacity, tons	Product size range, in.	Shroud
Continuous Casting				
2.75 million (aim)	2	300	8.5 × 30.5–63 × 177–374	Argon
1.35 million	1	180	8.5 × 30.5–63 × 177–374	Argon.

Mill served	Type	No. of furnaces	Capacity, tons/hr/furnace	Hearth dimensions
Reheating Furnaces				
No. 2 hot strip mill	Walking beam	2	400	47.4 × 12.0 m

IRON AND STEEL PLANT FACILITIES

[DOFASCO INC.—Cont'd]

Nominal width, in.	Capacity, tons/year	Finished size, thickness × width, in.	No. and configuration	
			Roughing stands	Finishing stands
Hot Strip Mill				
68	3.2 million	0.060–0.500 × 30–62	2-hi reversing with attached edgers. Horizontal 54½ × 72, vertical 42 × 43½.	7-stand, 4-hi, 30 and 60 × 68.

Identification	Capacity, tons/year	Strip thickness × width, in.	Acid used
Pickling			
No. 2	660,000	0.075–0.110 × 24–56	HCl.
No. 3	1,100,000	0.075–0.200 × 24–66	HCl.
No. 4	750,000	0.055–0.275 × 24–62	HCl.
CPCM	1,000,000	0.075–0.215 × 24–62.5	HCl.

Identification	Nominal width, in.	Capacity, tons/year	Finished size, thickness × width, in.	Configuration
Cold Reduction Mill				
66 in	66	260,000	0.0195–0.1650 × 24–61	4-hi, single-stand reversing.
No. 1 tandem	56	450,000	0.0072–0.0456 × 24–49	4-hi, 5-stand tandem.
No. 2 tandem	72	1,400,000	0.011–0.0125 × 24–61.5	4-hi, 5-stand tandem.
CPCM	68	1,000,000	0.008–0.100 × 23.5–62	4-hi, 5-stand continuous.

Identification	Capacity, tons/year	Strip thickness × width, in.	Fuel type
Continuous Annealing			
No. 2 tower anneal	280,000	0.0077–0.036 × 40 max.	Electric.
No. 1	80,000	0.007–0.025 × 18–48	
No. 2	110,000	0.007–0.040 × 18–48	

Identification	Capacity, tons/year	Bases
Batch Annealing		
Sheet mill batch	575,000	10 × 60-in. radiant tube, HNX, single stack. 112 × 72-in. radiant tube, HNX, single stack. 48 × 72-in. direct-fire, HNX, single stack. 4 × 86-in. direct-fire, 100% H_2, single stack.
Open coil anneal	52,200	3 × 108-in. radiant tube, HNX, single stack. 11 × 114-in. radiant tube, HNX, single stack. 2 × 114-in. direct-fire, HNX, single stack. 16 × 114-in. radiant tube, HNX, single stack.

Identification	Nominal width, in.	Capacity, tons/year	Product size, thickness × width, in.	Configuration
Temper/Skinpass Mill				
42 in.	42	317,200	0.0061–0.0350 × 20–39.5	4-hi, 2-stand.
56 in.	56	341,000	0.0051–0.0480 × 20–52	4-hi, 2-stand.
No. 1	66	372,800	0.018–0.135 × 20–61	4-hi, single-stand.
No. 2	66	475,900	0.018–0.135 × 20–61	4-hi, single-stand.
No. 5–56	56	300,000	0.012–0.040 × 24–50	4-hi, single-stand.

Type	Capacity, tons/year	Product thickness × width, in.	Differential coating
Galvanizing			
No. 1 hot dip	170,000	0.012–0.080 × 24–48	Galvalume/galvanize.
No. 2 hot dip	320,000	0.024–0.0168 × 24–60	Galvanneal/galvanize.
No. 3 hot dip	254,000	0.010–0.080 × 24–52	Galvanneal/galvanize.
No. 4 hot dip	305,000	0.012–0.080 × 24–60	Galvanize.
DJG hot dip	400,000 (Dofasco 50% ownership)	0.0157–0.0787 × 24–72	Galvanneal/galvanize.
DSG hot dip	450,000 (Dofasco 80% ownership)	0.0196–0.0787 × 36–72	Galvanneal/galvanize.
Sorevco hot dip	125,000 (Dofasco 50% ownership)	0.012–0.0787 × 24–50	Wipe coat/galvanize.

Type	Capacity, tons/year	Product thickness × width, in.
Tinplate		
No. 2 E line	144,600	0.0055–0.0230 × 18–40
No. 3 E line, tin/chrome	273,200	0.0055–0.0230 × 58–43

Identification	Unit capacity, tons/year	No. of units	Product size range	Configuration
Slitting				
48 in.	64,000	1	19–48.	
60 in.	350,000	1	0.059–0.100 × 9–64 entry to 2 min. out.	
62 in.	300,000	1	0.100–0.375 × 17–64 entry to 2¼ min. out.	

Unit	Capacity, tons/year	No. of units	Product size range
Miscellaneous			
Prep Line	320,000	1	0.005–0.023
No. 1 Cleaning Line	220,000	1	0.006–0.026
No. 2 Cleaning Line	360,000	1	0.077–0.140 × 18–68
Rewind Line	200,000	1	0.010–0.100 × 25–62
No. 3 Shear Line	50.000	1	0.0081–0.048 × 12.5–40
No. 5 Shear Line	150,000	1	0.014–0.135 × 12.5–67

IRON AND STEEL PLANT FACILITIES

[International Steel Group—Cont'd.]

Type	Capacity, tons/year	No. of units	Heat size, tons	Injectants
Vacuum Degassing				
RH 5-stage steam ejection unit	1 million	2	340	Argon, aluminum

Type	Capacity, tons/year	No. of units	Heat size, tons	Injectants
Ladle Metallurgy				
Ladle stirring and Trim Station.	3,000,000	1	340	Argon, carbon, aluminum, manganese and scrap.
CAS–OB	3,000,000	1	340	Argon, oxygen, nitrogen, carbon aluminum, manganese, titanium.

Capacity, tons/year	Strands	Ladle capacity, tons	Product size range, in.	Shroud
Continuous Casting				
3,000,000	4	340	32–48 × 9 × 400 max.	Argon gas submerged ladle shroud; Fused silica and alumina graphite.

Mill served	Type	No. of furnaces	Capacity, tons/hr/furnace	Hearth dimensions, ft
Reheating Furnaces				
54-in. hot mill	Walking beam	2	350	35 × 155

Nominal width, in.	Capacity, tons/year	Finished size, thickness × width, in.	Number and configuration	
			Roughing stands	Finishing stands
Hot Strip Mill				
54	3.8 million	0.056–0.50 × 23–49	1 4-hi reversing, 1 4-hi continuous.	7-stand, 4-hi.

Identification	Nominal width, in.	Capacity, tons/year	Finished size, thickness × width, in.	Configuration
Cold Reduction Mill				
No. 7 tandem	52	725,000	0.0065–0.0359 × 22½–48	5-stand, 4-hi
No. 8 tandem	52	699,000	0.0193–0.138 × 22½–48	4-stand, 4-hi
No. 9 continuous tandem	52	991,000	0.0065–0.060 × 24½–48	5-stand, 4-hi

Attachment 7—*The Strange Case of Weirton Steel,* MakingSteel.com (April 25, 2006)

The attachment is available at the following Web site, *http://www.makingsteel.com/weirton.html*

Fewer Blast Furnaces, But Higher Productivity

The number of U.S. blast furnaces has dropped from 83 to 43 in the past decade, but PCI and natural gas have helped raise output from the survivors by 25 percent

By William T. Hogan, S.J., and Frank T. Koelble

Father William Hogan and Frank Koelble of Fordham University's Industrial Economics Research Institute recently conducted an extensive study of the current capacity, condition, and outlook of coke ovens and blast furnaces in the U.S. In this two-part study, New Steel looks this month at blast furnaces and next month at coke ovens and at how steelmakers are boosting productivities and responding to new environmental regulations.

A quiet recasting of how the U.S. iron and steel industry makes its iron has been yielding major gains in productivity and major benefits to the environment. Driving this progress has been not some new, ''direct'' technology but the tried-and-true blast furnace, the dominant ironmaker for more than a century. Today's surviving blast furnaces still support some 60 percent of all U.S. steelmaking activity by producing much more iron and consuming much less coke than they did even a few years ago. And yet, because of impending environmental standards on cokemaking, the future of the blast furnaces is anything but assured.

On Jan. 1, 1998, 90 percent of all U.S. cokemaking capacity will have to meet much stricter standards under the Clean Air Act. Five years later, on Jan. 1, 2003, an initial group of coke batteries will have to meet a new public-health standard, which has not yet been promulgated.

As the two deadlines force more coke plants to close, the current deficit in domestic coke supply is likely to widen appreciably. This could constrain blast-furnace output and offset the recent improvements in productivity, which have allowed for fewer furnaces to sustain and even increase the supply of steelmaking iron.

The U.S. blast-furnace population has declined as the U.S. steel industry has undergone one of the most drastic restructurings in the history of industrial enterprise. At one point, nearly one-third of the industry's raw-steel capacity was downsized out of existence.

The blast-furnace-based integrated steelmakers were hit the hardest. Since 1975, the number of integrated mills with blast furnaces has fallen from 48 to 21. The number of blast furnaces in the U.S. has plummeted from 197 to 43. The most recent shutdown was a year ago, when Bethlehem Steel shut down its blast furnace, basic oxygen furnaces (BOFs), and electric furnace in Bethlehem, Pa., in Nov. 1995 (Steel Forum, Jan. 1995).

Electric furnaces accounted for 40 percent of U.S. steel production last year, up from 28 percent in 1980 and 34 percent in 1985. The growth of scrap-using EAFs has meant that ferrous scrap now accounts for more of U.S. steelmakers' metallics supply than blast-furnace iron.

BOFs accounted for 60 percent of steel production last year—virtually the same as in 1980. BOFs use on average 77-percent blast-furnace iron and 23-percent scrap. Much of the growth of the electric furnaces occurred at the expense of the open hearth, the now extinct process once used by integrated plants and phased out completely in 1991.

The Future Metallics Supply

The growth in blast-furnace productivity and in the output of scrap-based EAFs has helped U.S. steelmakers to have a viable metallics supply in recent years. But several trends do not bode well for the future supply of metallics feedstocks for American mills:

(1) Secular trends in U.S. steel demand and production have shifted from decline to renewed growth. Increasing quantities of both iron and scrap will be needed to support steelmaking over the long term.

(2) Recent levels of U.S. coke and iron demand already have been taxing the limits of coke-oven and blast-furnace capacity.

(3) U.S. coke ovens are of advancing age. Although steelmakers have invested considerably in extending their useful lives, the stricter environmental regulations will make the coke ovens' future operation increasingly difficult and higher in cost.

(4) U.S. steelmakers are depending more on imports of coke and semifinished steel. This ultimately raises the costs of finished-steel output and undermines the U.S. iron and steel industry's long-term competitiveness. In the past, U.S. mills have imported coke and slabs mainly to alleviate temporary shortfalls in domestic coke, iron, and steel production.

(5) Despite advances in scrap-based steelmaking and in the substitution of scrap for iron, electric-furnace melting alone is incapable of meeting U.S. steel demand. Minimills are limited by the availability and cost of high-quality, low-residual scrap and purchased electricity as well as by restrictions on the types and qualities of steel it can produce without access to virgin iron units at an economical cost.

For these reasons steelmakers are investigating new, direct methods of producing iron, both in solid form as a high-quality complement to scrap and in molten form as an alternative to iron

from the blast furnace. However, at least for the next ten years, U.S. mills will implement such ironmaking alternatives on a relatively small scale in comparison to U.S. blast-furnace capacity.

Saving 350 Pounds of Coke per Ton of Iron

U.S. steelmakers currently are operating 40 blast furnaces with a combined annual ironmaking capacity of 61.2 million tons. In addition, three furnaces are designated as ''standby'' but are unlikely to operate again; these have a combined capacity rating of 2.7 million tons. This brings the total blast-furnace population to 43 units. (All tons in this article are net.)

U.S. steelmakers have eliminated 27 blast furnaces since mid-1990. In June 1990, there were 70 U.S. blast furnaces with a combined capacity of 75.3 million tons.

Most of the blast furnaces shut down in recent years were idled before shutdown. The number of idle furnaces has fallen from 35 in 1986 to three now. The active furnace population declined from 48 in 1986 to 40 in 1996; the total blast-furnace population declined from 83 to 43 during this period (see Table 2).

Despite the shutdown of 27 furnaces since June 1990, the ironmaking capacity of U.S. blast furnaces dropped during that period by just 11.4 million tons—half the capacity represented by the 27 abandoned furnaces. The difference was made up by major productivity gains at the blast furnaces that continue to operate.

While closing the least efficient furnaces, steelmakers now are concentrating ironmaking output at the fewer, more productive blast furnaces. The overall productivity of today's active furnaces is more than one-fourth higher than it was a decade ago. Daily output over the past decade has risen, on average, from 5.5 to nearly 7.0 tons per 100 cubic feet of working volume.

From 1975 to 1995, ironmaking coke needs were cut by more than one-fourth, saving some 350 pounds of coke per ton of iron. The quantity of coke required to smelt one ton of iron fell during this period from 1,222 pounds (0.611 ton) to 874 pounds (0.437 ton) (Table 3). Although the active blast-furnace population declined from 135 to 40 from 1975 to 1995, average yearly output per furnace increased from 590,000 to 1.4 million tons.

Much of the boost in productivity took place recently. It took some 150 pounds less coke to make a ton of iron in 1995 than it did in 1991.

One big reason for the higher productivity is that blast-furnace operators are injecting more supplemental fuels, primarily natural gas and pulverized coal. This not only has reduced coke consumption but also has increased iron output by making additional space available in the furnace to hold iron ore and other iron-bearing materials instead of the coke displaced. Steelmakers also are boosting iron output by:

- Charging scrap metal, direct-reduced iron (DRI), and self-fluxing iron-ore pellets into the blast furnaces;
- Optimizing such hot-blast conditions as temperature and contained oxygen; and
- Using new repair and maintenance techniques, including refractory gunning and grouting, to reduce maintenance downtime and significantly extend furnace campaigns between major relines, obviating the need for standby capacity.

The combined result of these advances has been not only to sharply reduce the coke rate since 1991 but also to boost the aggregate capacity of today's 40 still-active furnaces by some 10 million annual tons.

Leading Blast Furnaces

Acme, AK, National, and U.S. Steel are among the leaders in boosting blast-furnace productivities. Acme's A blast furnace at South Chicago has raised its ironmaking capacity by one-third to a current level of 3,200 tons/day. Acme did this by injecting natural gas at a rate of 250 pounds/ton of iron, by using self-fluxing pellets, and by raising the hot-blast temperature some 100 degrees F to 1,910 degrees F. Acme uses the stoves and hot-blast system of the B furnace to enhance the hot blast on A; this is a primary reason Acme maintains B as standby capacity.

Acme operators eventually plan to raise throughput on the A furnace to more than 4,000 tons/day by injecting additional natural gas and adding scrap to the furnace charge. The increased iron output realized to date has been accompanied by a decline in the coke rate from just above 0.500 to a low of 0.365 ton of coke input ton of iron output.

AK Steel's two remaining blast furnaces, Amanda at Ashland, Ky., and No. 3 at Middletown, Ohio, also have made major productivity gains in the past few years. Employees at Amanda have increased the blast-furnace capacity by 49 percent by using pulverized-coal injection (PCI) at a rate of 200 pounds/ton of iron and by adding BOF slag and scrap to the iron-ore pellets charged.

Operators at the No. 3 furnace in Middletown have boosted capacity by 54 percent to a current level of 6,000 tons/day partly by injecting natural gas at a rate of 215 pounds/ton and using an enhanced burden that contains some 350 pounds/ton of hot-briquetted iron (HBI). The coke input rates have declined from 0.425 ton per ton of iron output at both blast furnaces a few years ago to 0.388 at Amanda in Ashland and 0.353 at No. 3 in Middletown.

A recent reline and upgrading of National's B furnace at Granite City, Ill., boosted its ironmaking capacity by 50 percent from 2,800 to 4,200 tons/day. Improvements included a new furnace top, a newly designed hearth, increased cooling and advanced process controls at the furnace, and a revamp of the stoves to raise the wind rate and hot-blast temperature.

U.S. Steel's four remaining blast furnaces at Gary, Ind., have raised their ironmaking throughput by an average of 30 percent while their combined input coke rate has fallen to 0.340 ton per ton of iron output. The productivity gains largely are due to the use of PCI in all four furnaces at injection rates that, averaged, currently lead the industry.

PCI vs. Natural Gas

Although they have used supplemental fuel injection for decades, U.S. ironmakers in recent years have aggressively increased their injection rates of natural gas and, more recently, pulverized coal. All 40 active blast furnaces today inject either one or a combination of fuels, including natural gas, pulverized coal, oil, tar, and coke-oven gas. Twenty-five furnaces inject natural gas at rates of up to 250 pounds per ton of iron produced; 12 furnaces use PCI at rates of up to 375 pounds/ton.

The volume of natural gas consumed by U.S. blast furnaces has increased nearly 90 percent since 1990, from 56.7 million to 106.5 million cubic feet annually. The acceptance of natural gas stems from its ready availability, its relatively low price in recent years, and its adaptability to injection without major capital or startup costs. Assuming a starting coke input rate of 0.500 ton per ton of iron output (or 1,000 pounds/ton), natural-gas injection has been proven by some mills to be capable of displacing about 25 percent of coke requirements—and maybe more, depending on the outcome of current tests sponsored by the Gas Research Institute.

Although 250 pounds/ton is the highest natural-gas injection rate currently employed, the average rate is a much lower 125 pounds/ton. At most blast furnaces, injection is limited to

between 100 and 200 pounds, because higher volumes unfavorably lower flame temperatures and furnace productivity.

Higher gas-injection rates require increased oxygen enrichment and higher hot-blast temperatures; this is not attainable at some blast furnaces because of limitations in oxygen processing and the capabilities of their hot-blast systems. In such cases, injecting more natural gas would require significant investments to upgrade stoves and other hot-blast components and to make more oxygen available.

Compared to natural gas, PCI has a much less significant impact on process temperatures and affords a greater opportunity for lowering the coke rate. Steel mills have proven that PCI can replace 40 percent of a 1,000-pound coke requirement and can use lower-cost, lower-grade coals in place of the high-grade metallurgical coal needed for cokemaking.

The disadvantage of PCI is that, unlike natural-gas injection, it requires an initial investment of $40–50 million, approximately two-thirds of which can be required for coal preparation. Some blast-furnace operators already injecting 150 pounds or more of natural gas consider this too high a price to pay for increasing injection rates an additional 200 pounds or so by switching to PCI. However, most operators recognize that a commitment to natural gas leaves them vulnerable to a repeat of past run-ups in gas prices.

A number of steel companies with PCI projects have benefited from creative arrangements to reduce or avoid the financial costs of coal preparation. PCI at Inland, for example, is supported by a coal-preparation facility jointly funded by Inland and Northern Indiana Public Service Company. National will obtain pulverized coal for its Ecorse, Mich., blast furnaces from Detroit Edison Company.

Likewise, U.S. Steel reduced its PCI investment at Fairfield, Ala., by obtaining injectable coal from a company-owned mine some five miles away; the coal is transported in specially designed hopper cars to ensure it remains dry. USS/Kobe's PCI unit uses coal pulverizers provided by Ohio Edison.

PCI was developed in the early 1960s by AK Steel's forerunner, Armco. The company first used the new technology commercially at the Ashland plant's now abandoned Bellefonte blast furnace in 1963—the same year Armco completed construction of the Amanda furnace there. Ten years later, Armco installed PCI at Amanda and used it intermittently at varying injection rates until establishing in recent years an average rate of 200 pounds/ton.

Twelve blast funaces in the U.S. now are equipped for PCI (Table 4). Their injection rates range from 120 to 375 pounds/ton and average 254 pounds; blast furnaces can inject as much as 400 pounds/ton, industry managers say. Raising PCI rates will help blast furnaces face future constraints on cokemaking capacity.

Next year Gulf States and National Steel at Ecorse plan to install PCI. LTV is considering using PCI at its Cleveland and Indiana Harbor, Ind., plants, although it has not yet made a final decision.

Startups From 1909 to 1980

In the past few years, steelmakers have made some of their largest productivity gains at some of the oldest blast furnaces. U.S. Steel's Gary No. 8 furnace was built in 1909; rebuilt in 1943; disabled in April 1995 by an explosion near the top of its stack; and returned to service in Aug. 1995 after repairs and an unscheduled reline. No. 8 now produces 40 percent more iron than it did a few years ago. Equipped to use PCI at a rate of some 235 pounds/ton, the No. 8 blast furnace has seen its coke rate decline to the 0.390 level, which makes it more efficient at using coke than some of its counterparts built 60–70 years later.

Roughly 75 percent of the active furnace population is under 30 years of age, and 25 percent over (see Table 1). Startup dates of current U.S. blast furnaces range from the first decade of the century to 1980.

Clearly, blast furnaces that have been rebuilt and retrofitted to take advantage of technological improvements over the years have proven capable of operating indefinitely, and doing so very effectively. As the furnace population has been rationalized and the least efficient units removed from service, age has become a less relevant indicator of useful furnace life. Rather, the most significant influence on future decisions to maintain or discontinue blast-furnace ironmaking will derive from environmental regulations that result in additional cuts in U.S. cokemaking capacity.

Father William Hogan of the Society of Jesus has been a leading authority on the steel industry for the past 45 years. His numerous books include Productivity in the Blast Furnace, The Development of Heavy Industry in the Twentieth Century, Economic History of the Iron and Steel Industry in the United States (a five-volume work), and, most recently, Steel in the 21st Century: Competition Forges a New World Order (1994). The International Iron and Steel Institute has named only two honorary members since its founding in 1967: Fr. Hogan and Herbert Gienow.

Frank Koelble has worked as a steel economist and consultant for the past 30 years. His books include Purchased Ferrous Scrap, An Analysis of the U.S. Metallurgical Coke Industry, and Direct Reduction as an Ironmaking Alternative in the United States. Hogan is director and Koelble associate director of the Industrial Economics Research Institute of Fordham University (Bronx, N.Y.).

THE 43 BLAST FURNACES IN THE U.S. TODAY (TABLE 1)

Co. & capacity coke capacity (mil. net tpy) [1]	Plant	Furnace	Dia. [2]	Rate [3]	Year [4]	(net tpd) [5]
Acme (1.17)	S. Chicago, Ill	A	25′0″	0.365	1964R	3,200
		B	19′8″		1970R	(1,200)(S)
AK Steel (4.12)	Ashland, Ky	Amanda	33′5″	0.388	1963B	5,300
	Middletown, Ohio	3	29′4″	0.353	1984R	6,000
Bethlehem (8.53)	Burns Harbor, Ind	C	38′3″	0.359	1972B	7,030
		D	35′9″	0.397	1969B	6,590
	Sparrows Pt., Md	L	44′3″	0.430	1977B	9,750
Geneva (2.45)	Geneva, Utah	1	26′6″	0.448	1963R	2,275
		2	26′6″	0.450	1963R	2,250
		3	26′6″	0.455	1963R	2,180
Gulf States (1.08)	Gadsden, Ala	2	26′0″	0.490	1966R	2,965
Inland (5.24)	E. Chicago, Ind	5	26′6″	0.393	1974R	2,500
		6	26′6″	0.448	1976R	2,450
		7	45′0″	0.330	1980B	9,400

THE 43 BLAST FURNACES IN THE U.S. TODAY (TABLE 1)—Continued

Co. & capacity coke capacity (mil. net tpy) [1]	Plant	Furnace	Dia. [2]	Rate [3]	Year [4]	(net tpd) [5]
LTV (7.68)	Cleveland, Ohio	C1	27′6″	0.413	1972R	3,440
		C5	29′6″	0.407	1990R	4,150
		C6	29′6″	0.412	1989R	4,350
	Ind. Harbor, Ind	H3	29′6″	0.400	1988R	3,950
		H4	32′9″	0.421	1987R	5,150
McLouth [6] (1.24)	Trenton, Mich	1	28′6″		1956B	(3,000)(S)
		2	28′6″	0.475	1958B	3,400
National (6.46)	Ecorse, Mich	A	30′6″	0.470	1954B	3,450
		B	29′0″	0.463	1951B	3,350
		D	28′10″	0.440	1952B	2,800
	Granite City, Ill	A	27′3″	0.378	1956B	3,900
		B	27′3″	0.380	1961B	4,200
Rouge (2.62)	Dearborn, Mich	B	20′0″	0.375	1958R	2,275
		C	29′0″	0.385	1959R	4,900
U.S. Steel (12.00)	Fairfield, Ala	8	32′0″	0.420	1978B	6,000
	Gary, Ind	4	28′10″	0.368	1950R	3,700
		6	28′0″	0.388	1947R	3,750
		8	28′0″	0.390	1943R	3,800
		13	36′6″	0.290	1974B	9,425
	Mon Valley, Pa	1	28′10″	0.448	1943R	3,230
		3	25′3″	0.443	1930R	2,975
USS/Kobe (2.30)	Lorain, Ohio	3	28′6″	0.355	1959R	3,600
		4	29′0″	0.453	1962R	2,700
WCI (1.50)	Warren, Ohio	1	28′0″	0.470	1980R	4,100
Weirton (2.54)	Weirton, WV	1	27′0″	0.403	1984R	3,770
		3	26′3″	0.418	1983R	3,200
		4	27′0″		1977R	(3,100)(S)
Wheel-Pitt (2.30)	Steubenville, Ohio	1N	25′0″	0.405	1991R	2,900
		5S	23′10″	0.430	1995R	3,400

[1] Capacity of active blast furnaces, representing potential maximum productive capability.
[2] Hearth diameter of furnace.
[3] Coke rate at full ironmaking capacity is expressed as the net tons of coke input per net ton of iron output.
[4] Years are designated B for the year built and R for the year in which a major rebuild was last completed. Relinings are not considered rebuilds.
[5] () indicates idle capacity; (S) indicates standby furnaces.
[6] Plant temporarily idled in March 1996; company has been sold to Hamlin Holdings Inc., with operations scheduled to restart in early 1997.

REDUCING THE NUMBER OF U.S. BLAST FURNACES (TABLE 2)

Date [1]	Active	Idle	Total
2/86	48	35	83
5/87	45	32	77
9/88	47	25	72
10/89	45	25	70
6/90	46	24	70
8/91	38	19	57
8/92	40	11	51
8/93	40	10	50
8/94	40	9	49
9/95	41	4	45
7/96	40	3	43

[1] Dates of surveys conducted by Industrial Economics Research Institute, Fordham University.

LOWERING THE COKE RATE (TABLE 3)

[Million of net tons]

Year	U.S. blast-furnace production	Coke consumed	Coke rate [1]
1975	79.9	48.8	0.611
1976	86.9	51.6	0.594
1977	81.3	48.5	0.597
1978	87.7	51.3	0.585
1979	87.0	50.0	0.574
1980	68.7	39.1	0.569
1981	73.6	40.5	0.55
1982	43.3	23.3	0.538
1983	48.7	26.3	0.540

LOWERING THE COKE RATE (TABLE 3)—Continued

[Million of net tons]

Year	U.S. blast-furnace production	Coke consumed	Coke rate [1]
1984	51.9	27.4	0.528
1985	50.4	26.6	0.508
1986	44.0	22.3	0.507
1987	48.4	25.5	0.527
1988	55.7	29.4	0.528
1989	55.9	29.2	0.522
1990	54.8	27.5	0.502
1991	48.6	24.8	0.510
1992	52.2	25.0	0.479
1993	53.1	23.7	0.446
1994	54.4	24.2	0.445
1995	56.1	24.5	0.437

[1] Data are from American Iron and Steel Institute; coke rate indicates the tons of coke consumed per ton of blast-furnace iron produced.

PULVERIZED-COAL INJECTION (TABLE 4)

Company	Plant	Furnace	Year started up	Rate (lbs./ton) [1]
AK Steel	Ashland	Amanda	1973	200
Bethlehem	Burns Harbor [2]	C	1994	180
		D	1994	260
Gulf States Inland	Gadsden	2	1997	
	E. Chicago	5	1993	245
		6	1993	120
		7	1993	320
National	Ecorse	A	1997	350P
		B	1997	250P
		D	1997	250P
U.S. Steel	Fairfield [2]	8	1995	270
	Gary	4	1993	295
		6	1993	235
		8	1993	235
		13	1993	375
USS/Kobe	Lorain	3	1994	315

[1] Injection rate; P is projected; all others are average rates during 1995.
[2] Plant based on granular-coal injection.

Attachment 9—See How a Blast Furnace Works, AISI

The attachment is available at the following Web site, *http://www.steel.org/AM/Template.cfm?Section=Home&template=/CM/HTMLDisplay.cfm&ContentID=12305*

Attachment 10—Ironmaking Process Alternative Screening Study—Volume I, Summary Report, Lockwood Greene study for the Department of Energy (Oct. 2000)

The attachment is available at the following Web site, *http://www.ornl.gov/~webworks/cppr/y2001/rpt/122325.pdf*

Attachment 11—ISG to Repair, Restart Second Blast Furnace at Weirton Unit, American Metal Market (July 12, 2004)

The attachment is available at the following Web site, *http://www.findarticles.com/p/articles/mi_m3MKT/is_28-1_112/ai_n6106694.*

Attachment 12—Mittal Steel USA Works to Restore Furnace at Sparrows Point, PRNewswire (July 14, 2006)

The attachment is available at the following Web site, *http://www.mittalsteel.com/NR/rdonlyres/20253936-859A-42A8-8DEC-DBC284FDFB6A/1161/LFurnacerecoveryNR071406.pdf.*

Attachment 13—Ispat Inland Accelerates Maintenance Outages, Ispat Inland Press Release (March 7, 2005)

The attachment is available at the following Web site, *http://metalsplace.com/metalsnews/?a=942*

Attachment 14—Weirton Workers Buyout from Online NewsHour, September 23, 1983

The attachment is available at the following Web site, *http://www.pbs.org/newshour/bb/business/july-dec83/steel_9-23-83.html.*

Attachment 15—High Production Costs Hamper AK Steel's Middletown Works, Steel Business Briefing (Aug. 10, 2006)

High Production Costs Hamper AK Steel's Middletown Works

Thursday, 10 August 2006

AK Steel, trying to lower its labour costs, is pointing to a year-old analyst's report that says slab-making costs at its flagship Middletown, Ohio works are nearly the highest on the globe, Steel Business Briefing has learned.

In a communiqué sent out earlier this week, AK says a report authored by World Steel Dynamics' Peter Marcus, rates Middletown 147th out of 151 slab mills in terms of cost per ton of slab. The steelmaker is attempting to illustrate that its labour costs have to come down in order for the plant to be competitive, not only in North America but throughout the globe.

An AK spokesman tells SBB, however, ''We're not saying all of that

is employment'' costs. He declined to discuss what the works' per-ton slab production costs are.

Steel industry analyst Charles Bradford says AK likely has a cost disadvantage on iron ore alone of about $30/short ton. He says the steelmaker also probably has a cost penalty on coal, too. ''Even if they could get competitive raw materials, they would have a freight penalty,'' he adds. But Bradford notes that care has to be taken in such an analysis because there is a cost difference to produce commodity hot-rolled coil versus an interstitial-free HR coil.

In addition to AK, other North American steelmakers at the bottom of the Marcus list include Mittal Steel USA's Weirton, West Virginia works, which has since shut its hot end, as the world's most costly slab producer. Severstal North America's River Rouge works was found to be the next highest cost producer in the June 2005 report.

Attachment 16—Dofasco Seals $251m Purchase of Canadian Iron Ore Miner QCM, American Metal Market (July 26, 2005)

The attachment is available at the following Web site, *http://www.findarticles.com/p/articles/mi_m3MKT/is_29-2_113/ai_n14842699.*

Attachment 17—*Force Majeure Clobbers Coke-Short Steelmakers: Weirton Eyes Option, Blast Furnace Closure*, American Metal Market (Jan. 9, 2004)

The attachment is available at the following Web site, *http://www.findarticles.com/p/articles/mi_m3MKT/is_1-5_112/ai_112104367.*

Attachment 18—*Heat Back on Steel Makers,* The Plain Dealer (February 26, 2004)

The attachment is available at the following Web site, *http://cleve.live.advance.net/indepth/steel/index.ssf?/indepth/steel/more/1077791716314950.html.*

Attachment 19—*Furnace Will Stay Idle at Weirton Steel Mill,* Associated Press (Dec. 2, 2005)

Friday, December 2, 2005

Furnace Will Stay Idle at Weirton Steel Mill

Bad Site, High Costs and Age Are Cited

By Vicki Smith, Associated Press

Historically high production costs, an inconvenient location and old, inefficient facilities have apparently doomed hopes of revitalizing a West Virginia steel mill that once employed 13,000 people and now has just 1,300 union workers.

Mittal Steel, the world's largest steelmaker, idled the blast furnace at its Weirton division this summer, laying off some 750 workers for what the Independent Steelworkers Union hoped would be a temporary wait for business to pick up. But late Tuesday, Mittal told the union that the furnace will remain cold, and as many as 800 jobs will be permanently lost.

''This was a very difficult decision, since the Independent Steelworkers Union and all employees have worked so hard to beat the odds trying to maintain steelmaking at Weirton,'' said Louis Schorsch, chief executive of Mittal Steel USA. ''However, the structural disadvantages of Weirton for these processes entail costs that are too high to support competitive downstream facilities.''

Analyst Michael Locker, president of Locker Associates in New York, said the small blast furnace and the steelmaking Mittal has elsewhere combined to seal Weirton's fate.

He said, ''The negative of the consolidation process is that you have a comparison going on of plants * * * within the Mittal family. If they come out on the short end of the stick, they can't justify standing alone—even with all the hopes of cost reduction and efforts by the union, which were mighty.

''You have good finishing facilities at Weirton that are going to survive, but the source of the steel is going to be elsewhere.''

Analyst Charles Bradford of Bradford Research-Soleil Securities in New York, sees Mittal's flexibility as a benefit of the industry's global consolidation.

''When there is softness in the market, you close the high-cost ones first. Mittal, just within North America, has more than a dozen blast furnaces, so they have the ability to cut one or two and moderate their business.''

Mittal, a Netherlands company, took control of Weirton in April through a $4.5 billion purchase of former owner International Steel Group of Richfield, Ohio. ISG had won a bidding war for Weirton, the nation's No. 2 tin producer, in bankruptcy court in 2004.

Weirton's steel-production costs have been among the highest at Mittal, which has other mills capable of producing enough steel to meet demand through 2006.

Union spokesman David Gossett said raw materials are at the root of Weirton's problem. Weirton does not have a coke plant and must buy it at a high cost on the open market.

Weirton also must buy iron ore and have it shipped by rail. Mittal's Cleveland mill can get it shipped in cheaper on Lake Erie.

Weirton is also struggling with high gas prices in a mill that Gossett said doesn't use fuel as efficiently as it could.

Bradford predicts Weirton's blast furnace will only be restarted if and when every other Mittal furnace is at capacity.

But ISU President Mark Glyptis said he believes Mittal is committed to maintaining an operation in Weirton, and that the mill is a key part of its strategy to sell tin.

Schorsch acknowledged in a statement that Mittal wants to reconfigure the Weirton plant around tinplate.

Attachment 20—*The shipping news & forecast: District ports face many competitive challenges, but whether they sink or swim over the long term will likely depend on infrastructure improvements,* Minneapolis Federal Reserve fedgazette (January 2003)

The attachment is available at the following Web site, *http://www.minneapolisfed.org/pubs/fedgaz/03-01/shipping.cfm.*

Attachment 21—*Weirton Files for Ch. 11; 1,000 Ohio Jobs Affected,* Associated Press (May 20, 2003)

Tuesday, May 20, 2003

Weirton Steel Files for Ch. 11

1,100 Ohio Jobs Affected

By Vicki Smith

The Associated Press

WEIRTON, W.Va.—Weirton Steel Corp., the nation's sixth-largest integrated steel maker and No. 2 producer of tin, filed for Chaper 11 bankruptcy protection Monday.

The employee-owned company located across the Ohio River from Steubenville, Ohio, held on while an import crisis took down dozens of competitors, but racked up more than $700 million in losses over five years.

Weirton Steel employs 1,100 Ohioans.

President and CEO John Walker said the company has obtained a $225 million financing package that will allow it to keep operating while it reorganizes.

Walker had been in the middle of a plan to cut costs by $120 million when Weirton Steel's board of directors voted Monday to file for bankruptcy.

''In the past year, we did everything we could do outside the bankruptcy venue before taking this necessary

step,'' Walker said. ''Our previous initiatives strengthened the company, but it became increasingly evident in the current industry climate that Chapter 11 reorganization is the only remaining solution to address our liability issues.''

In its bankruptcy filing, Weirton Steel said it had about $654.5 million in assets and about $1.41 billion in debts as of March 31. The company expects to file a reorganization plan within about six months.

Walker said the recent U.S. Steel-National Steel and International Steel Group-Bethlehem Steel mergers, along with a federal $250 million loan package awarded to Wheeling-Pittsburgh Steel, left his company with no options for expansion.

Weirton's survival strategy had centered on having the nation's largest tin mill. Only U.S. Steel produces more tin-plated steel than Weirton, where tin accounts for 38 percent of production and 50 percent of revenues.

Monday's filing surprised a steel analyst who said Weirton Steel had seemed to ''be bumping along.''

But the company was squeezed by rising energy and material costs and declining prices for tin products, said Michael Locker, president of Locker Associates Inc. and author of the Steel Industry Update Newsletter.

The Independent Steelworkers Union had helped Walker trim $38 million, approving a one-year contract that cut pay 5 percent, canceled a planned raise and froze accrued pension benefits. The company planned to cut an additional $34 million by asking the 3,600 active employees and 4,600 retirees and dependents for health-care givebacks.

Retirees, however, had been slow to embrace the request, which asked that they help cover the cost of health insurance with a $200 monthly deduction from their pension checks. They also faced higher co-payments for prescription drugs and doctor visits. Weirton Steel is seeking court approval to create a committee of retirees to address the pension issues.

ISU president Mark Glyptis, who sits on the board of directors, opposed the bankruptcy filing.

''Today, our senior management effectively gave up and conceded defeat,'' he said. ''But the working people of Weirton Steel will never surrender. We will not give up.''

Attachment 22—Testimony of Bill Stephans, Division Manager for TMP at Mittal Steel USA's Weirton Facility from *Hearing Transcript, In the Matter Of: Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Review) (April 27, 2006)

The attachment is available at the following Web site, *http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2005/tin_chromium_steel/PDF/Tin%20and%20chromium%20steel%2004-27-06.pdf.*

Attachment 23—*ISU Irked by Mittal Steel's Plan To Shut Weirton Galvanizing Line,* American Metal Market (Feb. 3, 2006)

ISU Irked by Mittal Steel's Plan To Shut Weirton Galvanizing Line

By Sam Kusic

PITTSBURGH—Mittal SteeL USA Inc. plans to shut down the galvanizing line at its Weirton, W.Va., plant, eliminating 25 to 40 jobs, and refocus the facility entirely on tinplate products.

The move comes two months after the company sent official notices to workers that the plant's blast furnace, idle for much of last year, would be closed permanently.

''The (galvanizing) line does not fit into the plans,'' a Mittal Steel USA spokesman said, adding that the Wierton line costs more to operate than other comparable facilities it owns.

But Mark Glyptis, president of the Independent Steelworkers Union (ISU) at Weirton, said the union had been working toward lowering the line's operating costs. '' Its a good line and one that ought to be running in this organization,'' he said. ''We did a great deal of work to keep that line in operation.''

The closure, set to take place in two to three months, follows the layoff of about 450 people when the Chicago-based company decided to indefinitely close its iron and steelmaking operations there in November. The hot end previously had been temporarily idled since May, when steel prices were falling due to bloated inventories nationwide.

The closure ends nearly 100 years of steelmaking at the plant, which was a founding piece of Weirton Steel Corp. in 1909. In 1984, its employees bought the plant, at the time making it the world's largest wholly employee-owned company. In 2003, International Steel Group Inc. (ISG) purchased the business, and Mittal bought ISG in a multibillion-dollar deal in April 2005.

With the closures, only the plant's hot- and cold-rolled mills and its tinplating operations remain intact. If there is good news, Glyptis said, it's that the union was able to work with the company to keep the hot-roll mill open, saving about 200 jobs.

Mittal had been reviewing whether to shutter the hot-roll mill, but ultimately decided against it. ''It's one of the better hot mills in operation,'' Glyptis said, adding that as the plant increases its tinplating operations, jobs are being added. ''It's kind of a roller coaster of good news and not-so-good news.''

Attachment 24—Excerpts of Testimony from *Hearing Transcript, In the Matter Of: Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (F) (June 29, 2000)

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation No.:
TIN- AND CHROMIUM-COATED STEEL SHEET	)	731-TA-860 (F)
FROM JAPAN	)	

Pages: 1 through 326

Place: Washington, D.C.

Date: June 29, 2000

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

1 union workers that we be able to increase our production of
2 tin- and chrome-coated steel
3 At the Commission conference last November, I
4 heard comments from some of our customers criticizing our
5 delivery performance. These problems stem directly from the
6 difficulties of running Weirton Steel with a one blast
7 furnace operation being supplemented by slab purchases.
8 After a very successful start up of the second
9 blast furnace in December, our on time delivery performance
10 has been better than 90 percent throughout 2000, and we
11 continue to aim for 100 percent on time delivery, yet our
12 domestic shipments in the first quarter of this year were
13 lower than they were last year as our customers continue to
14 buy dumped Japanese imports.
15 I would also like to make a comment from the
16 union's perspective on the issue of contracts for our tin
17 mill products. As Mr. Scott testified earlier today, the
18 contracts we have with customers are obviously not very
19 enforceable. For example, one of our customers who has a
20 plant on site has a contract with us that forbids the use of
21 imported tin mill products without Weirton's consent.
22 The company has a witness here today that in spite
23 of this contract provision and without obtaining permission
24 from Weirton, I watched as Japanese template was unloaded in

1 import slabs in 1999. That was the same transcript at page
2 96. Was this the case? And if so, why?
3 MR. RIEDERER: That was, as I reference in my
4 testimony, we had, because of the massive amount of imports
5 of all steel products, not just of tin plate, starting in
6 1998, we ended up making a decision at the end of 1998 to
7 shut down one of our blast furnaces. That blast furnace
8 supplied approximately 800,000 to 900,000 tons of slabs,
9 which we ended up through two mechanisms, either importing
10 slabs in order to replace those slabs, or cutting back our
11 production, which is what we ended up having to do in some
12 major cases, especially on the sheet side of our business,
13 not so much on the tin plate side of our business.
14 That all occurred at the end of 1998.
15 So you're absolutely right, in 1999 we did import
16 slabs to meet some of our production requirements.
17 CHAIRMAN KOPLAN: Thank you, Mr. Riederer.
18 I see my time has expired.
19 Commissioner Bragg?
20 COMMISSIONER BRAGG: Thank you.
21 What impact, if any, have the buyer purchasing
22 cooperatives had on domestic tin prices over the period of
23 investigation? Have they had an impact? Are there buyer
24 cooperatives?

1 to and with each of the mills that they did business with.
2 End of story. That's it.
3 In summary, the prices we have been able to obtain
4 for our key raw material have been driven by our growth and
5 our membership in the purchasing alliance. Our decision to
6 purchase foreign tin plate was made strategically to broaden
7 our portfolio of suppliers due to the quality and delivery
8 problems we had experienced, and to supply our
9 geographically diverse operations.
10 I want to thank you for the opportunity to provide
11 a customer's perspective on this very serious issue. I hope
12 my comments have been helpful, and I will be pleased to
13 answer any questions you may have.
14 CHAIRMAN KOPLAN: Thank you, Mr. Rourke.
15 Mr. Yurco?
16 MR. YURCO: Thank you. My name is Tom Yurco, I'm
17 the Vice President, Materials Management and Logistics for
18 U.S. Can Company, a position I've held for the last 18 years
19 and altogether I've been in the business of buying tin mill
20 products for the last 33 years.
21 I testified in the first hearing on this case
22 which was held last November, but I'm here today because
23 you're about to make a very important decision affecting an
24 industry to which I've devoted most of my professional life.

1 testimony, that their deliveries were late more than half
2 the time.
3 I provided details that that were cited. In 1999
4 that problem became worse. They started relying more on
5 import slabs, and when they began experiencing logistical
6 problems with these, their on-time performance eroded even
7 further. It wasn't just Weirton, however. Bethlehem Stee
8 had their problems starting in 1999. They had a planned
9 mill outage in the spring, they also had an unplanned mil
10 outage in the fall. These two events mean that they
11 actually limited orders and had some customers on what we
12 would call allocation. Wheeling-Pitt had on-time problems
13 in 1999. They had a fire in their temper line. They too,
14 had to turn down orders.
15 As a customer we found it extremely difficult and
16 frustrating dealing with these problems, and our customers,
17 the ones who fill the cans that we make, demand prompt, on-
18 time delivery of products. If we can't get our tin mill
19 products on time, it's a huge, huge problem for us and our
20 customers.
21 I hope you now better understand the situation we
22 faced as we made our purchasing decisions for 1999. We had
23 a reliable Japanese and other foreign supplier base that
24 were willing to work with us on a global basis, and we had

Attachment 25—*Brazil Slab Hits $555/T In Tight Export Market,* American Metal Market (June 5, 2006)

Brazil Slab Hits $555/T in Tight Export Market

By Diana Kinch

Vitoria, Brazil—Export prices for steel slab have risen to $555 a tonne f.o.b. Brazil and could continue to rise due to tight world supplies, Cia. Sider Ã°rgica de TubarÃ£o (CST) said late Thursday.

The slab producer, majority owned by Luxembourg-based steelmaker Arcelor SA, said it had just closed a deal to sell slab to a U.S. buyer at $555 a tonne, although the tonnage was not disclosed.

''Pressure continues on prices following the Chinese pulling out of the slab export market due to China's charging of export taxes,'' a CST source said.

(In fact, China apparently has delayed implementation of higher export taxes on steel products until at least July 1. But Chinese exporters reduced slab and billet offers in May in anticipation of the anticipated 5- to 10-percent tax, and as yet there is no sign of any rebound in slab exports, according to reports out of China.)

The other major factor influencing Brazilian export prices is the loss of the No. 3 blast furnace at Cia. Sider Ã°rgica Nacional (CSN) in January in what was described at the time as a minor accident involving a dust collection system. The furnace, responsible for 60 percent of CSN's raw steel output of 6 million tonnes per year, was expected to return to service in June, but now sources said they don't expect it to restart until next month at the earliest.

CSN reportedly has ordered 1 million tonnes of slab to replace the lost production but so far has received only 300,000 tonnes because of the market tightness, sources said.

CST did not confirm whether it sees the delay in bringing on-stream its new No. 3 blast furnace as a market factor. The new 2.5-million-tonne-per-year furnace, which is now more than 90 percent complete, will probably be inaugurated in early 2007 because of the impact on a recent construction workers' strike at the site, a source close to the furnace project said (see story, page 6).

Attachment 26—*Wheeling-Pittsburg Makes Loss, Despite Rising Market,* Steel Business Briefing (May 11, 2006)

Wheeling-Pittsburgh Makes Loss, Despite Rising Market

Thursday, 11 May 2006

Wheeling-Pittsburgh Corp, the holding company of Wheeling-Pittsburgh Steel, is reporting a $2.1m net loss for the first quarter, compared with $8m in earnings in the first quarter of 2005. The sheet steel producer had a $49m cost increase, Steel Business Briefing understands.

Wheeling-Pittsburgh, in talks with Brazil's CSN to form a slab rolling alliance, shipped 681,000 short tons in Q1, up substantially from 523,000 s.t shipped in Q1 2005 when the company suffered an equipment failure. However, sales were made at an average of $739/s.t a year ago, declining to $680/s.t in the most recently completed quarter.

CSN is interested in having its slabs rolled by Wheeling-Pittsburgh, which has about 600,000 s.t/year of excess hot-rolling capacity. CSN is also discussing taking a minority stake in the West Virginia steelmaker.

''While our first quarter loss represented an improvement from the fourth quarter of 2005, it was a disappointment given current demand for our products,'' says company CEO James Bradley.

Attachment 27—*Esmark To Shut Wheeling-Pitt BF If Bid Succeeds,* Steel Business Briefing (Aug. 23, 2006)

Esmark To Shut Wheeling-Pitt BF If Bid Succeeds

Wednesday, 23 August 2006

Esmark, the U.S. service centre consolidator in a proxy fight for control of Wheeling-Pittsburgh Steel, plans to shutter the sheet producer's Mingo Junction, Ohio blast furnace and rely solely on its new electric furnace, in addition to purchased slabs, Steel Business Briefing understands.

In a television interview with a Wheeling, West Virginia television station, brothers James and Craig Bouchard of Esmark say they plan to shut the BF because it is not cost-effective. SBB could not reach the Bouchards for further comment. Esmark has not filed documents with regulators detailing its plans.

The interview preceded Wheeling-Pittsburgh's response to a United Steelworkers assertion that the steelmaker violated its labour contract by not giving the union the same amount of time to make a competing bid for the company that Brazilian suitor CSN was given.

In a 21 August letter to USW officials, Wheeling-Pittsburgh CEO James Bradley notes the union has known about the potential hook-up with CSN since early July and that the USW ''has no compelling basis'' to request more time given its support of the Esmark proposal. He also again criticises the Esmark bid as inferior to CSN's proposal.

Attachment 28—Arcelor Brasil Sets Sights on New Slab Plant, American Metal Market (March 22, 2006)

Arcelor Brasil Sets Sights on New Slab Plant

By Diana Kinch

Vitoria, Brazil—Arcelor Brasil SA is studying the possibility of building a 3.5-million-tonne-a-year steel slab-for-export plant, probably in conjunction with Cia. Vale do Rio Doce (CVRD), at Anchieta in Espirito Santo state.

The plant would be about 60 kilometers (37 miles) from the existing Cia. SiderÃ°rgica de TubarÃ£o (CST)-Arcelor Brasil slabmaking and hot-rolled coil plant, company executives said during a press conference.

CVRD announced a month ago that it was seeking partners for a new slabmaking venture at Anchieta, in which it would like to hold a minority participation. According to the CVRD announcement, the final capacity of such a plant would be around 5 million tonnes a year.

''We would probably start off with 3 million to 3.5 million tonnes per year,'' a spokesman said.

Usinas SiderÃ°rgicas de Minas Gerais SA (Usiminas), based in Belo Horizonte, which also is considering building new slabmaking capacity in Brazil, reportedly isn't involved in the Anchieta project talks.

CST-Arcelor Brasil is expected to expand its own steelmaking capacity to 9 million tonnes a year by 2012, after which its current site at TubarÃ£o will be saturated, the spokesman said.

CST-Arcelor Brasil later this year will bring on-stream its third blast furnace, boosting its annual steelmaking capacity from 5 million tonnes currently to 7.5 million tonnes, of which some 5 million tonnes will be used for merchant slab production.

The steelmaker currently produces some 2.5 million tonnes of hot-rolled coil a year and is expected to double its hot-rolled coil mill capacity by 2008 in what should be a relatively economic investment.

Attachment 29—*CST to Hike Slab Sales to Dofasco,* American Metal Market (March 22, 2006)

The attachment is available at the following Web site, *http://www.findarticles.com/p/articles/mi_m3MKT/is_11–3_114/ai_n16119523.*

Attachment 30—*Gerdau Acominas Charging Into Slab Mart,* American Metal Market (June 30, 2006)

Gerdau Açominas Charging Into Slab Mart

By Diana Kinch

Ouro Branco, Brazil—Gerdau AĀ§ominas SA will step up production of merchant slab, particularly of special grades, by installing its first continuous slab caster.

The 3-million-tonne-per-year slab caster will operate initially at a rate of 1.5 million tonnes annually when it starts up in two years, with output directed at the export market, Jorge Gerdau Johannpeter, Gerdau SA chairman and president, announced Wednesday.

Currently, Gerdau AĀ§ominas, located at Ouro Branco, Minas Gerais state, produces less than 200,000 tonnes of merchant slab per year. Most of its current 3 million tonnes of annual raw steel output is sold as billet, bloom, wire rod and sections.

''The move into slab is in response to market demand,'' Gerdau AĀ§ominas sales director Alberto Huallem said, adding that talks have already taken place with possible clients abroad.

The move into large-scale slab export will bring Gerdau AĀ§ominas into direct competition with both Cia. SiderĀ°rgica de Tubarao and Cia. SiderĀ°rgica Nacional, Huallem said. ''But the market is big enough for everyone,'' he added.

The plant is working to boost its raw steel output to 4.5 million tonnes per year beginning in the second half of 2007, when its No. 2 blast furnace using Chinese technology, currently under construction, is due on-stream as part of a $1.5-billion investment.

The extra capacity will be used initially to produce more billet, and later slab for export once the slab caster comes on-stream in 2008, Gerdau AĀ§ominas industrial director Manoel Vitor de MendonĀ§a said.

''The slab caster is a new development, recently approved by the board, and will cost $275 million,'' Gerdau Johannpeter said. Proposals from potential suppliers are still being considered and the supplier should be confirmed by the end of this year.

Luiz AndrĀé Rico Vicente, Gerdau AĀ§ominas president, said that the caster will make only high-value grades. ''Our company trend is to steer away from commodity grades. We want to produce API and interstitial-free grades because the market is hungry for these products,'' he said.

Currently, Gerdau AĀ§ominas sells 70 percent of its products for export, billet being its principal product. But its relatively new sections rolling mill is aimed principally at the domestic construction industry.

Gerdau Johannpeter indicated that the installation of a 3-million-tonne slab caster is to prepare for possible future expansions of the Gerdau AĀ§ominas works, which was envisioned as a 10-million-tonne-per-year steelmaker when it was originally set up 20 years ago by the Brazilian state.

''We are already studying the possibility of a further expansion to 6 million or 6.5 million tonnes of crude steel capacity,'' Rico Vicente said. ''We are being advised by (Japan's JFE Steel Corp.) on these studies, which should be completed by the end of this year.''

Attachment 31—CSA Steel Project Receives License, American Metal Market (July 6, 2006)

CSA Steel Project Receives License

By Diana Kinch

Rio de Janeiro—Cia. SiderĀ°rgica do AtlĀ¢ntico (CSA), the 4.4-million-tonne-per-year slab-for-export joint venture to be built in Sepetiba, Rio de Janeiro state, by Germany's ThyssenKrupp Stahl AG and Brazil's Cia. Vale do Rio Doce, has been granted a preliminary environmental license despite protests by local fishermen.

Notice that Rio de Janeiro state environmental authority FundaĀ§Ā£o Estadual de Engenharia do Meio Ambiente granted the license to CSA was published in the state's official gazette Monday.

The preliminary environmental license basically determines the site of the new works and will enable the steelmaking project to proceed with equipment purchases. The $2.4-billion CSA is slated for start-up in 2008, with all output aimed for export.

Attachment 32—*North America at Top of TK's Agenda,* American Metal Market (August 11, 2006)

North America at Top of TK's Agenda

By Scott Robertson

Pittsburgh—ThyssenKrupp AG, Düsseldorf, Germany, is sharpening its focus on North America, with plans to take a significant share of the U.S. carbon and stainless steel markets.

The company said Friday it had approved a project development budget of $50 million, in effect a feasibility study into building a $2.9-billion carbon and stainless steel mill in the southern United States.

ThyssenKrupp executives termed the proposal to build a mill a ''backup plan'' in case the company's deal to acquire Dofasco Inc., Hamilton, Ontario, from Arcelor SA-Mittal Steel Co. NV falls through. But it seems likely the project will move forward, given the protective measures Arcelor took to secure Dofasco as it attempted to fight off a Mittal takeover in early negotiations.

''Our first priority is the acquisition of Dofasco,'' Ekkehard D. Schulz, executive board chairman of ThyssenKrupp, said. ''But in case that is not possible, we have to look for opportunities to develop our (North American) strategy.''

That would appear to make building a mill the likely option, especially given that ThyssenKrupp's announcement comes less than a week after Gonzalo Urquijo, senior executive vice president and chief financial officer of Arcelor, said it appears ''impossible'' for Dofasco to be sold given its control by a ''Dutch trust.''

ThyssenKrupp has been looking to increase its position in North America for years and reportedly had eyed the purchase of AK Steel Corp., Middletown, Ohio, or some form of tie-up with U.S. Steel Corp., Pittsburgh. The company also reportedly looked at acquiring the Sparrows Point, Md., plant of Mittal Steel USA Inc. if the Dofasco deal fell through.

Now it has turned its focus to a greenfield project that would comprise carbon and stainless steel manufacturing. The plan contemplates the construction of a hot strip mill by ThyssenKrupp Steel AG that would be used to process slab from ThyssenKrupp's new Cia. Siderurgica do Atlantico (CSA) steel mill in Brazil. The new U.S. plant also would feature cold-rolling and hot-dip galvanizing capacity for carbon flat products. The 1.8-billion-euros ($2.3-billion) carbon plant would produce about 4.5 million tonnes of steel per year.

At the same time, ThyssenKrupp Stainless AG would spend around 500 million euros ($636 million) to build a melt shop with an annual capacity of up to 1 million tonnes of slab, which would be processed on the hot strip mill. A cold-rolling facility also would be included, which in its initial phase would be designed to produce 325,000 tons of cold strip and 100,000 tons of pickled hot strip. In addition, ThyssenKrupp Mexinox would be supplied with hot strip from the United States as starting material.

ThyssenKrupp said sites in Alabama, Arkansas and Louisiana are under consideration for the project, but gave no timetable as to when construction might begin. Locating in that region would place the company in a geographic position to supply steel to

automotive transplant companies throughout the Southeast. It also would place the proposed mill in direct competition with SeverCorr LLC, a carbon steel mini-mill now under construction in Columbus, Miss., that plans to supply the automotive transplants. SeverCorr is on track to begin production in late 2007.

ThyssenKrupp executives stressed that negotiations aimed at acquiring Dofasco would continue over the next few days and that the mill project would be undertaken only if those negotiations fail.

''Dofasco is our top priority,'' said A. Stefan Kirsten, chief financial officer and a member of the executive board of ThyssenKrupp. ''The greenfield strategy is a backup strategy. We need a Nafta strategy. If there is any chance that we do not get Dofasco, we do not want to be unprepared. We do not want to put our steel strategy into the hands of a third party. What we have done is fund a feasibility study. We have not agreed to build a steel plant in the U.S. This is a prudent company.''

ThyssenKrupp has been prudent enough, Kirsten said, to review what adding such capacity would mean to the U.S. market. He said the U.S. steel industry does not produce all the steel the country needs and relies on imports to provide anywhere from 8 million to 12 million tons per year to make up the difference. ThyssenKrupp's plan, he said, is to displace those imports.

The entire plan could be scrapped, Kirsten said, if ThyssenKrupp gets Dofasco. ''If we get Dofasco, we will revisit our strategy,'' he said. ''We already have achieved a strong position in stainless (in the Nafta region) with our Mexican plant. This strategy (to build a new mill) is something we would be sure to revisit when the moment comes.''

Attachment 33—*Groundwork Laid For Brazil's Ceara Slab Project*, American Metal Market (September 1, 2006)

The attachment is available at the following Web site, *http://www.findarticles.com/p/articles/mi_m3MKT/is_49-5_113/ai_n15981124.*

Attachment 34—*CSN May Lift Slab Capacity Of Two Projects*, American Metal Market (September 1, 2006)

The attachment is available at the following Web site, *http://www.findarticles.com/p/articles/mi_m3MKT/is_35-1_114/ai_n16726710.*

Attachment 35—*Brasil's Usiminas Casts Sights Abroad For New Slab Project Partner*, American Metal Market (August 29, 2006)

The attachment is available at the following Web site, *http://www.findarticles.com/p/articles/mi_m3MKT/is_34-3_114/ai_n16715616.*

Attachment 36—*Russia's Severstal Wants to Ship More Steel to U.S.*, Reuters (February 2, 2004)

Russia's Severstal Wants To Ship More Steel to U.S.

Reuters, 02.02.04, 7:56 AM ET

Moscow, Feb 2 (Reuters)—Russian steel giant Severstal <CHMF.RTS> <CHMF.RTS>, fresh from its first acquisition in the United States, said on Monday it would ask the U.S. Commerce Department to allow it to ship more steel to the United States.

Last Friday, Severstal completed the acquisition of bankrupt U.S. firm Rouge Industries Inc, one of the largest suppliers of steel to car giants such as Ford Motor (nyse: *F*—news—people) Co.

The purchase, likely to increase Severstal's presence in the global car market, was the second move by a major Russian metals company into the U.S. market after Norilsk Nickel <GMKN.RTS> <GMKN.RTS> took over U.S.-based platinum firm Stillwater Mining (nyse: *SWC*—news—people) Co.

''We would like to present Rouge Industries (nyse: *ROU*—news—people) with a plan for its financial revitalisation by this spring,'' said Severstal spokeswoman Olga Yezhova.

''As part of this plan we intend to ask the U.S. Commerce Department to allow us to supply more steel slab there.''

Severstal, one of Russia's biggest exporters of steel, had previously said foreign firms with U.S. assets tended to obtain such permission. The company shipped a mere 2,000 tonnes of steel and products to the United States last year.

But Washington's recent decision to abolish three-year steel import duties that the United States slapped on countries including Russia, is likely to trigger major export growth from Russia.

Dmitry Goroshkov, Severstal's sales director, said in a recent media interview that Severstal could sell ''hundreds of thousands of tonnes of steel'' to the United States this year as a result.

Yezhova said Severstal had never supplied slab to Rouge before. Severstal plans to invest up to $45 million a year in its U.S. partner.

A U.S. bankruptcy court has allowed the sale of Rouge to Severstal for about $285.5 million. Through its U.S. vehicle, Severstal has also bought Rouge's 50 percent stake in Double Eagle Steel Coating Company—the world's largest electro-galvanising line that produces galvanised sheet steel for cars. Severstal North America has also acquired Rouge's 48 percent stake in Spartan Steel Coating, a hot dip galvanizing firm.

Attachment 37—*Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Review), USITC Pub. 3860 (June 2006) at V–8

The attachment is available at the following Web site, *http://hotdocs.usitc.gov/docs/pubs/701_731/pub3860.pdf.*

Attachment 38—*Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731–TA–860 (Review), USITC Pub. 3860 (June 2006) at Table III–8

The attachment is available at the following Web site, *http://hotdocs.usitc.gov/docs/pubs/701_731/pub3860.pdf.*

Attachment 39—*Mittal Shows Little Interest in Weirton Furnace Sale*, American Metal Market (May 5, 2006)

Mittal Shows Little Interest in Weirton Furnace Sale

By Scott Robertson

Pittsburgh—Mitchell A. Hecht, former chief financial officer at International Steel Group Inc., wants to buy and restart two idle blast furnaces in Weirton, W.Va. Standing in his way, he says, is the inattention of the furnaces' current owner, Mittal Steel Co NV., the world's largest steelmaker.

''I know right now they have bigger fish to fry,'' Hecht said about Mittal Steel's efforts to acquire Arcelor SA, the world's second-largest steel producer. ''But I think once they can focus on this, they'll find it's a win-win-win situation'' for Mittal, for Hecht's recently formed Hamsphire Steel Investments and for as many as 200 unemployed steelworkers in West Virginia.

Hecht confirmed Thursday that he has made an offer to buy the former Weirton Steel Corp. blast furnaces from Mittal Steel USA Inc. Those furnaces were idled a year ago when Mittal decided to reduce steel production to better align it with demand at the time. The company never brought back the furnaces—among the highest cost in Mittal's arsenal—in-stead redirecting efforts on the Weirton plant's tinplate business.

Hecht envisions starting a new company around the furnaces with an initial investment of about $10 million,

including the purchase price. Additional working capital would be needed as well.

Employees of the new company would receive an unspecified ownership interest. Hecht said employee involvement would not be on the order of an employee stock ownership plan (ESOP), the likes of which once operated at Weirton Steel. ''It's not going to be an ESOP. But I want the employees to be involved,'' he said.

''The furnaces are in good shape,'' Hecht said. ''They would require some prep work to bring them back. We're not talking about major dollars initially. Long-term, I think we are looking at investment on the level of several tens of millions of dollars.''

His plan is to sell pig iron produced on-site and invest further in alternative methods of ironmaking.

''We think it is a win for all parties,'' he said. ''It's a win for the (Independent Steelworkers Union) in that it would bring people back to work. It's a win for Mittal because it would allow them to enhance their good standing with the union, in the community and in the region. And it would be a win for us because we think we can make money selling pig and trying to invest in alternate methods of ironmaking. I have become intrigued over the past year with advances in alternative ironmaking that are being made in other countries. I think there are some positive things that can be done in that area.''

The ISU, which represents hourly workers at what is now known as Mittal Steel-Weirton, expects 80 jobs would be created by restarting one furnace and as many as 200 jobs if both furnaces are operating, according to Mark Glyptis, president of the ISU. About 1,000 union jobs have been eliminated at Mittal Steel-Weirton since the furnaces were idled.

Glyptis indicated that Mittal Steel appeared unwilling to part with the assets.

Hecht expressed a more positive view. ''I have made an offer to them and they have responded to that offer with some questions,'' he said. ''I have responded to their questions and we are moving the process forward. Frankly, they are thinly staffed at this point and their attention is diverted to what they are doing with Arcelor. I think once they get through (dealing with Arcelor) and have a chance to focus on this offer, they'll see it as something positive.''

Hecht said he has not heard anything negative from Mittal with regard to his offer. ''We are going through the process. Mittal Steel USA is a relatively small part, about 10 percent, of the global company. Right now (the parent company) has their attention elsewhere. I am confident that once they turn their attention and get focused on this offer, we'll be able to get something done.''

Hecht's Hampshire Steel Investments is a private hedge fund that aims to invest in steel equities. Before becoming involved with International Steel Group, which was acquired by steel mogul Lakshmi N. Mittal last year and merged with his other U.S. holdings to form Mittal Steel USA, Hecht spent time with Bankers Investment, PaineWebber Inc. and as an independent consultant.

Attachment 40—*Mittal Plans to Sell Dofasco, Hecht Waits for Weirton,* Steel Business Briefing (August 16, 2006)

Mittal Still Plans To Sell Dofasco, Hecht Waits for Weirton

Wednesday, 16 August 2006

Whilst the Arcelor side of the Arcelor Mittal merger maintains that Dofasco cannot be sold to ThyssenKrupp, there still appears to be a differing opinion coming from the Mittal camp. In fact, that opinion seems strong enough that Mittal Steel USA declines to say if one of its other tinplate plants will be sold to satisfy regulators' concerns.

A Mittal Steel USA spokesman tells Steel Business Briefing that no decision is forthcoming shortly on whether the Sparrows Point, Maryland works or the Weirton, West Virginia works will be sold to comply with U.S. Justice Department concerns over a controlling interest in the U.S. tin mill products market place.

He says that's because European management—at least those from the Mittal side of the equation—still believe Dofasco can be sold to TK under an agreement the two sides forged in January.

Meanwhile, Mitch Hecht, the former ISG executive who has expressed an interest in Weirton's now-shuttered hot end, tells SBB he's still interested in the slab making operation and that he is also willing to partner with the works' independent union to purchase the rolling operations as well if Mittal is keen to sell them.

Saying the Weirton hot strip mill ''is a very attractive asset,'' Hecht says he will bring in financial partners to again combine the rolling and finishing operations with the hot end to make the works profitable.

He adds, however, ''We're sitting here waiting to see which way Mittal will go'' with the sale of one of the properties.

Attachment 41—''HHI Impact of Alternative Divestiture Scenarios''

Arcelor-Mittal Merger—Competitive Impact for U.S. Tin Consumers

HHI Impact of Alternative Divestiture Scenarios

We calculate the HHI for the U.S. tin market using market shares reported in the DOJ Competitive Impact Statement. Market shares for the two foreign suppliers (Rasselstein and Corus) was estimated using U.S. import statistics.

Prior to the Mittal-Arcelor merger we estimate the market shares as follows:

	Market share (percent)
USS	44
Mittal	31
Ohio Coatings	8
Dofasco-Arcelor-EU	6
Rasselstein	5
Corus	6

Mittal's market share (31%) can be divided into Weirton (18.6%) and Sparrows Point (12.4%). Arcelor's market share can be divided into Dofasco (4.0%) and Arcelor-EU (2.0%).

In the following pages we present a separate HHI calculation for each potential divestiture. Given that certain options involve the high likelihood that a U.S. firm will fail, we are forced to make an assumption about how the surviving firms' market share will be reallocated. For simplicity we assume that the surviving firms' market share will grow in proportion to their current share.

For instance, if Weirton is divested by Mittal-Arcelor but subsequently fails, 18.6% of the tin market will disappear and 81.4% survives. We assume that the surviving firms' market share will remain in proportion to their current shares. That is, USS's current market share is 44%; our assumption implies that USS's market share following the failure of Weirton would be 44%/(81.4%) = 54.05%

We stress that our assumption is very optimistic (i.e., pro-competitive) as it implies the foreign suppliers' market share also increases. Given the U.S. tin industry's protectionist history, such market share increases could easily result in an antidumping petition against foreign suppliers. As exemplified by the 2000 tin case against Japan antidumping actions often result in the foreign country exiting the U.S. market. This prospect makes it even more imperative that the DOJ pursue a divestiture that maximizes that chance that all U.S. production will remain viable.

HHI Tin Market—Summary Tabulation

[Eastern U.S. Regional Market]

	HHI	Loss of Mkt size (%)
Market Condition (Pre-merger)	3,058	.....
Market Condition (Post-merger)—No Divestiture	3,446	.....
Change in HHI	388	.....
Market Condition (Post-merger)—Weirton Divested (independent):		
Weirton Survives (highly unlikely)	2,761	.....
Weirton Fails (very likely)	3,645	18.6
Market Condition (Post-merger)—Sparrows Point Divested (independent):		
Weirton Survives (unlikely beyond the very short term)	2,836	.....
Weirton Fails (likely within a few years)	3,421	18.6
Market Condition (Post-merger)—Sparrows Point Divested (independent):		
S–Point TMP Operations Survive	2,836	.....
S–Point TMP Operations Shuttered	3,495	12.4
Market Condition (Post-merger)—Sparrows Point Divested (to USS):		
S–Point TMP Operations Survive	3,927	.....
S–Point TMP Operations Shuttered	3,495	12.4
Market Condition (Post-merger)—Dofasco Divested (independent)	3,182	.....
Market Condition (Post-merger)—Dofasco Divested to TK	3,222	.....

Prepared by WFG

Competitive Impact Analysis: Alternative Remedies

HHI Tin Market

Eastern U.S. Regional Market

Market Condition (Pre-Merger)

	Mkt share	MShr-Sqr
USS	44%	0.19360
Mittal	31%	0.09610
Ohio Coatings	8%	0.00640
Dofasco-Arcelor-EU	6%	0.00360
Rasselstein	5%	0.00245
Corus	6%	0.00366
HHI	3,058	.....

Market Condition (Post-Merger)—No Divestiture

	Mkt share	MShr-Sqr
USS	44%	0.19360
Mittal-Arcelor	37%	0.13690
Ohio Coatings	8%	0.00640
Rasselstein	5%	0.00245
Corus	6%	0.00366
	100%	.....
HHI	3,430	.....

Key Market Shares

Weirton	18.6%
Sparrows Point	12.4%
Dofasco	4.0%
Arcelor-EU	2.0%

Market Condition (Post-Merger)—Weirton Divested (Independent)

	Weirton survives		Weirton fails	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	44.0%	0.19360	54%	0.29218
Mittal-Arcelor	18.4%	0.03386	23%	0.05110
Ohio Coatings	8.0%	0.00640	10%	0.00966
Weirton	18.6%	0.03460	.....	.....
Rasselstein	5%	0.00245	6%	0.00370

MARKET CONDITION (POST-MERGER)—WEIRTON DIVESTED (INDEPENDENT)—Continued

	Weirton survives		Weirton fails	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
Corus	6%	0.00366	7%	0.00552
HHI	2,746		3,622	

Eastern U.S. Regional Market

MARKET CONDITION (POST-MERGER)—SPARROWS POINT DIVESTED (INDEPENDENT)

	Weirton Survives		Weirton fails	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	44.0%	0.19360	54%	0.29218
Mittal-Arcelor	24.6%	0.06052	7.4%	0.00543
Ohio Coatings	8.0%	0.00640	10%	0.00966
Sparrows Point	12.4%	0.01538	15%	0.02321
Rasselstein	5%	0.00245	6%	0.00370
Corus	6%	0.00366	7%	0.00552
HHI	2,820		3,397	

MARKET CONDITION (POST-MERGER)—SPARROWS POINT DIVESTED (INDEPENDENT)

	S–Point TMP operations remain in operation		S–Point TMP operations shuttered	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	44.0%	0.19360	50%	0.25229
Mittal-Arcelor	24.6%	0.06052	28%	0.07886
Ohio Coatings	8.0%	0.00640	9%	0.00834
Sparrows Point	12.4%	0.01538		0.00000
Rasselstein	5%	0.00245	6%	0.00319
Corus	6%	0.00366	7%	0.00477
HHI	2,820		3,475	

MARKET CONDITION (POST-MERGER)—SPARROWS POINT DIVESTED (TO USS)

	S–Point TMP operations remain in operation		S–Point TMP operations shuttered	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	56.4%	0.31810	50%	0.25229
Mittal-Arcelor	24.6%	0.06052	28%	0.07886
Ohio Coatings	8.0%	0.00640	9%	0.00834
			0%	0.00000
Rasselstein	5%	0.00245	6%	0.00319
Corus	6%	0.00366	7%	0.00477
HHI	3,911		3,475	

MARKET CONDITION (POST-MERGER)—DOFASCO DIVESTED (INDEPENDENT)

	Mkt share	MSr-Sqr
USS	44%0	0.19360
Mittal-Arcelor	33%	0.10890
Ohio Coatings	8%	0.00640
Rasselstein	5%	0.00245
Corus	6%	0.00366
Dofasco	4%	0.00160
HHI	3,166	

MARKET CONDITION (POST-MERGER)—DOFASCO DIVESTED TO THYSSENKRUPP

	Mkt share	MSr-Sqr
USS	44%	0.19360

MARKET CONDITION (POST-MERGER)—DOFASCO DIVESTED TO THYSSENKRUPP—Continued

	Mkt share	MSr-Sqr
Mittal-Arcelor	33%	0.10890
Ohio Coatings	8%	0.00640
Rasselstein-Dofasco (TK)	9%	0.00801
Corus	6%	0.00366
HHI	3,206	

Prepared by WFG

Competitve Impact Analysis: Alternative Remedies

HHI Tin Market

Eastern U.S. Regional Market

MARKET CONDITION (PRE-MERGER)

	Mkt shareCHED H='1'≤MShr-Sqr	
USS	44%	0.19360
Mittal	31%	0.09610
Ohio Coatings	8%	0.00640
Dofasco-Arcelor-EU	6%	0.00360
Rasselstein	5%	0.00245
Corus	6%	0.00366
HHI	3,058	

MARKET CONDITION (POST-MERGER)—NO DIVESTITURE

	Mkt share	MShr-Sqr
USS	44%	0.19360
Mittal-Arcelor	37%	0.13690
Ohio Coatings	8%	0.00640
Rasselstein	5%	0.00245
Corus	6%	0.00366
	100%	
HHI	3,430	

KEY MARKET SHARES

Weirton	18.6%
Sparrows Point	12.4%
Dofasco	4.0%
Arcelor-EU	2.0%

MARKET CONDITION (POST-MERGER)—WEIRTON DIVESTED (INDEPENDENT)

	Weirton survives		Weirton fails	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	44.0%	0.19360	54%	0.29218
Mittal-Arcelor	18.4%	0.03386	23%	0.05110
Ohio Coatings	8.0%	0.00640	10%	0.00966
Weirton	18.6%	0.03460		
Rasselstein	5%	0.00245	6%	0.00370
Corus	6%	0.00366	7%	0.00552
HHI	2,746		3,622	

MARKET CONDITION (POST-MERGER)—SPARROWS POINT DIVESTED (INDEPENDENT)

	Weirton survives		Weirton fails	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	44.0%	0.19360	54%	0.29218
Mittal-Arcelor	24.0%	0.06052	7.4%	0.00543
Ohio Coatings	8.0%	0.00640	10%	0.00966

MARKET CONDITION (POST-MERGER)—SPARROWS POINT DIVESTED (INDEPENDENT)—Continued

	Weirton survives		Weirton fails	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
Sparrows Point	12.4%	0.01538	15%	0.02321
Rasselstein	5%	0.00245	6%	0.00370
Corus	6%	0.00366	7%	0.00552
HHI	2,820		3,397	

MARKET CONDITION (POST-MERGER)—SPARROWS POINT DIVESTED (INDEPENDENT)

	S–Point TMP operations remain in operation		S–Point TMP operations shuttered	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	44.0%	0.19360	50%	0.25229
Mittal-Arcelor	26.6%	0.06052	28%	0.07886
Ohio Coatings	8.0%	0.00640	9%	0.00834
Sparrows Point	12.4%	0.01538		0.00000
Rasselstein	5%	0.00245	6%	0.00319
Corus	60%	0.00366	7	0.00477
HHI	2,820		3,475	

MARKET CONDITION (POST-MERGER)—SPARROWS POINT DIVESTED (TO USS)

	S–Point TMP operations remain in operation		S–Point TMP operations shuttered	
	Mkt share	MShr-Sqr	Mkt share	MShr-Sqr
USS	56.4%	0.31810	50%	0.25229
Mittal-Arcelor	24.6%	0.06052	28%	0.07886
Ohio Coatings	8.0%	0.00640	9%	0.00834
			0%	0.00000
Rasselstein	5%	0.00245	6%	0.00319
Corus	6%	0.00366	7%	0.00477
HHI	3,911		3,475	

MARKET CONDITION (POST-MERGER)—DOFASCO DIVESTED (INDEPENDENT)

	Mkt share	MShr-Sqr
USS	44%	0.19360
Mittal-Arcelor	33%	0.10890
Ohio Coatings	8%	0.00640
Rasselstein	5%	0.00245
Corus	6%	0.00366
Dofasco	4%	0.00160
HHI	3,166	

MARKET CONDITION (POST-MERGER)—DOFASCO DIVESTED TO THYSSENKRUPP

	Mkt share	MShr-Sqr
USS	44%	0.19360
Mittal-Arcelor	33%	0.10890
Ohio Coatings	8%	0.00640
Rasselstein-Dofasco (TK)	9%	0.00801
Corus	6%	0.00366
HHI	3,206	

Attachment 42—"Probability That Divestiture Will Improve Competition"

Arcelor-Mittal Merger – Competitive Impact for U.S. Tin Consumers

Probability that Divestiture Will Improve Competition

Given that divesting a tin operation from the greater Mittal-Arcelor company may result in the failure of the divested facility, the DOJ should consider the likelihood that any proposed divestiture does not hurt the market.

To determine how likely a divestiture will reduce competition in the U.S. tin market, we can solve for the expected value of HHI given a divestiture

$$HHI_{expected} = P_{success} HHI_{success} + P_{failure} HHI_{fail}$$

where

$HHI_{expected}$	= expected value of HHI
$HHI_{success}$	= HHI if divested mill is successful (i.e., does not exit the industry)
HHI_{fail}	= HHI if divested mill fails (i.e., exits the industry)
$P_{success}$	= Probability of success
P_{fail}	= Probability of failure (= 1- $P_{success}$)

The possibility that divestiture does not lower the HHI below its pre-merger level (i.e., make the market at least as competitive as prior to the approval of the Arcelor-Mittal merger) means that the expected HHI (post divestiture) is greater than the HHI prior to the Arcelor/Mittal merger. This can be written as

Divestiture Worsens Competitive Balance if

$$\begin{aligned} HHI_{pre-merger} &\leq HHI_{expected} \\ &= P_{success} HHI_{success} + P_{failure} HHI_{fail} \\ &= P_{success} HHI_{success} + (1 - P_{success}) HHI_{fail} \end{aligned}$$

Solving for $P_{success}$ yields

Divestiture Worsens Competitive Balance if

$$P_{success} \leq \frac{\left(HHI_{pre-merger} - HHI_{failure}\right)}{\left(HHI_{success} - HHI_{fail}\right)}$$

In English, this equation means that if the likelihood that the divested mill will succeed is too small (i.e., $P_{success}$ is too small), the divestiture will worsen the competitive situation in the U.S. tin market.

Using the HHI's calculated in Exhibit [redacted] we can use the above equation and conclude

Policy Option	Critical Value of $P_{success}$	Interpretation
Divesting Weirton	64.3%	Unless the probability that a stand-alone Weirton will succeed is at least 64.3%, the expected result of divesting Weirton is a worsening of the competitive situation in the U.S. tin market.
Divest Sparrows Point	58.7%	The key issue is Weirton's viability within Mittal if Sparrows Point is divested. Without Sparrows Point's slab-making capacity there is considerable risk that Weirton will be starved due to lack of raw material Unless the probability that Mittal can survive without Sparrows Point is at least 58.7%, the expected result of divesting Weirton is a worsening of the competitive situation in the U.S. tin market.

Attachment 43—ITC Prehearing Staff Report, *Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom,* Inv. Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–328, 348, and 350 (Second Review); 701–TA–319, 320, 325–328, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review) (September 25, 2006) at Tables CORE–III–8 and CTL III–9

Public Version

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, DC

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom

Prehearing Report to the Commission on Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–328, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review).

Staff assigned:

Elizabeth Haines, *Investigator* (205–3200),
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Gerald Houck, *Industry Analyst* (205–3392),
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Staff gratefully acknowledge the contributions of the following individuals:

Mara Alexander; Gabriel Ellenberger; Lita David-Harris; Carolyn Holmes; Steven Hudgens; Susan Louie; Mark Rees; Fred Ruggles; Lemuel Shields; and Darlene Smith in January–June 2006

than in January–June 2005. Ten of the 18 producers operating continuously from 2000 to 2003 reported better operating profits while the other eight producers reported a decline in operating profits. As discussed in table CORE–III–9, data for 2003 are impacted by limitations in information available to * * * regarding the operations of * * *.

TABLE CORE–III–8—CORROSION-RESISTANT STEEL: RESULTS OF OPERATIONS OF U.S. PRODUCERS, 2000–05, JANUARY–JUNE 2005, AND JANUARY–JUNE 2006

Item	Fiscal year						January–June	
	2000	2001	2002	2003	2004	2005	2005	2006
Quantity (short tons)								
Total net sales	20,077,026	19,561,875	20,890,841	19,290,267	21,916,288	20,389,803	10,108,023	11,349,571
Value ($1,000)								
Total net sales	11,060,117	9,766,640	10,955,956	10,324,538	14,847,617	14,495,023	7,428,201	8,258,842
COGS	10,487,543	9,843,595	10,699,028	9,711,362	12,768,311	13,267,367	6,587,267	7,606,927
Gross profit (loss)	572,574	(76,955)	256,928	613,176	2,079,306	1,277,656	840,934	651,915
SG&A expenses	424,888	412,539	435,110	459,562	456,432	448,921	215,626	224,073
Operating income (loss)	147,686	(489,494)	(178,182)	153,614	1,622,874	778,735	625,308	427,842
Interest expense	270,797	281,813	219,501	184,218	190,862	147,755	71,222	79,063
CDSOA income	0	8,240	5,125	14,416	17,235	6,593	0	0
Other income (expense)	50,357	6,953	29,850	(58,033)	(95,415)	(101,884)	(54,609)	(45,711)
Net income (loss)	(72,754)	(756,114)	(362,708)	(74,221)	1,353,832	535,689	499,477	303,068
Depreciation	629,065	632,189	556,215	433,982	413,178	396,836	204,831	213,797
Cash flow	556,311	(123,925)	193,507	359,761	1,767,010	932,525	704,308	516,865
Ratio to net sales (percent)								
COGS:								
Raw materials	42.1	45.3	44.3	49.4	51.9	55.8	55.0	58.3
Direct labor	11.3	11.5	9.3	9.8	8.0	7.9	7.8	7.7
Other factory costs	41.5	44.0	44.0	34.9	26.0	27.9	25.9	26.1
Total COGS	94.8	100.8	97.7	94.1	86.0	91.5	88.7	92.1
Gross profit (loss)	5.2	(0.8)	2.3	5.9	14.0	8.5	11.3	7.9
SG&Aexpenses	3.8	4.2	4.0	4.5	3.1	3.1	2.9	2.7
Operating income (loss)	1.3	(5.0)	(1.6)	1.5	10.9	5.4	8.4	5.2
Net income (loss)	(0.7)	(7.7)	(3.3)	(0.7)	9.1	3.7	6.7	3.7
Unit value (per short ton)								
Total net sales	$551	$499	$524	$535	$677	$711	$735	$728
COGS:								
Raw materials	232	226	233	264	352	396	404	424
Direct labor	62	58	49	52	54	56	57	56
Other factory costs	228	220	231	187	176	198	191	190
Total COGS	522	503	512	503	583	651	652	670
Gross profit (loss)	29	(4)	12	32	95	60	83	57

TABLE CORE–III–8—CORROSION-RESISTANT STEEL: RESULTS OF OPERATIONS OF U.S. PRODUCERS, 2000–05, JANUARY–JUNE 2005, AND JANUARY–JUNE 2006—Continued

Item	Fiscal year						January–June	
	2000	2001	2002	2003	2004	2005	2005	2006
SG&Aexpenses	21	21	21	24	21	22	21	20
Operating income (loss)	7	(25)	(9)	8	74	38	62	38
Net income (loss)	(4)	(39)	(17)	(4)	62	26	49	27
Number of firms reporting								
Operating losses	5	10	7	6	1	4	2	6
Data	18	19	19	19	19	19	19	19

Souce: Compiled from data submitted in response to Commission questionnaires.

The industry-wide financial results improved sharply from 2003 to 2004. Per-unit operating income substantially improved as the increase in per-unit net sales values ($142 per short ton) was greater than the combined effects of an increase in unit cost of goods sold (''COGS'') ($79 per short ton) and a decline in selling, general, and administrative (''SG&A'') expenses ($3 per short ton). The 2003 to 2004 improvements in operating income was reflected in 18 of 19 reporting firms' financial data.

The domestic industry's total and per-unit operating income again declined from 2004 to 2005 and was lower in January—June 2006 than in January—June 2005; however, 2005 operating income was still higher than in 2000–03. In 2005, the increase in per-unit net sales values ($33 per short ton) was smaller than the increase in COGS ($68 per short ton) and SG&A expenses ($1 per short ton). The overall decline from 2004 to 2005 was experienced by the majority (17 of 19 producers) of the industry.

Per-unit net sales values were lower ($7 per short ton) while per-unit costs and expenses were higher ($17 per short ton) in January—June 2006 as compared to January—June 2005. The overall decline.

TABLE CTL–III–9—CTL PLATE: RESULTS OF OPERATIONS OF U.S. MILLS AND PROCESSORS, 2000–05, JANUARY–JUNE 2005, AND JANUARY–JUNE 2006

Item	Fiscal year						January–June	
	2000	2001	2002	2003	2004	2005	2005	2006
Quantity (short tons)								
Total net sales	4,747,122	4,308,921	4,769,611	5,263,108	5,691,810	5,762,736	2,859,260	3,389,491
Value ($1,000)								
Total net sales	1,731.020	1,467,318	1,627,675	1,906,404	3,609,040	4,213,623	2,202,648	2,486,482
COGS	1,782,446	1,562,873	1,644,041	1,903,185	2,711,059	3,018,911	1,548,290	1,782,419
Gross profit (loss)	(51,426)	(95,555)	(16,366)	3,219	897,981	1,194,712	654,358	704,423
SG&A expenses	111,043	104,762	97,260	136,865	104,440	122,899	58,079	70,415
Operating income (loss)	(162,469)	(200,317)	(113,626)	(133,646)	793,541	1,071,813	596,279	634,009
Interest expense	40,553	50,098	43,096	44,338	43,747	45,283	18,184	15,062
CDSOA income	0	827	146	1,508	2,677	413	0	0
Other income/(expense)	5,466	(1,824)	19,237	18,185	17,809	23,559	(382)	10,989
Net income/(loss)	(197,556)	(251,412)	(137,339)	(158,291)	770,281	1,050,502	577,713	629,935
Depreciation	109,461	114,677	127,946	121,969	116,779	116,072	58,565	60,141
Cash flow	(88,095)	(136,735)	(9,393)	(36,322)	887,060	1,166,574	636,278	690,077
Ratio to net sales (percent)								
COGS:								
Raw materials	44.0	43.7	43.9	48.8	46.6	45.8	44.8	43.7
Direct labor	14.7	14.4	12.2	11.8	5.5	5.0	4.4	5.2
Other factory costs	44.2	48.4	44.9	39.3	23.0	20.8	21.1	22.8
Total COGS	103.0	106.5	101.0	99.8	75.1	71.6	70.3	71.7
Gross profit (loss)	(3.0)	(6.5)	(1.0)	0.2	24.9	28.4	29.7	28.3
SG&A expenses	6.4	7.1	6.0	7.2	2.9	2.9	2.6	2.8
Operating income (loss)	(9.4)	(13.7)	(7.0)	(7.0)	22.0	25.4	27.1	25.5
Net income (loss)	(11.4)	(17.1)	(8.4)	(8.3)	21.3	24.9	26.2	25.3
Unit value (per short ton)								
Total net sales	$365	$341	$341	$362	$634	$731	$770	$734
COGS:								
Raw materials	161	149	150	177	295	335	345	320
Direct labor	54	49	41	43	35	37	34	38
Other factory costs	161	165	153	142	146	152	162	167

TABLE CTL–III–9—CTL PLATE: RESULTS OF OPERATIONS OF U.S. MILLS AND PROCESSORS, 2000–05, JANUARY–JUNE 2005, AND JANUARY–JUNE 2006—Continued

Item	Fiscal year						January–June	
	2000	2001	2002	2003	2004	2005	2005	2006
Total COGS	375	363	345	362	476	524	542	526
Gross profit (loss)	(11)	(22)	(3)	1	158	207	229	208
SG&A expenses	23	24	20	26	18	21	20	21
Operating income (loss)	(34)	(46)	(24)	(25)	139	186	209	187
Net income (loss)	(42)	(58)	(29)	(30)	135	182	202	186
Number of firms reporting								
Operating losses	8	8	9	10	1	0	1	0
Data	14	13	14	15	16	15	15	15

Source: Compiled from data submitted in response to Commission questionnaires.

The industry-wide financial decline reversed from 2003 to 2005. Per-unit operating income substantially improved as the increase in per-unit net sales values ($369 per short ton) was much greater than the combined effects of an increase in unit cost of goods sold (''COGS'') ($162 per short ton) and a decline in selling, general, and administrative (''SG&A'') expenses ($5 per short ton). While * * * enjoyed some of the largest increases in operating profitability from 2003 to 2005, the 2003 to 2005 increase cut across the industry, as all mills (individually) and processors (collectively) operating continuously during this time frame reported increased operating profits or smaller losses.

The domestic industry's operating income was also higher in January–June 2006 than in January–June 2005 due to the increase in net sales quantity; however, on a per-unit basis, lower net sales values ($37 per short ton) were greater in magnitude than the net reduction in COGS (lower by $16 per short ton) and SG&A expenses (higher by $0.50 per short ton). The higher operating income level in January–June 2006 was generally reflected across the industry, as a majority (10 of 15) of firms reported greater operating income than in January–June 2005.

Attachment 44—*Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia*, Inv. Nos. 701–TA–384 and 731–TA–806–808 (Review), USITC Pub. 3767 (April 2005) at Table III–11

The attachment is available at the following Web site, *http://hotdocs.usitc.gov/docs/pubs/701_731/pub3767.pdf.*

Exhibit 2

Weil, Gotshal & Manges LLP

November 15, 2006

Maribeth Petrizzi, Esq.,

Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, Washington, DC 20530.

Re: Comments of ThyssenKrupp A.G. Regarding The Proposed Final Judgment In *United States* v. *Mittal Steel Company N.V.* (Civil Case No. 1:06–CV01360–ESH)

Dear Ms. Petrizzi: Pursuant to the Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, ThyssenKrupp A.G. hereby submits comments on the Proposed Final Judgment in the above-referenced matter.

Sincerely,

James F. Lerner.

Encl.

Comments of Thyssenkrupp A.G. Regarding the Proposed Final Judgment in *United States* v. *Mittal Steel Company N.V.* (Civil Case No. 1:06–CV01360–ESH)

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act; 15 U.S.C. 16, ThyssenKrupp A.G. (''ThyssenKrupp'') hereby files these comments demonstrating that the remedies proposed as alternatives to the divestiture of Dofasco Inc. (''Dofasco'') to ThyssenKrupp, set forth in the Proposed Final Judgment intended to resolve the Complaint filed by the United States to prevent the acquisition by Mittal Steel Company N.V. (''Mittal'') of Arcelor, S.A. (''Arcelor''), do not adequately replace the competition lost in the Tin Mill Products market from the elimination of Dofasco as a significant competitor to Mittal.[1] Because the remedies proposed as alternatives to the divestiture of Dofasco do not address adequately the harm alleged by the Department of Justice (''DOJ'') in the Complaint, entry of the Proposed Final Judgment is not in the public interest.

Divestiture of Mittal's Sparrows Point Business or Mittal's Weirton Business Will Not Preserve Competition in the Market for Tin Mill Products in the Eastern United States

As set forth in the DOJ's August 1, 2006 Complaint, ''Mittal Steel's proposed acquisition of Arcelor would eliminate Arcelor, including its subsidiary Dofasco, as an independent competitor in the sale of Tin Mill Products in the Eastern United States, further consolidating an already highly concentrated market. * * *'' The acquisition would remove current constraints on coordination and increase the incentives of the two largest firms to coordinate their behavior. The acquisition would thus substantially increase the likelihood of coordination and would likely lead to higher prices, lower quality, less innovation, and less favorable delivery terms in the Tin Mill Products market in the Eastern United States.''[2] Complaint, at ¶¶ 4, 5.

The Proposed Final Judgment and Competitive Impact Statement both make clear that the divestiture of Dofasco to ThyssenKrupp is the preferred remedy for the competitive harm alleged to arise from Mittal's

[1] Although Mittal and Arcelor are now known as Arcelor Mittal, we refer to each by their pre-merger names in these comments to avoid confusion, unless otherwise indicated.

[2] As defined in the Proposed Final Judgment, ''Tin Mill Products'' means collectively black plate, i.e., light-gauge cold-rolled bare steel sheet; electrolytic tin plate, i.e., black-plate electrolytically coated with tin; and tin free steel, i.e., black plate electrolytically coated with chromium. Proposed Final Judgment, II.M.

acquisition of Arcelor. Mittal is ordered to use its best efforts to divest the Dofasco Business as expeditiously as possible, Proposed Final Judgment, IV.A, and only in the event that Mittal is unable to accomplish the divestiture of Dofasco is Mittal then required to divest either the Sparrows Point or the Weirton Business (the ''Selected Business''), with the decision as to which of these two alternative businesses is to be divested resting with the United States.

The Competitive Impact Statement states that the divestiture of either Dofasco or the Selected Business ''is designed to enable whoever acquires such divested business to be ''viable and active competitor in the Eastern United States Tin Mill Products market,'' Competitive Impact Statement, at 2, and goes on to assert that whether the Dofasco Business or a Selected Business is divested, ''the preserved competitor would have modern and efficient facilities located close enough to customers in the Eastern United States to compete effectively.'' Competitive Impact Statement, at 11. Despite this assertion, it is ThysdenKrupp's assessment that neither Sparrows Point nor Weirton has the ''modern and efficient'' facilities necessary to compete in the Tin Mill Products market in a manner that adequately would replace the competition lost by Mittal's acquisition of Arcelor, including Dofasco.

ThyssenKrupp received several comments from their key US tinplate customers expressing their concerns with the alternative divestiture, stressing that divestiture of either of the US Mittal tinplate facilities would not have the same effect in addressing their competitive concerns. These customers indicated that the divestiture of Dofasco to ThyssenKrupp is highly preferred to the divestiture of either of the Mittal facilities (*i.e.,* Sparrows Point or Weirton) and is the most-competitive solution.

In line with its customers, it is ThyssenKrupp's firm conviction that only direct access to an integrated network ensuring strong R&D support, and close coordination across a full-fledged and reliable steel production chain (including state-of-the art metallurgy—blast furnaces, melt shops, continuous casting—hot and cold rolling, annealing and coating) will enable a tinplate producer to compete effectively and to meet the increasing demands of its customers in regard to Tin Mill Products with thinner gauges and higher surface quality.

In terms of virtually all of the process steps and critical success factors for the successful production of tin plate, both Sparrow Point and Weirton fall far short of the capabilities of Dofasco. An acquirer of either Sparrows or Weirton would not, without a substantial investment that would take time (and still might not yield the desired results), be able to replace immediately the Tin Mill Product competition lost by allowing Mittal to retain Arcelor and Dofasco. Therefore, ThyssenKrupp will certainly not acquire Sparrows Point nor Weirton.

In contrast to this, ThyssenKrupp's acquisition of Dofasco will preserve a strong local tinplate competitor which will be able to continue to provide quality Tin Mill products and preserve meaningful competition for tinplate customers in the Eastern US.

Accordingly, entry of a Proposed Final Judgement that permits Mittal to divest either Sparrows Point or Weirton rather than requiring the divestiture of Dofasco will not adequately address the competitive concerns alleged in the DOJ's Complaint.

Dated: November 15, 2006.

A. Paul Victor,
Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, NY 10019, and

Steven P. Bernstein,
James F. Lerner,
Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153.

Attorneys for Thyssen Krupp, A.G.

Exhibit 3

Hogan & Hartson

Hogan & Hartson LLP, Columbia Square, 555 Thirteenth Street, NW, Washington, DC 20004, +1.202.637.5600 Tel, +1.202.637.5910 Fax, www.hhlaw.com.

November 15, 2006

Maribeth Petrizzi, Esquire,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: DaimlerChrysler Tunney Act Comments

Dear Maribeth: DaimlerChrysler submits that the United States Department of Justice antitrust Division (the ''Division'' or ''Antitrust Division'') should renegotiate its proposed consent decree with Arcelor Mittal to ensure that Dofasco is either divested as planned or operated separately until it can be sold. The alternative divestitures in the proposed consent decree do not adequately address the competitive problems created by Arcelor-Mittal merger.

Introduction

The Tunney Act requires that a proposed consent decree negotiated between the Antitrust Division and the parties be published in the **Federal Register,** with a 60 day period for public comment. 15 U.S.C. 16. The Act also requires a federal court to determine if the entry of final judgment on the terms agrees to in the proposed consent decree, is in the public interest. *Id.*

DaimlerChrysler is aware of the Division's position that Tunney Act review requires only an examination of whether the relief proposed satisfactorily remedies the competition issues pleaded in the Complaint. In this case, the Complaint identified competitive issues in the market for Eastern United States Tin Mill Products. However, this settlement is worthy of reconsideration by the Division for several reasons.

- First, although both the Division and Mittal apparently believe that Dofasco could be divested, that turns out not to be true. The directors of Strategic Steel Stichting, the Dutch foundation holding Dofasco's shares (''Dutch trust''), have refused to dissolve the Dutch trust and relinquish the shares.
- Second, recent events demonstrate that the automotive issues resulting from the merger are far more important for the automobile industry than they first appeared.
- Third, the alternative divestitures are not likely to preserve competition in either the market alleged in the Complaint, Eastern United States tin Mill Products, or the North American Hot dipped Galvanized Steel market.

DaimlerChrysler submits these comments in support of the Division's preferred remedy—the divestiture of Dofasco—and to explain the infirmities in the alternative divestiture candidates.

The Arcelor-Mittal Merger

A. Merger Chronology

In January 2006, Mittal Steel Company N.V. (''Mittal'') announced its intention to launch a hostile tender offer to acquire Arcelor S.A. (''Arcelor''). In an attempt to preempt potential antitrust objections to the proposed combination in the United States, Mittal simultaneously announced that if it acquired Arcelor, it intended to sell Arcelor's subsidiary, Dofasco Inc. (''Dofasco''), which Arcelor was in the process of acquiring at that time, to ThyssenKrupp, a German-based steel corporation. Arcelor initially resisted Mittal's takeover attempt vigorously and, as part of that resistance, transferred its interest in Dofasco to the Dutch trust as a defense measure against Mittal's tender offer. After the Dofasco transfer, Arcelor's Board agreed to recommend Mittal's improved 433 billion offer to its shareholders on June 25, 2006, and the combination of Arcelor and Mittal is now under way. See Paul Glader, Mittal's Founder Asserts Control as Steelmaker, Wall St. J., (Nov. 7, 2006). On November 13, 2006, Arcelor announced that the directors of the Dutch trust had decided not to dissolve the Dutch trust and this action has blocked Arcelor Mittal's divestiture of Dofasco—the Division's preferred remedy. See Press Release, Arcelor Mittal Press Release on Dofasco (Nov. 13, 2006) available at: *http://www.arcelormittal.com/index.php?lang=en&page=49&tbPress=here&tb0=10.*

B. Complaint and Proposed Consent Decree

In May 2006, the Division negotiated a ''pocket consent decree'' with Mittal in which Mittal agreed to divest Dofasco. At that time, it appears that neither the Division nor Mittal fully appreciated the obstacles to

the Dofasco divestiture created by the Dutch trust. On August 1, 2006, the Antitrust Division filed a Complaint, proposed consent decree, and Competitive Impact Statement with the United States District Court for the District of Columbia, conditionally approving Mittal's proposed acquisition of Arcelor.

1. Alleged Anticompetitive Effects on Tin Mill Products

In the Complaint and Competitive Impact Statement, the Division alleged that Mittal's acquisition of Arcelor would substantially lessen competition in the market for Tin Mill Products in the Eastern United States in violation of Section 7 of the Clayton Act. The Division alleged that the relevant geographic market for Tin Mill Products is the Eastern United States because of a number of factors, including shipping costs and anti-dumping duties on Tin Mill Products from Japan that effectively close the United States market to competition from Japan. Applying this geographic market definition to Tin Mill Products, the Division determined that the market for Tin Mill Products in the Eastern United States is highly concentrated and is dominated by Mittal and ''another integrated steelmaker'' (United States Steel). According to the Complaint, Mittal accounted for 31 percent of the Tin Mill product tonnage sold in this geographic market in 2005, and United States Steel accounted for more than 44 percent. The Complaint alleges that Mittal's acquisition of a combined Arcelor/Dofasco would significantly increase concentration in the already concentrated market for Eastern United States Tin Mill Products. The Complaint also alleges that the remaining competitors lack the ability and incentive to defeat anticompetitive price increases and that de novo or foreign entry is neither feasible nor likely.

2. The Proposed Remedies

The proposed Final Judgment (''the proposed consent decree'') aims to preserve competition in the Eastern United States Tin Mill Products market by requiring Arcelor Mittal to use its best efforts to sell its Dofasco mill in Canada to ThyssenKrupp or another approved buyer. In the event that Mittal is unable to dissolve the Dutch trust—which now appears to be the case—Mittal may sell either Mittal's Sparrows Point or Weirton facilities (collectively ''alternative divestitures''). While the proposed consent decree clearly reveals the Division's preference that Mittal divest Dofasco, it states that divestiture of either Weirton or Sparrows Point is sufficient to preserve competition. DaimlerChrysler agrees that the divestiture of Dofasco solves the competitive problems created by the Arcelor-Mittal merger, but disagrees with the Division's view that either of the alternative divestitures would be sufficient to preserve competition.

C. DaimlerChrysler's Interest—Hot Dipped Galvanized Steel

DaimlerChrysler is an automobile manufacturer that sources its steel from a number of North American steel producers including Mittal and Dofasco. DaimlerChrysler does not, however, utilize Tin Mill Products in its production of automobiles, nor do the other North American automobile manufacturers. If Tin Mill Products were the only problematic product market, DaimlerChrysler and the rest of the automobile industry would have little interest in Mittal's and the Division's choice of remedies. However, DaimlerChrysler and other automobile manufacturers are keenly interested in which facility is divested because the market for Hot Dipped Galvanized Steel would be even more adversely affected by Mittal's acquisition of Arcelor. DaimlerChrysler utilizes up to a ton of Hot Dipped Galvanized Steel per vehicle produced.

DaimlerChrysler fully supports the Division's preferred divestiture of Dofasco, but submits that the alternative divestitures would not preserve necessary competition. The divestiture of Dofasco would ensure that Dofasco remains an independent competitive restraint on the increasingly consolidated Hot Dipped Galvanized Steel market. Further, this divestiture would allow for continued regional competition in Canada.

D. Alternative Divestiture Remedies Should Be Rejected

Divestiture of either Sparrows Point or Weirton likely will not preserve competition for Eastern United States Tin Mill Products and certainly will not prevent the merger's anticompetitive effects in the Hot Dipped Galvanized Steel market. Neither Sparrows Point nor Weirton is attractive to potential buyers, nor do they have the ability to compete in either market as an independent company. Instead, each is a candidate for closure, especially during economic downturns. Weirton's steel making capability has already been shut down, making Weirton only a rolling mill and coating facility that is dependent upon a source of hot bands, which presently are in short supply. Sparrows Point still has the ability to make steel, but it has never demonstrated that it is viable as a stand-alone facility; it has always been part of a larger, multi-facility corporation. Dofasco, unlike either of the alternative divestiture candidates, was a profitable stand-alone company as late as January 2006.

North American Hot Dipped Galvanized Steel

DaimlerChrysler recognizes that the Division's Complaint and proposed consent decree focus on the anticompetitive impact of the merger on the Eastern United States Tin Mill Products market and not the North American Hot Dipped Galvanized Steel market. However, this view should be reconsidered.

A. Product Market

The automotive industry requires various steel alloys for frame, shell, and various parts that make up a complete automobile. Because of their exposure to the elements, automobiles require steel that resists corrosion. But, automobile manufacturers cannot utilize all grades of corrosion resistant steel. Automobile-grade exposed corrosion resistant steel must also be of high strength and high enough quality to apply paint. While corrosion resistant steel of lower grades can be used in construction or products like home appliances, only sufficiently high quality, automotive-grade corrosion resistant steel can be used by the automobile industry. The most cost-efficient material to provide this protection is steel that is coated with a rust-inhibiting layer, usually composed primarily of zinc, which is referred to as Galvanized Steel. DaimlerChrysler utilizes up to a ton of Galvanized Steel per vehicle.

Two methods of galvanization are used to provide protection from corrosion—Electroplate Galvanizing and Hot Dipped Galvanizing. In Electroplate Galvanizing, steel is passed through a zinc-rich bath at ambient air temperature. An electric current is passed through the steel, which attracts particles of zinc to the steel's surface thereby plating it. In Hot Dipped Galvanizing, heated steel sheet is passed through a bath of molten zinc resulting in a thin coating of an essentially pure zinc layer on the steel. The post-coating application of heat to the zinc coated steel promotes a reaction between the iron in the steel and the zinc in the coating, creating the zinc-iron compound known as ''Galvanneal.'' In contrast, the iron and zinc do not react in electroplate galvanization and thus do not produce the desirable properties characteristic of Galvanneal.

1. Hot Dipped vs. Electrogalvanizing

Automotive-grade Hot Dipped Galvanized Steel constitutes a separate product market from galvanized steel generally because Electroplate Galvanized Steel has more limited uses and applications, especially in the automotive industry. Hot Dipped Galvanizing is less costly than Electrogalvanizing and requires substantially less energy to produce. Hot Dipped Galvanizing also impacts desirable high strength to the steel without the addition of costly alloying elements. Even if Electrogalvanizing proved to be adequate for automotive needs, the differences in stamping properties for automotive uses would require major investments in stamping, painting and other processes by automobile manufacturers that sought to switch from one process to another. As a result, Hot Dipped Galvanized Steel and Electroplate Galvanized Steel cannot easily be substituted by automobile manufacturers.

Automotive uses also require much higher grade of steels, which Hot Dipped Galvanization can best supply. For example, automotive uses require a smooth finish and very precise alloy chemistries. Hot Dipped Galvanneal has better cosmetic corrosion performance than Electrogalvanized Steel which typically has more surface defects. Automotive use also requires very tight width and thickness tolerances that Hot Dipped Galvanization can better provide. As a result, production yields for automotive-grade Galvanized Steel are much lower than for other end uses.

2. Substitutes for Galvanized Steel

As explained above, steel can be galvanized two ways—by the hot dipped or electroplating processes. Automotive companies have explored other materials, but none is likely to replace galvanized/galvannealed steel in the foreseeable future. Like electrogalvanized steel, available alternatives are not adequate for automotive

uses. Non-coated steel is much less corrosion-resistant and fails to meet minimum automotive standards for quality. Painted steels similarly fail to meet such standards. Stainless steel, while able to meet quality standards, is far too costly to serve as a viable alternative to Hot Dipped Galvanized Steel. As a result, Hot Dipped Galvanized Steel is a separate relevant product market.

B. The Relevant Geographic Market

For DaimlerChrysler and other North American automobile manufacturers, the only practical Hot Dipped Galvanized Steel suppliers are in North America.

1. Logistical Limitations

Reliance on overseas imported steel is not economically feasible because of the logistical obstacles presented by the product itself. As Susan DeSandre, Director of Body and Chassis Purchasing, North America for Ford Motor Company characterized it in proceedings before the United States International Trade Commission, ''it's heavy, it's bulky, and it rusts on water.''[1] Automobile producers require continuous supply to keep the production lines running and it is not economically feasible to transport steel by air to accommodate unforeseen variations in demand.

2. Tariffs on Imported Steel

Currently, Australia, Canada, France, Germany, Japan, and Korea are subject to antidumping and/or countervailing duties on corrosion resistant flat steel products, including Hot Dipped Galvanized Steel. On October 17, 2006, the International Trade Commission heard testimony on whether it should renew tariffs on the foreign supply of Corrosion Resistant Steel, which are currently being reviewed. The six largest automobile producers in North America have advocated removal of the duties on Corrosion Resistant Steel because the domestic steel industry is healthy and would not be materially injured by their removal. In addition, automobile producers have argued that non-U.S. sources of corrosion-resistant steel are not readily available anyway because these products are in heavy demand in foreign markets.

Although Dofasco is not a U.S. producer, an independent Dofasco would indirectly constrain anticompetitive price increases in the United States. It would be an alternate supply to DaimlerChrysler's Canadian operations and thus reduce the company's dependence on the few remaining United States suppliers of Hot Dipped Galvanized Steel. If antidumping duties are lifted on Canadian Corrosion Resistant Steel, as DaimlerChrysler believes is appropriate, a divested Dofasco has the capacity to compete directly with the three remaining North American Hot Dipped Galvanized Steel producers, US Steel, Arcelor Mittal, and AK Steel.[2] If Dofasco were controlled by Mittal, there would be no incentive for it to do so.

C. Market Concentration

Today, the market for North American Hot Dipped Galvanized Steel is highly concentrated with the top two firms representing approximately 73% of capacity and the top three firms representing nearly 90%. Arcelor Mittal alone represents nearly half of North American capacity for Hot Dipped Galvanized Steel with its acquisition of Arcelor (including Dofasco's Canadian facilities). Unless Dofasco is divested, the post-merger Herfindahl-Hirschman Index for the North American Hot Dipped Galvanized Steel market will rise from a premerger total of 2171 to more than 3200—well above the Guidelines' threshold of 1800 for a highly concentrated market. The change in concentration resulting from the merger would be over 1000 points—again well above the Guidelines' threshold for concern.

1. Concentration Through Consolidation

Only five years ago, DaimlerChrysler had a choice of nine suppliers to choose from to meet its demand for Hot Dipped Galvanized Steel. In 2001, Mittal represented a mere 8% of North American Hot Dipped Galvanized Steel capacity. LTV's bankruptcy in 2001 and subsequent combination with Bethlehem Steel into International Steel Group in 2002 ushered in a wave of consolidation that continues today. In 2003, US Steel acquired National Steel, leaving only seven suppliers of North American Hot Dipped Galvanized Steel. Mittal increased its share from 8% to 30% with its acquisition of ISG in 2005. Mittal achieved market leadership with its acquisition of Arcelor and its Dofasco facilities in Canada, and DaimlerChrysler estimates that Arcelor Mittal now has 47% of North American Hot Dipped Galvanized Steel capacity.

Unprintable graph appears here, it purports to show 2006 North America hot dip auto capacity by company. A copy of the graph is available for inspection at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 200, Washington, DC 20530.

2. Effect of Consolidation on Prices

Although it is too early to detect the effect that Mittal's acquisition of Arcelor and Dofasco will have on prices, rising prices over the last five years, coupled with comments to industry analysts and the press by Mittal, indicate that higher prices are to come. Indeed, Mr. Lakshmi Mittal has noted that ''[c]onsolidation of the industry has accelerated * * * [l]eading to a new market oriented behavior * * * [a]nd a new fundamental price dynamic.'' See ''New Steel Paradigm and Future Challenges,'' Presentation by Lakshmi Mittal to Merrill Lynch Conference (May 11, 2006).

Over the past six years, the average price for Galvanized Steel has risen from about $500 per ton in 2000 to nearly $900 per ton earlier this year. DaimlerChrysler expects significant price increases for contracts starting in 2007. Over this same period, the number of industry participants dwindled. Thus, industrial production has decreased while prices increased to a new, higher band.

Comments to industry analysts and press by Mittal leave little doubt that the goal and likely result of consolidation is the continued rise in prices to consumers. The Automotive News observed in October of this year that ''Mittal has taken steps to stave off price cuts caused by a recent run-up in steel inventories.'' It added, ''Mittal is prepared. The company has told analysts that it will prop up prices by reducing production at one plant during that period.'' A Ton of Trouble, Automotive News (Oct. 2, 2006). ''*Mr. Mittal also hopes that a new, larger group may be able to set a lead for the rest of the industry—sending signals about when to moderate production,* and so smooth the peaks and troughs in demand that have bedeviled the steel business.'' Steel: Age of Giants, The Economist (Feb. 2, 2006) (emphasis added).

As a result, there is reason for concern about the effect of the merger on output and prices for North American Hot Dipped Galvanized Steel. These effects would be reduced by divestiture of Dofasco—and the Division should insist on its original preferred remedy.

Neither Alternative Divestiture is Viable

Although the unique circumstances existing here warrant reconsideration of this transaction's effects on the North American Hot Dipped Galvanized Steel market, the alternative divestiture remedies also fail to remedy the Division's legitimate concerns regarding the transaction's effect on the Eastern United States Tin Mill Products market.

A. Alternative Divestitures Will Fail To Preserve Competition in Either Tin Mill or Hot-Dipped Galvanized Steel Markets

Weirton has struggled since the 1970s and has nearly closed several times. In 1982, National Steel announced that it would not make the capital improvements needed for Weirton to remain competitive. In efforts to save the company, Weirton was purchased by its employees in 1984. Public offerings in 1989 and 1994 raised funds needed to modernize the plant. However, the steel import crisis that began in 1998 ''significantly reduced the company's production output, harmed its ability to control pricing and severely hampered its financial performance.'' See Weirton Steel Corporation: History, available at: *http://www.weirton.com/company/about/hist.html.* Weirton lost nearly $800 million from 1998 until it declared Chapter 11 bankruptcy in 2003. ISG purchased Weirton in 2004, and ISG was acquired by Mittal in 2005. In November 2005, Mittal shut down Weirton's steelmaking operations altogether and laid off 800 employees.

Today Weirton produces no steel and instead relies on other Mittal facilities to supply the substrate it uses in its production of tin plate. It is unlikely that Weirton will produce steel going forward. See Vicki

[1] Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan and the United Kingdom, USITC Inv. Nos. 701–TA–319, 320, 325–328, 348 and 350 (Second Review) and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review) Hearing Transcript at 426 (testimony of Ms. DeSandre) (Oct. 17, 2006).

[2] A fourth supplier, Nucor Corp., is not a practical alternative supplier to the auto industry for exposed automotive-grade corrosive resistant steel because its production method, which utilizes recycled scrap metal, produces steel that does not meet the tolerances required by automobile makers for substrate.

Smith, Furnace Will Stay Idle at Weirton Steel Mill, Courier-Journal (Louisville, Ky.) (Dec. 2, 2005). In any event, Weirton will almost certainly never play a role in disciplining price increases in North American Hot Dipped Galvanized Steel because it cannot produce that product. Its inability efficiently to produce the steel substrate it needs for tin mill production, coupled with relatively high transportation and raw materials costs, do not bode well for its tin mill production prospects either. In fact, Weirton is likely to be a victim of the increased concentration in the North American Steel market rather than a disciplining force. Since Weirton does not produce Hot Dipped Galvanized Steel at all, it is totally unable to discipline any output restrictions in that market.

Sparrows Point has also struggled. In October 2001, Bethlehem, which employed about 3,400 workers at Sparrows Point, filed for Chapter 11 bankruptcy. By May 2006, the plant employed only 2,500 employees and had changed hands three times in the past six years. Despite cutting costs and the introduction of new ''efficiencies and innovations, Sparrows Point is one of Mittal's most expensive plants to run because of high energy costs and more environmental regulations owing to its location on the Chesapeake Bay.'' Allison Connolly, Feeling Pressure for Profits, Balt. Sun, 1C (May 14, 2006). ''[W]orkers worry that Mittal will take away their incentives or force them to make other concessions to keep the plant open.'' Id. ''They also worry about layoffs if certain parts of the plant are idled, for example, if Mittal sends the tin work back to Weirton.'' Id. Today, Sparrows Point is used primarily to supply other Mittal plants with substrate. It is unlikely to produce Hot Dipped Galvanized Steel for use by the automobile industry and is unlikely ever to be able to operate as a stand-alone entity.

B. Divestiture of Dofasco Is the Only Viable Option To Preserve Competition

Unlike either Sparrows Point or Weirton, Dofasco has recently been a successful stand alone steel company and continues to thrive independently today (pursuant to the Hold Separate Order). If not for the Dutch trust issue, Dofasco could clearly be sold to ThyssenKrupp or a number of other potential suitors. Indeed, analysts agree that Dofasco is by far the most attractive of the three mills and that Mittal has little incentive to divest it. ''Right now time is on their side, and they are generating a lot of cash flow. * * * At the end of the day, if they can keep [Dofasco], really the winners will be Arcelor Mittal, and the losers will be ThyssenKrupp,'' says Alain William, an analyst for Societe Generale. Heather Thomas, Poison Pill Is Among the Reasons Mittal Steel Deal Remains a Multi-Company Tangle, N.Y. Times (Nov. 3, 2006).

Sparrows Point and Weirton, on the other hand, will be difficult to divest, and incapable of operating as stand-alone businesses. ''The problem is, who would want to buy either of the two? Mittal will have to decide which one to sell, but you can't manufacture a customer,'' said Charles Bradford, an independent steel analyst for Soleil Securities in New York. See Merger Proviso Gives Hope to Weirton Steel, Pittsburgh Tribune Rev. (Aug. 3, 2006). ''Weirton and Sparrow's Point are not good plants. Dofasco is * * *. Dofasco's good company and I'm not so sure that Mittal wouldn't rather have it than Weirton or Sparrow's Point.'' Romino Maurino, Mittal Steel Sets Deadline for Sale of Dofasco, Inc., Winnipeg Free Press, (Sept. 28, 2006).

The Division, with its investigative resources, has better access than DaimlerChrysler does to the underlying facts that support these comments. It has prudently reserved the right to determine whether a divestiture of either Sparrows Point or Weirton would be feasible. The Division should revisit its view that divestiture of either Weirton or Sparrows Point would be sufficient.

Conclusion

An independent Dofasco can discipline anticompetitive price increases for Tin Mill Products. But even more important from DaimlerChrysler's point of view, it can also act as a competitive constraint on anticompetitive output restrictions on the supply of North American Hot Dipped Galvanized Steel. Thus, DaimlerChrysler urges the Division to reconsider its acceptance of one of the alternative divestiture candidates and instead to insist on the divestiture of Dofasco. If the Dutch trust proves to be an immovable obstacle to the sale of Dofasco, it could simply be spun off as a freestanding entity, to operate independently, as it did as recently as January 2006. If an adequate remedy requires renegotiation of the consent decree, we urge the Division to take the steps that are necessary to maintain competition in the steel industry.

Sincerely,

Thomas B. Leary.
Janet L. McDavid.

cc: Allan M. Huss, Senior Counsel, Antitrust/Regulatory Affairs, DaimlerChrysler Corporation.

[FR Doc. 07–1321 Filed 4–6–07; 8:45 am]

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Federal Register

Monday,
April 9, 2007

Part III

Department of Homeland Security

6 CFR Part 27

Chemical Facility Anti-Terrorism Standards; Final Rule

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[DHS–2006–0073]

RIN 1601–AA41

Chemical Facility Anti-Terrorism Standards

AGENCY: Department Of Homeland Security.

ACTION: Interim final rule.

SUMMARY: The Department of Homeland Security (DHS or Department) issues this interim final rule (IFR) pursuant to Section 550 of the Homeland Security Appropriations Act of 2007 (Section 550), which provided the Department with authority to promulgate ''interim final regulations'' for the security of certain chemical facilities in the United States.

This rule establishes risk-based performance standards for the security of our Nation's chemical facilities. It requires covered chemical facilities to prepare Security Vulnerability Assessments (SVAs), which identify facility security vulnerabilities, and to develop and implement Site Security Plans (SSPs), which include measures that satisfy the identified risk-based performance standards. It also allows certain covered chemical facilities, in specified circumstances, to submit Alternate Security Programs (ASPs) in lieu of an SVA, SSP, or both.

The rule contains associated provisions addressing inspections and audits, recordkeeping, and the protection of information that constitutes Chemical-terrorism Vulnerability Information (CVI). Finally, the rule provides the Department with authority to seek compliance through the issuance of Orders, including Orders Assessing Civil Penalty and Orders for the Cessation of Operations.

EFFECTIVE DATES: This regulation is effective June 8, 2007, except for Appendix A to part 27. A subsequent final rule document will announce the effective date of Appendix A to Part 27.

Comment related to the addition of Appendix A to part 27 only will be accepted until May 9, 2007.

ADDRESSES: You may submit comments, identified by docket number 2006–0073, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* IP/CSCD/Dennis Deziel, Mail Stop 8100, Department of Homeland Security, Washington, DC 20528–8100.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Chemical Security Regulatory Task Force, Department of Homeland Security, 703–235–5263.

SUPPLEMENTARY INFORMATION: This interim final rule is organized as follows: Section I explains the public participation provisions and provides a brief discussion of the statutory and regulatory authority and history; Section II summarizes the changes from the Advance Notice of Rulemaking and discusses the revised rule text; Section III summarizes and responds to the comments the Department received in response to the Advance Notice of Rulemaking; and Section IV contains the regulatory analyses for this interim final rule.

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I. Introduction and Background

A. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on Appendix A of this interim final rule. Comments that will provide the most assistance to DHS in finalizing the Appendix will reference specific chemicals and Screening Threshold Quantities on the list, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing trade secrets, confidential commercial or financial information, Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should be appropriately marked as containing such information and submitted by mail

to the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments by mail may also be inspected. To inspect comments, please call Dennis Deziel, 703–235–5263, to arrange for an appointment.

B. Statutory Regulatory Authority and History

On October 4, 2006, the President signed the Department of Homeland Security Appropriations Act of 2007 (the Act), which provides the Department of Homeland Security with the authority to regulate the security of high-risk chemical facilities. *See* Pub. L. 109–295, sec. 550. Section 550 requires the Secretary of Homeland Security to promulgate interim final regulations ''establishing risk-based performance standards for security of chemical facilities'' by April 4, 2007. *Id.* Although interim final regulations are usually issued without prior notice and comment (and the Act requires neither), the Department issued an Advance Notice of Rulemaking (Advance Notice) seeking comment on the significant issues and regulatory text. *See generally* 71 FR 78276 (Dec. 28, 2006).

As discussed more fully in the Advance Notice, before the enactment of Section 550, the Federal government did not have authority to regulate the security of most chemical facilities. The Department has, however, worked closely with industry leaders in pursuit of voluntary enhancement of security at these facilities and provided both technical assistance and grant funding for security. In addition, through the Coast Guard's Maritime Security regulations, the Department has addressed security at certain maritime-related chemical facilities. *See* 33 CFR Part 105. Recently, the Departments of Homeland Security and Transportation also proposed security regulations for the rail transportation of hazardous chemicals. *See* 71 FR 76834, 71 FR 76851 (Dec. 21, 2006). Other Federal programs have addressed chemical facility safety, but not security: the Environmental Protection Agency (EPA) regulates chemical process safety through its Risk Management Plan (RMP) program; the Department of Labor's Occupational Safety and Health Administration (OSHA) regulates workplace safety and health at chemical facilities; the Department of Commerce oversees compliance with the Chemical Weapons Convention; and the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regulates, through licenses and permits, the purchase, possession, storage, and transportation of explosives.

With the authority under Section 550, the Department can now fill a significant security gap in the country's anti-terrorism efforts. Section 550 specifies that the regulations ''shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk.'' The statute requires that the regulations establish risk-based performance standards; requires Security Vulnerability Assessments and Site Security Plans; allows Alternative Security Programs; mandates audits and inspections to determine compliance with the regulations; provides for civil penalties for violation of an order issued under the statute; and allows the Secretary to order a facility to cease operations if the facility is not in compliance with the requirements. The statute also gives the Department the authority to protect from inappropriate public disclosure any information developed pursuant to Section 550, ''including vulnerability assessments, site security plans, and other security related information, records, and documents.''

As discussed in the Advance Notice, by directing the Secretary to issue ''interim final regulations,'' Congress authorized the Secretary to proceed without the traditional notice-and-comment required by the Administrative Procedure Act. *See* 71 FR 78276, 78277. The Department, however, saw great benefit in soliciting comments on as much of the program as was practicable in the short timeframe permitted under the statute. Accordingly, the Department voluntarily sought comment on a range of regulatory and implementation issues and responds to the comments below.

II. Interim Final Rule

A. Summary of Changes From Advance Notice of Rulemaking

In this interim final rule, the Department has not changed the general, risk-based approach it proposed in the December 28, 2006, Advance Notice. *See* 71 FR 78276. As discussed in detail below, the Department plans to implement the regulation in phases, starting to work aggressively with chemical facilities presenting the very highest security risks first. The Department adopts a risk-based tiering structure in its regulatory approach, so that the Department's scrutiny of facilities under this regulation increases as the level of risk increases. Even though this approach remains the same, the Department provides further details below on a number of unresolved issues presented in the Advance Notice. For example, the Department provides further detail on the issues surrounding background checks for those with access to high-risk facilities, and the Department describes its approach on facilities possessing ammonium nitrate.

On several important issues, the Department has reconsidered and modified the position it proposed in the Advance Notice. For example, in response to comments, the Department has restructured its provisions concerning objections, consultations, adjudications, and appeals. As discussed below, the Department's aim is to provide flexibility and assistance for facilities seeking to comply with the regulatory standards. The Department has decided, however, to incorporate a role for a neutral adjudicator where unresolved differences present themselves and result in significant fines or other penalties. In addition, the Department has modified a number of scheduling and timing requirements in response to comments, and the Department further explains its approach on preemption of state and local law after considering the numerous comments on that subject. Although the Department continues to view as important the opportunity for facilities to submit Alternative Security Programs, the Department modified the circumstances in which it will accept Alternative Security Programs.

Finally, the Department will consider the issues surrounding the use of fees in this regulatory program. The Department is contemplating the assessment of different fees, including filing fees, fees for inspections and audits, and fees for the screening of individuals against the Terrorist Screening Database. The Department has not provided for fees in this interim final rule, but may, in the future, propose and seek comment on the issues surrounding fees for this regulatory program.

B. Rule Provisions

This section summarizes the regulatory text changes that the Department has made to this interim final rule. In addition to the summary contained in this section, we have, in many cases, provided a more extensive discussion of the change, and the reason for the change, in the response to comments below. *See* § III ''Discussion of Comments.'' Finally, to the extent that the Department has made technical corrections or corrected typographical errors, we do not specifically discuss them.

Subpart A

Section 27.100 Purpose

The Department has added a Purpose section to the rule. It states the Department's purpose and intent in issuing this rule and enforcing this regulatory program.

Section 27.105 Definitions

For purposes of clarity, DHS has added several definitions, including ''Chemical Security Assessment Tool,'' ''Chemical-terrorism Vulnerability Information,'' ''Deputy Secretary,'' ''Director of the Chemical Security Division'' and ''Screening Threshold Quantity.'' The Department has also revised a few definitions, including ''Assistant Secretary'' and ''Under Secretary.'' The Department revised ''Under Secretary'' as a result of organizational changes in the Department following the Post-Katrina Emergency Reform Act, which the President signed on October 4, 2006. *See* Public Law 109–295, Title VI. In several places, the Department indicated that the named official, or his designee, has the specified responsibility under the regulation. The Department also revised the definition of ''Alternate Security Program,'' to provide consistency with changes the Department has since made to § 27.235, the Alternate Security Programs section. The Department expanded upon the definition of ''tier,'' adding that, for purposes of this part, there are four risk-based tiers.

Finally, the Department made clarifying changes to ''Chemical Facility,'' ''Covered Chemical Facility,'' and ''Owner.'' With respect to the definition of ''Chemical Facility,'' the Department removed the circular nature of the definition in the Advance Notice (i.e., a chemical *facility* shall mean any *facility*) (emphasis added) and now provides that a chemical facility ''shall mean any establishment that possesses or plans to possess * * *.''

Section 27.120 Designation of a coordinating official; Consultations and technical assistance

The language in revised § 27.120(a) makes clear that the Assistant Secretary will designate a Coordinating Official responsible for ensuring the uniform, impartial, and fair implementation of these regulations. The language in revised § 27.120(b) indicates that the Coordinating Official and his staff shall provide guidance to facilities, and while the Coordinating Official and his staff will be available for consultation and to provide technical assistance, they will be available only to the extent that resources permit.

In § 27.120(c), the Department has provided specific details as to how a facility requests the assistance of the Coordinating Official. In the second sentence of § 27.120(c), the Department provides that requests for consultation or technical guidance do not serve to toll any of the applicable timelines set forth in this part. Accordingly, regardless of whether or when a facility submits a request for consultation or technical guidance, the Department will require the facility to comply with the regulatory requirements, such as completing the Top-Screen, identifying vulnerabilities in the Security Vulnerability Assessment, and developing and implementing a Site Security Plan.

The Department has added a new provision in § 27.120(d). This provision provides that a covered facility may request a consultation with the Coordinating Official if it modifies its facility, processes, or the types or quantities of materials that it possesses, and believes such changes may impact the covered facility's obligations under this part. The Department added this provision in response to commenters concerned about a facility's ability to ''exit'' the regulatory program. The Department recognizes that facilities that reduce risk to levels below those levels that the Department deems as that characterized for Tier 4 facilities (i.e., the lowest risk facilities of the ''high risk'' facilities) or that eliminate certain risks altogether may no longer need to be covered by this regulation. This provision allows the covered facility to request the initiation of the screening process (which determines whether or not the facility is high-risk and therefore whether the facility is or is not included in this regulatory program) prior to the facility's next scheduled CSAT Top-Screen submission pursuant to § 27.210. Through this consultation process, the facility may initiate discussions with the Department and ultimately accelerate the process for determining whether it can ''exit'' the regulatory program.

Subpart B

Section 27.200 Information regarding security risk for a chemical facility

The Department has added several new provisions to this section. The Department has revised paragraph (b), by incorporating language from proposed § 27.200(a) of the Advance Notice and by also adding new provisions. The two sentences in paragraph (b)(1) come from the end of proposed § 27.200(a). Paragraph (b)(1) provides that the Assistant Secretary may seek the information listed in paragraph (a) by contacting chemical facilities individually or by publishing a notice in the **Federal Register**. It also provides that the Assistant Secretary may instruct facilities to complete and submit a Top-Screen through a secure Department Web site or through any other means approved by the Assistant Secretary.

Paragraph (b)(2) is a new provision. It provides that a facility must complete and submit a Top-Screen in accordance with the schedule provided in § 27.210 if it possesses any of the chemicals listed in Appendix A: ''DHS Chemicals of Interest'' at the corresponding quantities. For a further discussion of Appendix A, see the discussion of Appendix A further below in the Rule Provisions section. The purpose of this provision is to give facilities direction as to whether or not they must complete and submit a Top-Screen.

As noted in the discussion of Appendix A, the presence or amount of a particular chemical is not an indicator of a facility's coverage under this rule. The presence or amount of a chemical in the Appendix is merely a baseline threshold requiring a facility to complete and submit a Top-Screen. (Consistent with § 27.200(b)(1), DHS will retain the ability to notify facilities, through direct notification or **Federal Register** notice, that they need to complete and submit a Top-Screen.) The information that the Department will obtain through the Top-Screen process is only one of several factors that the Department will consider in determining whether a facility is ''high-risk'' and thus covered by this rule.

Paragraph (b)(3) addresses the requirements for individuals who submit information to the Department through the CSAT system, which includes the Top-Screen process. Paragraph (b)(3) provides that, where the Department requests that a facility complete and submit a Top-Screen, the facility must designate a person to be responsible for the submission of information through the CSAT system. (The CSAT system is comprised of three sequential parts: the Top-Screen, the SVA, and the SSP). The Department provides that any such submitter must be an officer of the corporation or other person designated by an officer of the corporation, and must be domiciled in the United States. The Department had contemplated such requirements in Appendix A to the Advance Notice and now finalizes them here.

Consistent with the explanation in Appendix A to the Advance Notice, the

Department notes that a facility may choose to have another individual, in addition to the above-discussed ''submitter,'' involved in the submission of information through the Top-Screen. That other individual is a ''provider.'' A provider would be a qualified individual who is familiar with the facility in question and who completes the information in the CSAT system. The provider, however, would not formally submit information to the Department. The individual responsible for sending information to the Department through the CSAT system (whether Top-Screen, SVA, or SSP) is always the submitter. And as indicated in paragraph (b)(3), the submitter is also responsible for attesting to the accuracy of the submitted information.

Paragraphs (c)(1) and (2) address facilities that the Department deems as ''presumptively high risk.'' Both paragraphs were in the Advance Notice, though they were located in proposed §§ 27.200(b) and (c).

Section 27.205 Determination that a chemical facility ''presents a high level of security risk.''

The Advance Notice, at the end of § 27.205(a), contained a provision about Departmental notification to facilities of their preliminary placement in a risk-based tier. The Department has moved that language to § 27.220 ''Tiering,'' so that it is located with the related tiering provisions.

In addition, the Department has removed proposed § 27.205(c), along with §§ 27.220(b), and 27.240(c), all of which had contained a mechanism for objections. In the Advance Notice, the Department had provided facilities with the opportunity to object to the following three Departmental actions: determination that a facility ''presents a high level of risk,'' placement in a high-risk tier, and disapproval of a facility's Site Security Plan. The intention behind those provisions was to provide facilities with an informal opportunity to consult with the Department. The Department believes that the rule (including existing provisions from the Advance Notice as well as new provisions in this interim final rule) provides facilities with several opportunities for consultation when they disagree with an initial decision on these matters. Specifically, revised § 27.120(b) provides that the Coordinating Official and his staff shall be available to consult and to provide technical assistance to a facility owner or operator, revised § 27.120(c) provides the details for how a facility should initiate consultations or assistance, and revised § 27.120(d) provides that a covered facility may request a consultation if it modifies its facility, processes, or the types or quantities of materials that it possesses and believes such changes may impact the covered facility's obligations under this part. In addition, §§ 27.240(b) and 27.245(b) provide that a facility shall enter further consultations following Departmental written notification that a Security Vulnerability Assessment or Site Security Plan is unsatisfactory. Given that the rule already provides consultation opportunities, coupled with the fact that the Department has greatly modified its adjudication and appeal provisions, the Department believes it is unnecessary to retain these objections provisions and has thus removed them from the interim final rule.

Section 27.210 Submissions Schedule

In § 27.210, the Department clarifies the submission schedule for the Top-Screen, Security Vulnerability Assessment, and Site Security Plan. In § 27.210(a) of the Advance Notice, the Department included a sentence indicating that the presumptive time frames were 60 days for the Security Vulnerability Assessment and 120 days for the Site Security Plan. In this interim final rule, the Department has added presumptive timeframes for the submission of the Top-Screen and revised the presumptive timeframes for SVAs and SSPs. *See* § 27.210(a) and (b). The presumptive timeframes for initial submissions are 60 calendar days for the Top-Screen, 90 calendar days for the SVA, and 120 calendar days for the SSP. The presumptive timeframes for resubmission vary depending on a facility's tier. As a general matter, the Department will require facilities in Tiers 1 and 2 to update their Top-Screen, SVA, and SSP every two years, and facilities in Tiers 3 and 4 to update their Top-Screen, SVA, and SSP every three years.

In addition, the Department added a new paragraph (c), which addresses the Department's authority to modify schedules as necessary. The Department removed § 27.210(c) as it appeared in the Advance Notice, because the provision was unnecessary in light of the new provisions in § 27.120(b) and (c), ''Designation of a coordinating official; consultations and technical assistance.''

Finally, the Department added a new paragraph (d), which addresses material modifications. In §§ 27.215(c)(3) and 27.225(b)(3) of the Advance Notice, the Department provided that a covered facility had to notify the Department of material modifications to the SVA or SSP and that the Department would notify the facility within 60 days of whether the Department disapproved the revised SVA or SSP. The Department has re-located a new but similar requirement in § 27.210(d). The regulation now provides that if a covered facility makes material modifications to its operations or site, the covered facility must complete and submit a revised Top-Screen to the Department within 60 days of completion of the material modification. In accordance with the resubmission requirements in § 27.210(b)(2) and (3), the Department will notify the covered facility as to whether the covered facility must submit a revised Security Vulnerability Assessment, Site Security Plan, or both. As a result of this new paragraph (d), the Department removed the provisions that appeared in §§ 27.215(c)(3) and 27.225(b)(3) of the Advance Notice.

Section 27.215 Security Vulnerability Assessments and Section 27.225 Site Security Plans

The Department has revised several of the corresponding provisions in both § 27.215 and § 27.225. First, the Department has revised the corresponding provisions regarding methodologies. Specifically, the Department has revised the language in § 27.215(b) and added a new paragraph (b) in § 27.225. In both places, the Department explains that, except as provided in § 27.235, a covered facility must submit either the SVA/SSP through the CSAT process or any other methodology or process identified by the Assistant Secretary.

By this change, the Department is making more explicit its intention to use the CSAT process at this time. The CSAT process includes completion of the Top-Screen process and, depending on the results of the Top-Screen process, may also include the development of a Security Vulnerability Assessment and the development of a Site Security Plan. Thus, for facilities that are determined to be high-risk, the CSAT process will consist of three sequential parts (i.e., the Top-Screen, SVA, and SSP). The Department also notes that facilities will have to obtain access to the CSAT system by submitting a user registration request. Section 27.200(b)(1) contains the requirements for individuals (i.e., submitters) who will be submitting information through the CSAT system and attesting to the accuracy of that information.

Second, in paragraph (c) of both sections, the Department provides that a covered facility must submit an SVA or SSP to the Department in accordance

with the schedule provided in § 27.210. This captures the requirement that had been located in proposed § 27.240(a)(1) of the Advance Notice.

Third, in paragraph (d) of both sections, the Department revised the update/revision provisions for submitting SVAs and SSPs. In the Advance Notice, the Department indicated that covered facilities must update or revise their SVAs or SSPs based on a schedule set by the Assistant Secretary. Because the Department has established a submission schedule in § 27.210, the Department now includes cross-references in § 27.215(d)(1) and § 27.225(d)(2) to that schedule. As a related matter, in § 27.215(d), the Department moved the general submissions schedule requirement to § 27.215(d)(1), thereby re-locating the provision formerly in § 27.215(d)(1) to § 27.215(d)(2).

Fourth, the Department has removed the language about material modifications from proposed § 27.215(c)(3) and § 27.225(b)(3). As discussed in the summary of § 27.210, the Department added a new, but similar, provision to § 27.210(d). The new provision now captures the concept contemplated in proposed § 27.215(c)(3) and § 27.225(b)(3).

With respect to changes to § 27.225 only, the Department has added a provision that requires facilities to conduct annual audits of their Site Security Plans. *See* § 27.225(e). This provision had been implied in the recordkeeping requirement in the Advance Notice (*see* § 27.255(a)(6)) and is now explicit. DHS made some additional revisions to the corresponding recordkeeping provision, in which DHS more clearly specifies the audit-related records that covered facilities should maintain.

Finally, throughout this document, the Department now uses the term ''Security Vulnerability Assessment'' (or SVA) instead of the term ''Vulnerability Assessment'' or (VA), which the Department had used in the Advance Notice. The Department intends no change in meaning with this revision.

Section 27.220 Tiering

The Department has added several paragraphs to this section. Section 27.220(a) addresses the Department's preliminary determination as to a facility's risk-based tier. Paragraph (a) is based on language that had been in the Advance Notice at the end of § 27.205(a). The Department has elaborated on the Preliminary Tiering provision. Notably, the Department has indicated that it *shall* notify a facility of the Department's preliminary tiering decision. This contrasts with the Advance Notice, which had merely indicated that the Department *may* notify a facility of the Department's preliminary tiering decision.

Section 27.220(b) is not a new subsection; rather, it contains the language that was previously located in § 27.220(a). Note that the Department has removed paragraph (b) as proposed in the Advance Notice. Paragraph (b) had contained an objections provision. For a discussion of the Department's decision to remove the objections provisions from this rule (in §§ 27.205(c), 27.220(b), and 27.240(c)), see the summary under § 27.205(c).

Section 27.220(c) is a new subsection. The Department is reiterating, in part, what it provides in the definitions section. The Department will place facilities in one of four risk-based tiers. Tiers will range from Tier 1, which contains the highest-risk covered facilities, to Tier 4, which contains the lowest-risk covered facilities. Finally, the Department separated the sentence located at the end of proposed § 27.220(a) into its own section, § 27.220(d).

Section 27.230 Risk-Based Performance Standards

This section contains the risk-based performance standards that covered facilities must satisfy. The Department has added a sentence to § 27.230(a), noting that the ''acceptable layering of measures used to meet the standards will vary by risk-based tier.'' While all facilities must satisfy the performance standards, the measures sufficient to meet those standards will be more robust for those facilities that present higher levels of risk. In other words, the manner in which the standards are applied will require a higher level of security (and so provide for greater reduction in risk) for those facilities that present higher levels of risk. The Department will provide details about the application of these standards in guidance.

In addition, for each of the performance standards, the Department has added a short descriptor at the beginning of the subparagraph (e.g., paragraph (a)(1) begins with ''Restricted Area Perimeter,'' paragraph (a)(2) begins with ''Securing Site Assets,'' and so forth).

The Department has also revised some of the language related to specific performance standards. Section 27.230(a)(4) now provides that facilities must select, develop, and implement measures designed to ''[d]eter, detect, and delay an attack, creating sufficient time between detection of an attack and the point at which the attack becomes successful.'' This revised language more adequately captures the concept that the Department had intended in the language in paragraph (a)(4) of the Advance Notice and is more complete. Section 27.230(a)(5) now requires facilities to secure and monitor the storage of hazardous materials, in addition to the shipping and receipt of hazardous materials. Section 27.230(a)(8) now contains a broader description of critical process systems. In the Advance Notice, the Department had used the acronym ''SCADA'' (Supervisory Control and Data Acquisition) to refer to instrumented control systems in general. In this interim final rule, the Department has provided more descriptive terminology to refer to critical process systems. For a further discussion of SCADA, see the Department responses to ''Comments on Specific Performance Standards.'' Section 27.230(a)(12) contains an expanded standard for background checks. For a further discussion of background checks, see the Department response to comments about ''Background Checks.'' Section 27.230(a)(15) now provides that facilities should report significant security incidents to local law enforcement in addition to the Department. Finally, the Department has removed the paragraph that was paragraph 27.230(a)(19) in the Advance Notice, because that standard was already addressed in paragraph (a)(14).

Section 27.235 Alternative security program

The Department has revised this section to provide more detail about the process for Alternate Security Programs (ASPs). The basic requirement remains the same, in that certain covered facilities may submit ASPs, and the Assistant Secretary may approve those ASPs. *See* § 27.235(a). To accept an ASP, the Assistant Secretary must find that the program ''provides an equivalent level of security to the level of security established by this part.'' This language, which clarifies the standard for accepting ASPs, comes from the preamble of the Advance Notice and is consistent with the terms of Section 550. *See* 71 FR 78276, 78285.

In § 27.235(a)(1)–(2), the Department specifies, by tier, which facilities may submit ASPs in lieu of Security Vulnerability Assessments (SVAs) and which facilities may submit ASPs in lieu of Site Security Plans (SSPs). A Tier 4 facility may submit an ASP in lieu of a Security Vulnerability Assessment, Site Security Plan, or both. Tier 1, Tier 2, and Tier 3 facilities may submit an

ASP in lieu of a Site Security Plan. Tier 1, Tier 2, and Tier 3 facilities may not submit an ASP in lieu of a Security Vulnerability Assessment. Accordingly, Tier 1, Tier 2, and Tier 3 facilities will have to submit their SVA through the CSAT system.

With respect to Tier 4 facilities, the Department clarifies the following point: Given that the Department notifies a facility of its final placement in a risk-based tier following the Department's review of a covered facility's SVA (*see* § 27.220(b)), a facility will not know its final tier placement at the time it might decide to submit an ASP in lieu of a SVA. Because of that, the Department understands that facilities will rely on the Department's preliminary tiering determination made pursuant to § 27.220(a).

There are various reasons underlying the Department's decision not to accept ASPs as SVAs for Tier 1, Tier 2, and Tier 3 facilities. The Department needs a consistent baseline against which to compare risks and vulnerabilities across chemical facilities. (For a further discussion of this issue, see the Department's response to comments in § III(B)(1)). As well, the Chemical Security Assessment Tool (CSAT) system uses an integrated approach to chemical facility security, and by considering SVAs that use the methodology in the CSAT system, the Department can take full advantage of that integrated approach. Furthermore, by using this electronic, integrated CSAT approach, the Department can more efficiently review and assess a greater number SVAs, and that is of importance considering the Department's phased implementation scheme to address the highest risk facilities first.

The Department acknowledges that many facilities have expended substantial resources and incurred significant expense to identify vulnerabilities and to develop security plans. The Department commends facilities for such efforts. The work performed on these efforts is valuable, and DHS is committed to capitalizing on these investments. The information developed in these efforts will be relevant to facilities as they complete the CSAT SVA. Facilities will be able to use the information from existing vulnerability assessments, and in many cases, the practical impact of requiring Tiers 1, 2, and 3 facilities use the CSAT SVA system will be one of formatting, i.e., facilities will have to enter their information from their existing vulnerability assessments into the format established by the CSAT system. While some additional analytical effort will be required, even where the facility has produced a strong SVA, the effort will be considerably less than that at facilities that are starting without a pre-existing SVA.

In addition, § 27.235(b) provides that the notice requirements for submitting ASPs correspond with the notice requirements (including the approval and disapproval process) for SVAs and SSPs. In other words, if a facility is submitting an ASP in lieu of an SVA, the process in § 27.240 applies, and if a facility is submitting an ASP in lieu of an SSP, the process in § 27.245 applies.

Section 27.240 Review and Approval of Security Vulnerability Assessment and Section 27.245 Review and Approval of Site Security Plans

In this interim final rule, the Department has separated the review and approval of SVAs and SSPs into two separate sections. In the Advance Notice, both sets of requirements were located in § 27.240. In this interim final rule, the provisions related to Security Vulnerability Assessments are located in § 27.240, and the provisions related to Site Security Plans are located in § 27.245.

In addition, the Department made some changes to the corresponding provisions in the two separate sections. In both sections, the Department has removed the language (from proposed § 27.240(a)(1)) about time periods for submitting SVAs and SSPs. The Department has already addressed this issue in §§ 27.215(c)–(d) and §§ 27.225(c)–(d) (by providing that a facility must provide, update, and revise its SVA and SSP consistent with the schedule in § 27.210), so it was unnecessary to also include this language here. Also, in both sections, the Department has added new language about the disapproval of SVAs or SSPs. The Department added a new sentence, which provides that ''[i]f the resubmitted [SVA or SSP] does not satisfy the requirements of [§ 27.215 or § 27.225], the Department will provide the facility with written notification (including a clear explanation of deficiencies in the [SVA or SSP]) of the Department's disapproval of the [SVA or SSP].'' *See* § 27.240(b) and § 27.245(b).

Finally, the Department has added a provision in § 27.245(a)(1)(iii), indicating that the Department issues a Letter of Approval if it approves a facility's Site Security Plan in accordance with § 27.250. While this provision appears elsewhere in the rule (*see* § 27.245(b)), the Department thought it was appropriate to include it here as well.

The Department has removed 27.240(c) as proposed in the Advance Notice. Paragraph (c) had contained an objections provision. For a discussion of the Department's decision to remove the objections provisions from this rule (in §§ 27.205(c), 27.220(b), and 27.240(c)), see the summary under § 27.205(c).

Section 27.250 Inspections and Audits

The Department has added additional provisions to the inspection and audit section. In § 27.250(c), the Department discusses the time and manner requirements for inspections. While the Department will generally provide facilities with 24-hour advance notice of inspections, the Department recognizes two exceptions where an unannounced inspection might occur. The Department included the first exception in the Advance Notice, and the Department has added the second exception in this interim final rule. For a further discussion, see the Discussion of Comments in § III(F) on ''Inspections and Audits.''

In § 27.250(d), the Department addresses various details related to the inspectors who will conduct inspections and audits. This is a new paragraph that was not in the Advance Notice. Although Congress has not provided the Department with administrative subpoena authority, this paragraph explains that inspectors will have credentials and may administer oaths and receive affirmations upon consent. It also provides details about the means by which inspectors may gather information and the access that inspectors will have to records. The Department has also added a paragraph (e), which addresses confidentiality. Finally, the guidance paragraph, which had been located in paragraph (d) has been moved to paragraph (f).

Section 27.255 Recordkeeping Requirements

The Department revised various provisions related to recordkeeping. With respect to § 27.255(a)(1), the Department added a few additional record requirements regarding training. In addition to keeping records of the date and location of each training session, time of day and duration of each session, the name and qualifications of the instructor, and a clear, legible list of the attendees including attendees' signatures, the facility must also keep at least one other unique identifier for each attendee receiving training and the results of any evaluation or training. The Department also added a requirement to § 27.255(b), requiring facilities to keep submitted Top-Screens in addition to submitted

SVAs and SSPs. In addition, as discussed above in the summary for § 27.225(e), the Department revised the recordkeeping provision related to internal audits. *See* § 27.255(a)(6).

The Department also added a new paragraph (c), allowing the Department to request that covered facilities make available records kept pursuant to other Federal programs or regulations. The Department would make such requests for records to the extent that any such records were necessary for security purposes. As a result of adding new paragraph (c), the Department had to re-designate proposed paragraph (c) as paragraph (d).

Subpart C

The Department has substantially revised Subpart C, which contains the provisions for Orders, Adjudications, and Appeals.

Section 27.300 Orders

The Department has restructured the Orders provisions. Whereas the Advance Notice contained four separate sections (*see* §§ 27.300, 27.305, 27.310, and 27.315), the Department has now consolidated all of the Order provisions into one section, § 27.300. The main substance of the Orders provisions, however, remains the same. Pursuant to § 27.300(a), the Assistant Secretary can issue an Order for any instance of noncompliance. For example, the Assistant Secretary may issue an Order for a facility's refusal to complete a Top-Screen, failure to allow an inspection, or failure to update a Site Security Plan.

Beyond a basic Order, the Assistant Secretary may issue an Order Assessing Civil Penalty, an Order to Cease Operations, or both, where it determines that a facility is in violation of any Order issued pursuant to paragraph (a). *See* § 27.300(b). Orders Assessing Civil Penalty are for a continual noncompliance, a repeated pattern of noncompliance or egregious instances of noncompliance. Orders to Cease Operations are the most serious Orders that the Assistant Secretary might choose to issue under this regulatory scheme. The Assistant Secretary will use such a measure cautiously and judiciously and will balance the immediate security needs with the possible impact (e.g., economic impact or national security effect) of such an Order on the chemical industry and the Nation as a whole. As the Department wrote in the Advance Notice, ''This authority would be utilized when no other options will achieve the required result.'' *See* 71 FR 78276, 78287.

Paragraphs (c) through (f) of § 27.300 address the process and procedures for Orders. Section 27.300(c) lists the information, at a minimum, that the Assistant Secretary must include in an Order and also notes that the Assistant Secretary may establish further procedures for the issuance of Orders. Section 27.300(d) notes that a facility must comply with the terms of the Order by the date specified in the Order. Section 27.300(e) indicates that a facility has the right to seek an adjudication to review the decision of the Assistant Secretary to issue an Order, and § 27.300(f) addresses final agency action.

With respect to the staying of Orders, the Department addresses this issue in the new adjudications sections. Specifically, § 27.310(b)(4) provides that an Order is stayed from the timely filing of a Notice of Application for Review until the Presiding Officer issues an Initial Decision, unless the Secretary lifts the stay due to exigent circumstances pursuant to § 27.310(d). The new adjudications section is discussed in more depth below.

Section 27.305 through 27.340 Adjudications

Most significantly with respect to adjudications, the Department has provided facilities with the opportunity to seek review of specified decisions before a neutral adjudications officer. A facility or other person may seek review of the following Department (i.e., Assistant Secretary) determinations: (1) A finding, pursuant to § 27.230(a)(12)(iv) that an individual is a potential security threat; (2) The disapproval of a Site Security Plan pursuant to § 27.245(b); or (3) The issuance of an Order pursuant to § 27.300(a) or (b). *See* § 27.310(a).

The procedures for Applications are found in § 27.310(b). To institute Adjudication Proceedings, the facility or other person (''Applicant'') must file a Notice of Application for Review within seven calendar days of notification of the Assistant Secretary's determination. *See* § 27.310(b)(1)–(2). Then, in an Application for Review, the Applicant must explain his or her position (i.e., explain why the Assistant Secretary's determination should be set aside). The Applicant has 14 calendar days from the date of notification of the Assistant Secretary's determination to file and serve an Application for Review. *See* § 27.310(b)(5). The Assistant Secretary, through the Office of the General Counsel, shall file and serve a Response within 14 calendar days of the filing and service of the Application for Review. *See* § 27.310(c). Finally, the Secretary may make certain procedural modifications in exigent circumstances. *See* § 27.310(d).

A Presiding Officer is the neutral adjudications officer who handles these proceedings. The Secretary shall appoint a Presiding Officer, consistent with the requirements in § 27.315. A Presiding Officer shall immediately consider whether a summary adjudication of an Application for Review is appropriate, and if the Presiding Officer finds that there is no genuine issue of material fact and that one party or the other is entitled to decision as a matter of law, then the record shall be closed and the Presiding Officer shall issue an Initial Decision on the Application for Review. *See* § 27.330(b). Such summary decisions are governed by the procedures in § 27.330.

Where there is no summary decision, the Presiding Officer may conduct a hearing using the procedures specified in § 27.335. The Presiding Officer shall close and certify the record upon the completion of one of the following: a summary judgment proceeding, a hearing, the submission of post-hearing briefs, or the conclusion of oral arguments. *See* § 27.340(a). Based on the certified record, the Presiding Officer shall issue an Initial Decision, and the decision shall be subject to appeal pursuant to § 27.345.

In addition to the sections mentioned above, there are a few other sections that address provisions related to adjudications. Section 27.320 specifies the prohibition on ex parte communications during Proceedings. And § 27.325 provides that the Assistant Secretary bears the initial burden of proving the facts necessary to support the challenged administrative action at every proceeding instituted under this subpart.

Finally, as related to the Appeals section below, a Presiding Officer's Initial Decision is stayed from the timely filing of a Notice of Appeal until the Under Secretary issues a Final Decision, unless the Under Secretary lifts the stay due to exigent circumstances. *See* § 27.345(b)(4).

Section 27.345 Appeals

The interim final rule contains a revised appeals section. There are several differences. First, a facility or other person may appeal the Initial Decision of the Presiding Officer made pursuant to § 27.340(b). This differs from the Advance Notice, in which a facility could appeal a Departmental final determination regarding disapproval of a Site Security Plan and the Departmental issuance of an Order. *See* § 27.320 in the Advance Notice.

Second, the Advance Notice provided that the Under Secretary would make decisions for most categories of appeals, and the Deputy Secretary would make decisions for one category of appeal. This interim final rule provides that all appeals go to the Under Secretary or his designee acting as a neutral appeals officer. Third, as is discussed in more depth below, the procedures for an appeal have changed.

The Assistant Secretary, a facility, or other person (''Appellant'') may institute an Appeal by filing a Notice of Appeal within seven calendar days of notification of the Presiding Officer's Initial Decision. *See* § 27.345(b)(1)–(3). The Appellant shall then file and serve a Brief within 28 calendar days of the notification of the Presiding Officer's Initial Decision. *See* § 27.345(b)(5). The Appellee shall file and serve its Opposition Brief within 28 days of the filing of Appellant's Brief. *See* § 27.345(b)(6). The Under Secretary shall issue a Final Decision and serve it on the parties. A Final Decision by the Under Secretary constitutes final agency action. *See* § 27.345(f).

In addition to the provisions mentioned above, the Department notes the following: Pursuant to § 27.345(b), the Under Secretary may provide for an expedited appeal; pursuant to § 27.345(c), ex parte communications are prohibited; and pursuant to § 27.345(c), a facility or other person may elect to have the Under Secretary participate in any mediation or other resolution process by expressly waiving, in writing, any argument that such participation has compromised the Appeals process. In addition, pursuant to § 27.345(g), the Secretary may establish procedures for the conduct of appeals.

Subpart D

Section 27.400 Chemical-Terrorism Vulnerability Information

The Department has made numerous clarifying changes to the chemical-terrorism vulnerability information (CVI) section. Some of these changes corrected typographical errors, while several others clarified existing provisions. With respect to a minor change, note that, in § 27.400 of the Advance Notice, the Department referred to CVI as ''Chemical-terrorism Security and Vulnerability Information'' and in this interim final rule, the Department now refers to CVI as ''Chemical-terrorism Vulnerability Information.'' The Department intends no change in meaning with this revision.

The Department has highlighted below the more substantive changes to § 27.400. With respect to paragraph (c), the Department has removed paragraph (c)(2), because that concept is already covered in paragraph (e)(1)(v). In paragraph (d)(1), the Department provides that covered persons must protect all CVI in their possession or control, including electronic data. In paragraph (e)(1), the Department added language providing that a person who might have a ''need to know'' includes ''state or local officials, law enforcement officials, and first responders.'' In paragraph (e)(1)(ii), the Department clarified that a person in training will only have access to CVI that he needs as part of his training, and in paragraph (e)(1)(iv), the Department clarified that a the person in a fiduciary relationship with a covered person who is representing or providing advice to that covered person will also have a need to know CVI. In paragraph (e)(2)(iii), the Department provides that it may require non-Federal persons seeking access to CVI to complete a non-disclosure agreement before such access is granted. In paragraph (f)(3), the Department shortened the distribution limitation statement and added a new sentence at the end, which provides: ''[i]n any administrative or judicial proceedings, this information shall be treated as classified information in accordance with 6 CFR §§ 27.400(h) and (i).'' And in paragraphs (h)(1), (i)(1), and (i)(2), the Department made it clear that these sections apply to the disclosure of CVI in the context of administrative or judicial enforcement proceedings of section 550 only, not any other kind of enforcement proceeding. Similarly, in paragraph (i)(7)(iii), the Department made it clear that this section applies only to judicial enforcement proceedings and not any other judicial proceeding.

Section 27.405 Review and Preemption of State Laws and Regulations

The Department has made several changes to § 27.405, including various regulatory text changes. Among those changes, the Department has added paragraph (a)(1). The Department wishes to avoid any unintended consequences in the program's interaction with other Federal requirements. For this reason, § 27.405(a)(1) provides that ''[n]othing in this regulation is intended to displace other federal requirements administered by the Environmental Protection Agency, U.S. Department of Justice, U.S. Department of Labor, U.S. Department of Transportation, or other federal agencies.'' For a further discussion of these changes and preemption in general, see the section below entitled ''Executive Order: 13132: Federalism.''

Proposed Appendix A: DHS Chemicals of Interest

In the Advance Notice, the Department sought comment on appropriate sources of information or methodologies for evaluating and categorizing chemical facilities.'' *See* 71 FR 78276, 78282. The Department responds to those comments below in the ''Discussion of Comments.'' In this interim final rule, the Department has decided to evaluate chemical facility risks by, in part, classifying facilities by particular chemicals. In proposed Appendix A, the Department has included a list of ''DHS Chemicals of Interest'' along with Screening Threshold Quantities, or STQs, for each chemical. The Department has established STQs to trigger preliminary screening requirements. The STQ is not the threshold quantity for establishing whether a given facility is a high-risk facility, but only sets a threshold to require a facility to complete and submit a CSAT Top-Screen. As noted in the ''Public Participation'' section above, the Department is accepting public comment on proposed Appendix A for 30 days. Following the close of the comment period, the Department will review the comments and publish a final Appendix A. The requirements related to Appendix A, which are found in §§ 27.200(b)(2) and 27.210, will become operative on the date that the Department publishes a final Appendix A.

Pursuant to § 27.200(b)(2), if a facility possesses any chemicals identified in Appendix A at the corresponding quantities, the facility must complete and submit a Top-Screen. Consistent with the submission requirements in § 27.210(a)(1), the facility must complete the Top-Screen within 60 calendar days of the effective date of a final Appendix A or within 60 calendar days of coming into possession of any such chemical at the corresponding quantity. (As indicated in the regulatory text, this submission requirement is not operative until the Department publishes a final Appendix A.) Note that this provision does not affect the Department's ability to contact facilities independently of this list. Pursuant to § 27.200(b)(1), DHS may notify facilities, on an individual basis or through an additional **Federal Register** notice, that they need to complete and submit the Top-Screen. The Department notes that, where a facility has a question as to whether it should complete a Top-Screen, the facility can contact the

Department and seek a consultation pursuant to § 27.120.

The Department reiterates that the presence or amount of a particular chemical listed in Appendix A is not the sole factor in determining whether a facility presents a high-level of security risk and is not an indicator of a facility's coverage under this rule. The DHS Chemicals of Interest list merely directs certain facilities to complete and submit the Top-Screen. This list serves as a tool to aid the Department in gathering information needed to administer the program under Section 550. In order for the Department to assess compliance by particular chemical facilities with the regulation (*see* Section 550(e)), the Department must first obtain information to determine whether the particular chemical facilities qualify for coverage under Section 550. The list set out in Appendix A serves as a procedural tool designed to aid the Department in determining which facilities must comply with the substantive standards. Only after the Department gathers additional information through the Top-Screen process will the Department make a determination as to whether a facility presents a high risk and therefore must comply with the regulatory requirements to ensure adequate security. Under Section 550, the Department has the authority to use its best judgment and all available information in determining whether a facility presents a high level of security risk.

In developing the ''DHS Chemicals of Interest'' list, the Department has looked to existing sources of information and has then drawn on many of those sources of information, including some of the sources that commenters suggested. Those sources include the following: (1) The chemicals contained on the EPA's RMP list. Pursuant to the Clean Air Act (42 U.S.C. 7401, et seq.), which provides that the EPA shall promulgate a list of substances that ''in the case of accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment (*see* 42 U.S.C. 7412(r)(3)), the EPA promulgated two lists. Table 1 is titled ''List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention,'' and Table 3 is titled ''List of Regulated Flammable Substances and Threshold Quantities for Accidental Release Prevention'' (*see* 40 CFR 68.130); (2) The chemicals from the Chemical Weapons Convention (CWC). Section 6701, et seq. of Title 22 of the United States Code implements the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. The CWC covers three lists, or ''schedules'' of chemicals. Schedule 1 chemicals are provided in Supplement No. 1 to 15 CFR part 712, Schedule 2 chemicals are provided in Supplement No. 2 to 15 CFR part 713, and Schedule 3 chemicals are provided in Supplement No. 3 to 15 CFR part 714; and (3) Hazardous materials, including gases poisonous by inhalation (PIH) and explosive materials, which the Department of Transportation regulates. *See* 49 CFR 173.115(c), 49 CFR 173.50(b), and 49 CFR 172.101. The Department has also considered other categories of chemicals, such as chemicals that can be used as precursors for Improvised Explosive Devices (IEDs) and certain water-reactive materials that produce toxic gases.

The Department makes a few points with respect to the list in Appendix A. First, DHS is not using any existing list (e.g., the EPA RMP list) as its sole source, and DHS is not classifying all facilities on a list in one particular way (i.e., classifying all RMP facilities as high-risk). By using multiple sources at this initial phase, DHS believes it is obtaining a more complete picture of the universe of facilities that may qualify as high-risk. Second, in identifying the types and STQs of chemicals for Appendix A, the Department has sought to be sufficiently inclusive of chemicals and quantities that might present a high level of risk under the statute without being overly inclusive and therefore capturing facilities which are unlikely to present a high level of risk.

In addition to drawing on information from existing sources, the Department has identified chemicals by considering three security issues. These three security issues, which are explained below, address multiple risk areas.

1. *Release*—DHS believes that certain quantities of toxic, flammable, or explosive chemicals or materials, if released from a facility, have the potential for significant adverse consequences for human life or health.

2. *Theft or Diversion*—DHS believes that certain chemicals or materials, if stolen or diverted, have the potential to be used as weapons or easily converted into weapons using simple chemistry, equipment or techniques in order to create significant adverse consequences for human life or health.

3. *Sabotage or Contamination*—DHS believes that certain chemicals or materials, if mixed with readily-available materials, have the potential to create significant adverse consequences for human life or health.

In proposed Appendix A, the Department lists the DHS Chemicals of Interest and identifies a Standard Threshold Quantity (STQ) for each chemical. To clearly identify each chemical, the Department includes the Chemical Abstract Service (CAS) number for each chemical. These chemicals listed in proposed Appendix A fall into the three categories identified above: chemicals with a release hazard, chemicals with a theft or diversion hazard, and chemicals with a sabotage or contamination hazard.

The Department acknowledges that there are two additional security issues that it is considering at this time, although it is not including any such chemicals that would trigger a Top-Screen submission. They include the following two issues:

1. *Critical Relationship to Government Mission*—DHS believes that the loss of certain chemicals, materials, or facilities could create significant adverse consequences for national security or the ability of the government to deliver essential services.

2. *Critical Relationship to National Economy*—DHS believes that the loss of certain chemicals, materials or facilities could create significant adverse consequences for the national or regional economy.

The Department is continuing to assess currently-available information about these chemicals critical to government mission and the national economy. The Department will use the information it collects through the Top-Screen process, as well as currently-available information, as a means of identifying facilities responsible for economically critical and mission-critical chemicals.

III. Discussion of Comments

In the Advance Notice, DHS sought comment on proposed text for the interim final rule as well as on various implementation and policy issues concerning the chemical security program. DHS received a total of 106 public comments totaling more than 1,300 pages, including comments from thirty-two trade associations, thirty companies, thirteen private citizens, ten state agencies and associations, seven advocacy and safety groups, eight U.S. Representatives, five U.S. Senators, four unions, one Local Emergency Planning Committee, one professional association, one international standards committee, and the U.S. Small Business Administration.

Commenters generally applauded this effort from the Department and commended the general approach that the Department is taking. However,

commenters also raised some specific concerns. In the sections below, DHS provides a topical summary of the comments and responses to those comments.

A. Applicability of the Rule

1. Definition of ''Chemical Facility or Facility''

The Advance Notice defined ''Chemical Facility or facility'' to mean ''any facility that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criterion identified by the Department. * * *'' *See* proposed § 27.100.

Comment: While a few industry and State agency commenters supported this definition, commenters generally thought that the proposed definition was broad. In particular, several industry commenters, an industry association, a labor union, and a State agency thought the proposed definition was overly broad and consequently did not inform facilities about whether they would be regulated. They noted that the definition did not name the regulated chemical substances or the threshold quantities. One commenter argued that DHS's failure to release to the public its proposed list of ''potentially dangerous chemicals'' and threshold amounts for those chemicals denies the public the opportunity to comment on key provisions of the rule that depend on whether the facility possess specified quantities of chemicals determined by DHS to be potentially dangerous. The commenter explained that it is difficult to comment on that aspect of the rule without knowing what the chemicals and thresholds are. An industry group cautioned that threshold quantities should be set high enough that retail establishments are not covered merely because they stock commercially acceptable quantities of commonly used chemicals. A few industry commenters and a member of Congress added that the definition of chemical facility should include the concepts of national security and economic criticality.

Several industry commenters supported the use of EPA's Risk Management Plan (RMP) program to help identify the initial group of regulated facilities. Commenters supported use of the RMP list of toxic substances as a basis for selecting chemical facilities. Likewise, one association felt that DHS should link its definition of chemical facility to those facilities covered by EPA's RMP, because it is a clear and defined list. The industry commenters noted, however, that not all RMP facilities should be considered high-risk. One commenter pointed out that RMP does not take into account facilities that may cause substantial impacts from multiple tanks. A few commenters also recommended that DHS should consider facilities in EPA's Toxic Release Inventory program or facilities that handle DOT hazardous materials.

One commenter emphasized that the rule could focus on toxic gases at RMP threshold quantities, but warned that the RMP program has a different purpose. The commenter indicated that worst-case scenarios under RMP may be based on unrealistic assumptions. Another commenter indicated that DHS should consider certain substances from the Chemical Weapons Convention list when assessing overall risk. Finally, some industry commenters objected to the phrase ''possesses or plans to possess,'' because the term implies legal title or ownership rather than simple presence at the facility.

Response: Aside from the minor modification noted above, DHS is retaining the definition of chemical facility that it proposed in the Advance Notice. And while DHS is not defining ''chemical facility'' by listing specific chemicals, DHS is making available, with the issuance of this rule, a list of those chemicals and Screening Threshold Quantities (STQs) that it proposes to use to determine whether to further assess whether a chemical facility presents a high risk. Specifically, if a facility possesses any of the chemicals, at the corresponding quantities, in Appendix A (when finalized), the facility must complete and submit a Top-Screen within 60 calendar days. *See* § 27.200(b)(2) and § 27.210(a). The Department will continue to contact facilities individually and through additional **Federal Register** notices, as necessary. *See* § 27.200(b)(1). To the extent the Department notifies facilities through an additional **Federal Register** notice, the Department will engage in outreach activities with the chemical sector.

Finally, in response to specific comments above, the Department makes two additional points. The Department has retained the phrase ''possesses or plans to possess.'' DHS believes that phrase adequately captures the Department's intent. The plain meaning of those terms is not limited to ownership. Also, with respect to the commenter who cautioned that any types of threshold quantities should be high enough so that DHS does not cover all retail establishments that stock commercially acceptable quantities of commonly used chemicals, DHS notes that it is aware of that issue. While DHS believes these STQs are set at levels that normally will not cover such retail establishments, DHS believes that, if a retail establishment does exceed any of these STQs, the retail establishment will have to complete the Top-Screen.

2. Multiple Owners and Operators

The second half of the definition of ''Chemical Facility or facility'' provides that the terms ''shall also refer to the owner or operator of the chemical facility. Where multiple owners and/or operators function within a common infrastructure or within a single fenced area, the Assistant Secretary may determine that such owners and operators constitute multiple chemical facilities depending on the circumstances.'' *See* § 27.105.

Comment: Comments were varied on the issue of multiple owners and operators. One industry commenter suggested that DHS should combine adjacent facilities under common ownership into a single facility, and other industry commenters thought that DHS should define certain adjacent facilities as less than the entire property. One industry commenter thought that DHS should allow facilities with multiple owners or operators to agree among themselves how to meet the requirements of this rule. A trade association noted that some large chemical facilities have third-party warehouses and leasing agreements and that the owners of the chemical facility should be responsible for security.

Response: DHS believes that it will generally be fairly straightforward for facilities to define their boundaries and identify the party (at their facility) that is responsible for compliance with the regulation. However, DHS acknowledges that, in some circumstances, the issue might be more complex. The Department will address these situations on a case-by-case basis. Both owners and operators of facilities, however, bear responsibility under the regulations for implementing measures that meet the regulatory standards.

3. Classifying Facilities Based on Hazard Class

Comment: In the preamble to the Advance Notice, DHS requested comment on whether it should use an approach based on hazard class, rather than use an approach where classifications are based on particular chemicals. Responses were mixed.

Several commenters favored the hazard class approach, noting that facilities are familiar with the DOT hazard classes, that the hazard classes

may be harmonized with international requirements, and that the number of chemicals (in a non-hazard class approach) might otherwise be very large. Some of the commenters who favored the hazard class approach also noted some caveats to its use. Industry commenters and a State agency warned that the hazard class approach could result in the inclusion of chemicals that do not pose a security risk. Conversely, others noted that the hazard classes may not include chemicals of concern from a terrorism perspective. Commenters noted that other agencies may regulate the hazard classes under other programs. Also, one State agency association pointed out that a combination of chemicals might be more dangerous than any one chemical. One firm suggested that the DHS approach should include both the hazard class approach and the classification of chemicals approach.

A few industry commenters indicated that basing the applicability of the rule on hazard classes would be inappropriate and that they favored a list of security-sensitive chemicals with threshold quantities. One trade association supported the use of lists of particular chemicals, explaining that they thought it would lead to more accurate assessments of likelihood and consequence and therefore risk. They also argued that DHS publish the list in the final rule.

Response: As explained above, DHS is publishing a list of ''Chemicals of Interest'' in Appendix A to this interim final rule. The list contains specific chemicals and STQs. That list is a baseline screening threshold against which facilities will know whether they need to complete and submit a Top-Screen. While DHS's primary approach will be through the classification of chemicals, DHS will not preclude the use of the hazard classes for certain purposes in the performance standard guidelines.

4. Applicability to Specific Chemicals or Quantities of Chemicals

Comment: Several commenters discussed specific chemicals and whether or not the regulation should cover facilities that possess those chemicals. Several commenters thought that DHS should not cover anhydrous ammonia or ammonium nitrate, both of which are discussed in more depth below. A local government agency urged DHS to cover facilities that store propane, while other commenters indicated that DHS should not cover flammable fuels such as propane. A few commenters noted that some facilities may have only small amounts of chemicals or may handle them only intermittently. A trade association suggested that DHS should allow such facilities to adjust their level of security to the level of risk. Another commenter urged DHS to consider the nature of batch production facilities, which make a continually changing mix of products using a continually changing, and often unpredictable, mix of ingredients.

With respect to anhydrous ammonia, commenters noted that the chemical is in the EPA RMP list but indicated that it should not be a chemical that DHS regulates. They explained that ammonia refrigeration is used for dairy and food processing facilities and that those facilities do not pose a significant risk to human health, national security, or the economy, because an attack on such a facility would not result in a catastrophic release of ammonia. In addition, the commenters stated that the food industry (which uses anhydrous ammonia for refrigeration) should not have to spend its resources enhancing security for refrigeration systems.

With respect to ammonium nitrate (AN), some industry commenters noted that AN is an important part of the economy in both the explosives and the fertilizer industries. They noted that the threat posed by AN is not that of a direct attack but of theft or diversion for later criminal misuse. While they said that DHS should focus not only on the possibility of a direct attack at facilities with ''weaponizable'' chemicals, but on facilities with risks of theft or diversion, they suggested that DHS place those facilities (*i.e.*, those with risk of theft or diversion) in lower-risk tiers.

One commenter recommended requirements for chain-of-custody control and suggested that the ATF could assist in enforcement at AN sites with commercial explosives; other commenters favored regulation by DHS, not ATF. Another commenter believed that DHS should work with the U.S. Department of Agriculture and producer groups in deciding whether to regulate an agriculture operator or supplier. An industry commenter noted that the mere presence of AN at a site should not trigger application of DHS's screening process. Two members of Congress argued that the rule should apply to AN manufacturing facilities, but they agreed with DHS and other commenters that DHS should subject AN facilities to regulatory requirements based on the nature of the facility and risk assessment results. The commenters thought that by including AN facilities in the regulatory program, DHS would make it more difficult for terrorists to acquire this product.

Response: The Department's regulatory scheme will cover chemical facilities that present a high risk because they possess or plan to possess chemicals that terrorists may use or target in the furtherance of acts of terrorism. Facilities that possess chemicals that are hazardous and can be used as weapons, such as anhydrous ammonia or ammonium nitrate, will be regulated if they present a high risk. However, a facility that possesses a chemical substance that does not cause it to present a high risk (taking into account all relevant factors), or possesses an otherwise hazardous chemical in an amount that is below what would cause the facility to present a high risk (again, taking into consideration all relevant factors), will not be regulated.

Accordingly, with this interim final rule, DHS plans to regulate high-risk facilities with ammonium nitrate and anhydrous ammonia using the same risk-based approach under which it plans to regulate all other high-risk facilities. If DHS later decides that any individual chemicals warrant specialized attention in regulatory provisions, DHS will address such chemicals through future rulemakings.

5. Applicability to Types of Facilities

Comment: A few commenters suggested that the rule should not apply to railroad facilities, because such facilities are covered by current and proposed requirements from the Department of Transportation's (DOT) Federal Railroad Administration and Pipeline and Hazardous Materials Safety Administration and DHS's Transportation Security Administration (TSA). Those commenters asserted that railroads should be treated separately from fixed facilities and that the proposed requirements are inappropriate for railroad facilities. One commenter requested exemptions for motor vehicles and rail cars that are ''in transit.'' Another commenter asked DHS to take a system-wide approach and recognize the interdependence of chemical facility and rail security.

Response: Regulating chemicals in the railroad system is a complex issue, and DHS continues to evaluate it. TSA is the lead component within DHS for the security of transportation facilities and has initiated some recent efforts to address rail security, including Voluntary Agreements with the rail industry and a Notice of Proposed Rulemaking on Rail Transportation Security. *See* 71 FR 76852 (December 21, 2006). With respect to chemical security, certain aspects of Section 550 and TSA's authorities are concurrent

and overlapping. DHS is working, and will continue to work, with its components, including TSA, to determine whether DHS will include railroad facilities in its chemical security program. DHS presently does not plan to screen railroad facilities for inclusion in the Section 550 regulatory program, and therefore DHS will not request that railroads complete the Top-Screen risk assessment methodology. DHS may in the future, however, re-evaluate the coverage of railroads, and would issue a rulemaking to consider the matter.

Comment: Commenters asked about the applicability of the rule to natural gas pipelines and facilities, with some noting that DHS should not regulate pipelines because DOT/PHMSA and DHS/TSA already regulate safety and security of pipelines. Other commenters asked about DHS's plans to address other large facilities, such as mines. One engineer pointed out that mining facilities can be very large and can cover thousands or tens of thousands acres but that the security-sensitive portions of those mines may be very small (*e.g.*, a single tank).

Response: Whether a facility is covered under this regulation is driven by a number of factors, including the specific types and quantities of chemicals at a given facility. Whether the Department will apply the requirements of this regulation to a facility depends, in part, on the chemicals present at that facility. In the case of natural gas pipelines, DHS has no intention at this time of requiring long-haul pipelines to complete the Top-Screen (or prepare Security Vulnerability Assessments and develop Site Security Plans). But chemical facilities otherwise covered by this regulation and with pipelines within their boundaries must treat those pipelines like any other asset, i.e., include measures in their Site Security Plan addressing the security of those pipelines.

Related to this, DHS makes a clarifying point about facility assets in general. DHS expects that facilities will address all facility assets in their Security Vulnerability Assessments and Site Security Plans, as any given facility asset has the potential to have an effect on the consequence and/or vulnerabilities of the facility. Facility assets include any items or structures (such as buildings, vehicles, laboratories, or test facilities) located on an area owned, operated, or used by the facility. Such assets may exist inside or outside of perimeter structures.

Similarly, the extent of coverage of mines in this regulation will depend in part on the type and amount of chemicals present at any given mine facility. The Department expects that mines will comply with the requirements of § 27.200(b) and complete and submit the Top-Screen as required in that section. With respect to large mines that may only possess a concentrated amount of a given chemical in one discrete location, if the given chemical (and quantity) is one that the Department believes presents a security risk, the Department will expect that the facility will go through the screening process. While the facility may have to develop a Site Security Plan, the SSP would be tailored to the specific circumstances at the mine. The SSP for a large mine with a concentrated amount of one chemical in one location would surely look dramatically different than that of mine company with different circumstances (*e.g.*, a large mine with larger quantities of different types of chemicals spread throughout the mine or a smaller mine with moderate quantities of very hazardous chemicals in several different locations).

6. Statutory Exemptions

Comment: Some commenters asked why § 27.105(b) excluded certain facilities from the rule, and another commenter suggested that the exempted facilities should be reviewed to determine if they would be considered high-risk but for the exemption.

Other commenters suggested additional exemptions. One commenter suggested that the rule should not apply to most facilities that manufacture, sell, or reclaim lead-acid batteries, and another commenter believed DHS should exclude pesticide facilities. Yet another commenter thought that most facilities storing petroleum products, some of which are exempted under proposed § 27.105(b), are not high-risk facilities.

Response: In the authorizing legislation for this regulation, Congress exempted various facilities from this rule. *See* Section 550(a). DHS has included those exemptions in § 27.110(b) of the rule. The statute provides for the following exemptions: facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Public Law 107–295, as amended; public water systems (as defined by Section 1401 of the Safe Drinking Water Act); water treatment works facilities (as defined by Section 212 of the Federal Water Pollution Control Act); any facilities owned or operated by the Departments of Defense and Energy; and any facilities subject to regulation by the Nuclear Regulatory Commission. The Department has considered the exemptions requested by commenters, and, at this time, the Department does not intend to provide any additional regulatory text exemptions.

Comment: Some industry commenters supported the exemptions in § 27.110, such as the exemption for facilities regulated under the Maritime Transportation Security Act (MTSA). In addition, one association wanted to exclude from the Top-Screen requirements any facilities covered under MTSA. Other commenters asked for clarifying information about the exemptions.

Response: In the Advance Notice, the Department discussed the applicability of this rule to maritime facilities. *See* 71 FR 78276, 78290. In this interim final rule, the Department clarifies that it will apply the statutory exemption only to facilities regulated under 33 CFR part 105, Maritime Facility Security regulations. Part 105 of Title 33 of the Code of Federal Regulations is the only regulation that imposes the security plan requirements of 46 U.S.C. 70103 on maritime facilities.

Comment: A State agency believed that the Nuclear Regulatory Commission (NRC) exemption should apply only to facilities holding an NRC power reactor license and disagreed with the exemptions for public water systems and treatment works.

Response: The Department agrees with the commenter and will apply the statutory exemption to facilities where NRC already imposes significant security requirements and regulates the safety and security of most of the facility, not just a few radioactive sources. For example, a power reactor holding a license under 10 CFR part 50, a special nuclear material fuel cycle holding a license under 10 CFR part 70, and facilities licensed under 10 CFR parts 30 and 40 that have received security orders requiring increased protection, will all be exempt from 6 CFR part 27. A facility that only possesses small radioactive sources for chemical process control equipment, gauges, and dials, will not be exempt.

B. Determining Which Facilities Present a High-Level of Security Risk

1. Use of the Top-Screen Approach

Comment: In general, many industry associations and chemical companies supported the use of a tiered approach that narrows DHS's focus to high-risk facilities. Several commenters pointed out as a problem the fact that they had been unable to review the details of the approach and associated criteria; several commenters suggested that knowledgeable parties should have an

opportunity to review the details. Many of the commenters wanted to make sure that the final group of high-risk facilities was determined based on risk (not just on potential consequence or limited pieces of threat data) and that the number of facilities in this group was small.

Associations differed in their views on how inclusive the Top-Screen process should be—one association wanted DHS to screen out certain low-risk facilities in the first few questions while other associations and a chemical company wanted DHS to make sure that as many facilities as possible submitted Top-Screen data, including some facilities that might not traditionally be considered chemical facilities. Several associations urged DHS not to presumptively classify facilities as high-risk without perfect information; they felt that doing so would go beyond the authority that Congress granted DHS and would not match the intended focus on high-risk facilities. A local agency took the opposite view on that question.

Several commenters provided input on the data that facilities will need to enter into the Top-Screen. One association suggested that DHS allow facilities to enter chemical volumes in ranges and asked that DHS provide guidance on handling mixtures and blends. That association also questioned how facilities should address chemicals that are stored offsite. Another association encouraged DHS to include reactive chemicals and propane in the Top-Screen. One advocacy group encouraged DHS to incorporate chemical transportation in the rule and the Top-Screen.

Commenters also provided input on how DHS should process the information that it receives through the Top-Screen. One industry association suggested that facilities should be allowed to explain ''yes'' responses before DHS drives the facility to a full Security Vulnerability Assessment. The association suggested that facilities should not be the ones to estimate consequences, particularly injuries, and that DHS should refine the definition of injuries. The association stated that DHS should have different requirements for facilities that only periodically have certain materials onsite. One association cautioned about using RMP data and advocated for DHS to use conversion factors to make estimates of casualties.

Several commenters were concerned about the questions in the Top-Screen that related to economic impacts. Several associations indicated that DHS should use a sufficiently high threshold for economic impacts that captures the full extent of economic impacts. They noted that a facility should consider all impacts, not just the impacts to one facility. One association commented that most facilities will not be able to provide answers to the questions in the Top-Screen that ask about a facility's market share for given chemicals. That association suggested that DHS re-phrase those questions to support yes/no answers or to allow facilities to use broad ranges.

Several associations commented that the submitting company, not DHS, should determine the most appropriate person to submit data. A number of parties commented on DHS's subsequent use of the data that is collected through the Top-Screen. One association commented that any information must have demonstrated utility before it is shared with anyone.

As for timing, commenters, including State agencies, requested that DHS provide facilities with the specific timing requirements for completing the Top-Screen. One industry association recommended that DHS use phased-in timing for having facilities complete the Top-Screen. A number of commenters from State agencies and industry associations suggested the need for DHS to provide active, written notification that a facility is not high risk—and for telling facilities that they need to comply with the regulation. One association suggested that DHS provide this notification immediately upon the facility's submission of data.

Finally, a number of company and industry association commenters wanted to make sure that facilities have the opportunity to conduct independent evaluations (or meet with DHS) to verify or deny DHS's initial classification of a facility's risk.

Response: In this regulatory program, DHS will employ a modified version of the Risk Analysis and Management for Critical Asset Protection (RAMCAP) risk assessment methodology known as the Chemical Security Assessment Tool, or CSAT. The RAMCAP Sector Specific Guidance was developed under contract to DHS by the ASME Innovative Technologies Institute (ASME–ITI) and leveraged the knowledge and insight of leading experts from across the industry and Federal Government. The DHS Risk Assessment Methodology is composed of two separate parts. The first part is a screening tool known as the Top-Screen, which is used to perform a preliminary ''consequence'' analysis. The second part provides the tools to conduct a thorough facility Security Vulnerability Assessment.

DHS is using a standard vulnerability tool, the CSAT system, because it is not practical for DHS to accept a broad spectrum of methodologies. Even where certain ''equivalencies'' exist between methodologies, the equivalencies can only be extracted and employed in a comparative risk analysis at very great cost and over a very long period of time. In order to effectively manage risk at the national level, the Department must be able to develop and understand the relative risk of different facilities. A comparative risk capability is essential to regulation and can be achieved only through the collection of comparative data. Thus, a standard vulnerability tool is necessary.

The Department has vetted the CSAT system with the engineering profession, the National Laboratories, and academia. The Top-Screen component, as well as the individual algorithms employed in the Top-Screen, have been subject to extensive peer review and have been found acceptable. While the Top-Screen is consequence-specific, DHS uses the Top-Screen only to determine a preliminary tier ranking. DHS bases a facility's final tier ranking upon the complete Security Vulnerability Assessment, as well as the application of threat information—and thus it is risk-based.

Insofar as the range of facilities possessing dangerous or potentially dangerous chemicals is large, there is no good alternative to a fairly broad range of facilities being included in the screening process. DHS anticipates that the vast majority of screened facilities will be found not to have a level of potential consequences that would result in a ''high risk'' designation. However, the facilities that do achieve that level of consequence are expected to come from a fairly broad swath of the Nation's economy. DHS has no intention of classifying facilities as presumptively high risk until and unless DHS is unable to acquire sufficient data.

The Top-Screen will enable DHS to determine a preliminary tier based on consequence. That ranking will determine the need for (and timeline for) a Security Vulnerability Assessment, and where the Top-Screen indicates the need for a follow-on Security Vulnerability Assessment, DHS will expect that the owner-operator will comply. The Department will require facilities to submit the Top-Screen within the timeframes now specified in § 27.210. The Department notes that the Top-Screen is designed to preclude a large number of ''false negatives.''

DHS is establishing the entire CSAT system as an on-line suite of tools, which will allow notification of results to the owner or operator. As provided in § 27.205, the Department ''shall notify

the facility in writing [of a determination that the facility presents a high level of security risk].'' While the online feature of the CSAT system will allow rapid results, it will not allow the Department to respond instantaneously, as some commenters requested. Finally, the Top-Screen tool does require the owner-operator to provide certain data similar to an RMP analysis; however, casualty estimates and consequence ranking are performed by DHS using well-vetted formulae.

Regarding economic criticality, DHS recognizes the complexity of estimating potential economic or mission impact stemming from the loss of certain manufacturing (or other) capacity. Accordingly, DHS will focus early efforts on developing a sufficiently clear picture of the chemical industry as a system in order to allow a reasonable analysis of economic and mission criticality, which will be enhanced as the Department moves forward.

2. Assessment Methodologies

Comment: Many commenters provided input on methodologies that DHS should use for determining which facilities present a high level of risk, and several commenters had suggestions as to how DHS should determine which facilities are high-risk. One association asserted that DHS needed to clearly define the ''risk of interest'' before DHS could determine which methodology to use. One (non-chemical) company suggested that DHS use other Federal programs such as the EPA's Toxics Release Inventory or the Superfund Amendments and Reauthorization Act (SARA) Tier II annual reports to determine high risk facilities. Commenters addressed the suitability of both asset- and scenario-based approaches, with the majority favoring an asset-based approach. Commenters suggested that DHS consider specific methodologies developed by associations, national laboratories, or State and Federal agencies. One association suggested that DHS use other methodologies while RAMCAP continues to develop and mature. State agency commenters warned that the question of which facilities pose a high risk is a community-specific issue.

Many comments were very specific as to how DHS should proceed, and what tools DHS should employ. For example, an engineering firm focused on the need for process-based assessments. A chemical company noted the need for any approved methodology to also consider the criticality of surrounding and supporting infrastructure in a reasonable manner—that is, one that is within the expertise of the facility personnel.

Many commenters also focused on various aspects related to RAMCAP. One commenter asserted that RAMCAP might not adequately identify high-risk facilities. Another commenter asked who owns RAMCAP. Several commenters noted that the RAMCAP approach was not designed to address control system cyber security. Another commenter felt that DHS provided inadequate detail on the RAMCAP methodology and noted that DHS should define the method before DHS solicits comment. Several commenters also pointed out that RAMCAP's lack of details on vulnerability team composition and experience could be a limitation. Some of RAMCAP's developers took issue with deviations from the original RAMCAP design. Another commenter pointed out the need for DHS to include proper references to the RAMCAP and its genesis.

Also related to RAMCAP, some commenters expressed concern with the details in Appendix B, ''Background: Risk Analysis and Management Critical Asset Protection (RAMCAP) Vulnerability Assessment Methodology.'' In particular, some expressed concern about expectations that the noted threat scenarios would be analyzed as design basis threats. The commenters noted that many of the scenarios require military support to defeat, and that appears to be beyond the capability of a chemical facility to address. Associations noted that scenarios can be useful in a comparative top-screen, but that they should not guide all facility-specific assessments. One company opined that the threats needed to be more realistic before they were used in any assessments.

Finally, one chemical company commented that DHS needs to list in the rule the specific threats that facilities need to address in their SSP. Also, the company indicated that DHS, not individual companies, should determine deaths and injuries.

Response: In the Advance Notice, DHS sought to provide an overview of RAMCAP and the DHS Methodology Assessment in the preamble (*see, e.g.,* pp. 78277–78288) and in Appendix B. As there seemed to be confusion about the nature and purpose of RAMCAP and the DHS Assessment Methodology (or CSAT) and its purpose, DHS provides further explanation here.

The CSAT vulnerability assessment tool, part of the CSAT system owned by DHS, is an asset-based vulnerability assessment tool very similar to the Chemical Sector RAMCAP module. The CSAT system employs a set of defined attack vectors, used to both ''produce'' consequences (for the measurement of criticality) and to measure vulnerability. These are not ''Design Basis'' threats and in no way reflect the type of actual threats against which owner-operators will be expected to ''defend.'' They are measurement devices, supporting the DHS need to conduct comparative risk analysis. The CSAT tool does include basic assessments of certain types of cyber systems, and certain features thereof. However, the CSAT tool is not intended to be a full-scope, detailed analysis of all possible areas of vulnerability. It is a measurement tool that will allow general categorization of a facility as vulnerable or not, critical or not, and thus, at risk or not. DHS will undertake detailed evaluations of specific security issues as part of the ongoing relationship between the facility owner-operator and DHS. The assessment tool that DHS uses to conduct comparative risk assessments must be uniform and consistent in order for DHS to use it, and so a ''menu'' of different methodologies is simply not practical.

Finally, DHS notes that there were several comments from companies, encouraging the Department to adopt or require their own methodology or technique. DHS is unaware of the extent of peer review or scientific evaluation of these other methodologies or techniques. In addition, DHS does not believe it is appropriate to identify a single commercial product or endorse particular commercial products for purposes of complying with this rule.

3. Risk-Based Tiers

In the Advance Notice, the Department asked for comment on the notion of risk-based tiering of high-risk facilities. Specifically, the Department asked how many risk-based tiers should the Department create, what the criteria should be for differentiating among tiers, what the types of risk should be most critical in the tiering, how should performance standards differ among risk-based tiers, what additional levels of regulatory scrutiny should DHS apply to each tier. 71 FR 78276, 78283.

Comment: Most commenters supported the establishment of risk tiers and agreed that three or four tiers would be sufficient. Several comments, including industry commenters, State agencies, and a member of Congress believed that DHS should base tiering on the attractiveness of the facility as a target or the consequences of a terrorist attack, such as adverse impacts on public health and welfare, the potential for mass casualties, and disruption of

essential services. The commenter indicated that the creation of tiers would allow facilities to maintain security measures commensurate with risk.

A few commenters suggested that DHS did not provide enough information in the Advance Notice on the number of tiers or on how a tier classification would affect a facility's security requirements. Two industry commenters were concerned that DHS might apply the rule requirements to facilities other than those that pose the highest security risk. Two other commenters believed that the tiering approach is not appropriate for cyber security of control systems. One commenter argued that tiers should include consideration of the transportation of chemicals outside the facility property. Another commenter recommended that DHS should modify the tiers after it receives data from regulated facilities. Another commenter thought that DHS should define ''present high levels of security risk'' and ''high risk'' at the end of the RAMCAP process and not at the discretion of the Secretary.

Commenters suggested that tiers should be objective and transparent and should provide flexibility. One industry commenter pointed out that tiering allows DHS to focus on the most important facilities first and believed that DHS should establish a de minimis tier that sets thresholds below which a facility does not have to complete the Top-Screen tool. Two commenters noted that tiering provides an incentive for facilities to eliminate risk.

Some industry commenters and State and local agencies suggested that facilities in higher risk tiers should have more contact with DHS, and that lower-risk facilities should have fewer security layers implemented over a longer period of time, greater discretion, or fewer inspections. One commenter, however, believed there should be no difference in regulatory scrutiny or performance standards between tiers.

Response: The Department agrees with many of the commenters that the risk-based tiering structure will allow DHS to focus its efforts on the highest risk facilities first. To that end, the Department intends to retain the model proposed in the Advance Notice. *See, e.g.*, 71 FR 78276, 78283. In sum, the Department's framework for risk-based tiering will consist of four risk-based tiers of high-risk facilities, ranging from high (Tier 1) to low (Tier 4). The Department will use a variety of factors in determining which tier facilities will be placed, including information about the public health and safety risk, economic impact, and mission critical aspects of the given chemicals and Threshold Quantities (TQ) of the chemicals. The Department considers the methods for determining these tiers to be sensitive anti-terrorism information that may be protected from further disclosure. The types and intensity of security measures (necessary to satisfy the risk-based performance standards in the facility's Site Security Plan) will depend on the facility's tier. The Department will mandate the most rigorous levels of protection and regulatory scrutiny for facilities that present the greatest degree of risk. Finally, pursuant to Section 550(a), it is in the discretion of the Secretary to apply regulatory requirements to those facilities that present high levels of security risk; accordingly, the Department believes it is most appropriate for the Secretary to determine which facilities present high-risk (and not, for example, rely solely on output from the CSAT process).

The Department incorporates the concept of ''target attractiveness'' into its risk equation. Insofar as it is a fairly subjective element, and that it requires considerable analysis to develop, DHS will not incorporate it into the initial tier assignment process. However, insofar as ''target attractiveness'' is included in the more detailed Security Vulnerability Assessment component of the regulatory process, and insofar as the final determination of tier placement will be based upon the complete analysis of risk, ''target attractiveness'' will, in fact, be an important element in tier assignment and subsequent risk management efforts.

C. Security Vulnerability Assessments and Site Security Plans

1. General Comments

Comment: One association requested that DHS encourage, but not require, facilities that are not high-risk to conduct vulnerability assessments as a best practice.

Response: The Department has always encouraged the chemical sector to analyze security vulnerabilities and will continue to do so through voluntary sector efforts even if the site has not been designated as high risk under this rule.

Comment: One commenter requested that DHS define ''material modifications,'' as used in §§ 27.215(c)(3) and 27.225(b)(3), or at least provide examples of circumstances or events that rise to the level of ''material modifications.''

Response: Material modifications can include a whole host of changes, and for that reason, the Department cannot provide an exhaustive list of material modifications. In general, though, DHS expects that material modifications would likely include changes at a facility to chemical holdings (including the presence of a new chemical, increased amount of an existing chemical, or the modified use of a given chemical) or to site physical configuration, which may (1) substantially increase the level of consequence should a terrorist attack or incident occur; (2) substantially increase a facility's vulnerabilities from those identified in the facility's Security Vulnerability Assessment; (3) substantially effect the information already provided in the facility's Top-Screen submission; or (4) substantially effect the measures contained in the facility's Site Security Plan.

2. Submitting a Site Security Plan

Comment: Several industry commenters recommended changes to the proposed process for notifying facilities to submit SSPs and the timing for submitting the SSPs. A number of commenters believed that the most appropriate person to submit an SSP is a corporate representative with first-hand knowledge of security matters at the facility, rather than an officer of the corporation, as proposed. The comments recommended allowing a corporate security contact, a security manager, or a consultant with delegated authority to submit information on behalf of the corporation. The commenters indicated that, in most instances, members of senior management teams do not have day-to-day detailed knowledge on security issues and, thus, cannot meet the proposed qualifications. One of the commenters added that the proposed regulations appear to limit an organization's flexibility to assign internal responsibilities for various aspects of the regulations. Another commenter suggested that, in addition to notifying a covered facility, the Department should notify the facility's corporate ownership (and/or parent corporation) allowing a multi-facility corporation to prepare and submit a response in an efficient and timely manner.

Response: The goal of this rule is to increase flexibility while embracing security for covered facilities, not to unnecessarily decrease flexibility. The rule obligates the chemical facility to submit the Site Security Plan; however, as used herein, the term chemical facility or facility shall also refer to the owner or operator of the chemical facility. While the owner or operator of

a chemical facility may designate someone to submit the Site Security Plan, the owner or operator is responsible for satisfying all the requirements under this part. Note that the Department has added requirements for submitters in the rule (*see* § 27.200(b)(3)) and that the Department discusses those new requirements in the Rule Provisions discussion of § 27.200. *See* § II(B). Finally, it is presumed that the covered facility is the most appropriate party to notify its parent corporation or other related corporate entities as necessary.

3. Content of Site Security Plans

Comment: One commenter stated that, until some of the initial regulatory elements regarding definition of risk and the establishment of tiers is in place, it would be premature for DHS to publish details on Site Security Plans. Another commenter stated that, based on the consequence assessment, every site should be required to have specific security elements in place that prudently deter, detect, delay, and respond based on their assigned tier level. The commenter also stated that, without some degree of access control and physical security specificity based on tier levels, there will be considerable confusion as to the exact considerations needed to meet Department requirements. Another commenter encouraged DHS to abide by the congressional mandate of Public Law 104–113, as described in OMB Circular A119, and ensure that voluntary consensus codes and standards are used when they are applicable under the rule.

Response: The Department has developed a means of assessing risk and a tiering process as described in §§ 27.205 and 27.220. These methods anticipate, on a risk basis, a certain level of vulnerability for a given tier level. A facility's SSP will describe the appropriate levels of security measures that a facility must implement to address the vulnerabilities identified in their SVA and the risk-based performance standards for their tier. The Department has included risk-based performance standards in this interim final rule and will publish further guidance on the risk-based performance standards. The risk-based standards address, among other things, vulnerabilities under the security concepts of detection, deterrence, delay, and response. Finally, the Department notes that covered facilities may use and cite voluntary consensus codes and standards in their SVAs and SSPs to the extent they are appropriate.

4. Approval of Site Security Plans

Comment: In general, commenters supported the proposed submission and approval processes for SSPs. While one commenter endorsed proposed § 27.240(a)(3) stating that the Department will not disapprove an SSP based on the presence or absence of a particular security measure, another commenter believed that the Department should have the authority to disapprove an SSP if a facility has refused to include a widely-practiced and cost-efficient procedure that can severely reduce the risk posed by a chemical facility. Two commenters requested that the Department inform local law enforcement and first responders when the Department is reviewing an SSP in their community and then inform them whether that plan was accepted or rejected. The commenters stated that the health and safety of responders may well depend upon whether the chemical facility has an adequate SSP.

Response: The Department may not disapprove a Site Security Plan submitted under this Part based on the presence or absence of a particular security measure, as provided in Section 550 of the Homeland Security Appropriations Act of 2007. The Department may disapprove a Site Security Plan that fails to satisfy the risk-based performance standards established in § 27.230.

The Department intends to work closely with local law enforcement and first responders to provide adequate homeland security information to them under this rule.

Comment: One commenter recommended that the Department first complete the SSP review and approval process for Tier 1 facilities, then, after soliciting feedback from the Tier 1 facilities on the process, then proceed in a step-wise fashion to subsequent tiers.

Response: The Department will implement the rule in a phased approach but will not necessarily complete all Tier 1 sites prior to undertaking plan review and approvals with lower-tier chemical facilities as the need arises. This is necessary to make sufficient progress with higher-tier chemical facilities and not only the highest tier.

5. Timing

Comment: One concern raised by an industry association related to DHS's resources for reviewing Security Vulnerability Assessments and providing responses in 20 days. Changes to control systems were suggested for reviews and updates within 7 days or sooner. One commenter agreed with updating SSPs annually, but not Security Vulnerability Assessments. Several commenters suggested the following for updates: every 2–5 years for Tier 1 facilities, 3–5 years for Tier 2, and 3–7 years for Tier 3 and beyond.

Numerous reviewers recommended that the reviews be limited to approximately every three years. Two companies and one industry association wanted reviews to follow major changes and not follow a set schedule. Many reviewers wanted periodic replaced with a suggested frequency.

Several commenters stated that the requirement to submit SVAs within 60 calendar days, and SSPs within 120 calendar days, starting on the date that the facility is notified that it is considered high-risk, is too short, and therefore inadequate. One commenter noted that managing change in a safe fashion requires significant thought and careful planning to ensure that the change itself does not create another hazard to the community, the environment, or employees. The commenter also noted that developing and implementing an SSP that properly mitigates risk requires the security manager to make appropriate revisions to existing facility procedures and to train employees and other affected parties on these new procedures. Another commenter expressed concern that there is no specific date or time by which DHS must notify high-risk chemical facilities of their status. Likewise, there is no firm time by which the Secretary will send out a notice approving or disapproving an SSP.

With regard to the time needed to review an SSP, one commenter stated that DHS should issue a decision approving or disapproving them within 30 days of receipt of a completed plan. This timeframe would bring at least most priority facilities into compliance within seven months of the effective date. The commenter also stated that, given the urgency, any ''objections'' or ''appeals'' should be processed after the seven-month schedule is completed. Because of concern that DHS staffing levels might delay the processing of SSPs, another commenter requested a provision be included in the interim final rule indicating that facilities are deemed in compliance after 30 days of submission of SVAs and SSPs until such time that the Department reviews and responds to the submission.

A few commenters recommended that the deadline for Tier 1 facilities to submit SSPs be extended from 120 days to 180 days. The commenters believe that this extension would assure facilities adequate time to assemble the

best teams, prepare thorough SVAs, deal with budget planning for potentially large capital expenditures, and ensure the on-site work is properly conducted. Another commenter agreed that the proposed submission schedule for submitting SSPs was unrealistic in light of the tasks involved. The commenter also thought that, if DHS found fault with a provision of the SVA, it would be unreasonable to begin development of an SSP based upon a potentially flawed assessment. Consequently, the commenter argued that the submission time of 120 days should be started only after the Department's approval of the SVA is formally received. Yet another commenter believed that submission of SSPs should be timed according to the tier assigned to the facility and that the time clock should begin when the facility receives word back from the Department on its preliminary tier assignment.

Response: The Department has established a schedule for activities under this part that considers the need to generally address the risks associated with higher tier facilities before that of lower tiers, but staggers the submittals and review and inspection activities. The Department has developed the Chemical Security Assessment Tool (CSAT) to assist chemical facilities with all of the program requirements (registration, screening, SVA, and SSP). In addition, because information from the CSAT applications will be in electronic form, DHS will be able to expedite its review of the information that chemical facilities submit. These deadlines are both prudent and achievable. DHS expects that it will complete its review of the Top-Screen, SVA, and SSP within 60 days of the facility's submission of the Top-Screen, SVA, or SSP.

6. Alternate Security Programs

Comment: The use of alternate security programs was supported by several chemical companies and associations as well as companies and associations in related industries. A chemical company agreed with the concept of initially allowing multiple methodologies and then switching to a common methodology for at least the Tier 1 facilities; they encouraged DHS to still allow alternate approaches for other tiers. This viewpoint was echoed by at least one association. Several companies wanted to ensure that existing plans could be used and one association noted that more methodologies than just those approved by the Center for Chemical Process Safety (CCPS) would be appropriate. Commenters also noted that CCPS should not be the sole arbiter unless DHS periodically reviews its resources and expertise.

A number of industry associations offered their own approaches and a food industry association commented on the need to keep their current programs in place and to not unduly focus on ammonia refrigeration risks. MTSA-, Sandia-, and NFPA-approved programs were among those mentioned by the commenters, as were those allowed under other regulations. Some commenters found the specific process for approval of alternative programs to be lacking in detail. One association requested that submitters just send in a form saying they have an alternate security plan, and not require any other document be submitted for approval.

An advocacy group commented that alternate approaches needed to be equivalent to the DHS approach, not just sufficiently similar, and that DHS should approve equivalent State and local programs. Another advocacy group suggested that DHS should only determine equivalency based on reviews of individual SSPs, not in any blanket or broad way. A third advocacy group supported a single, consistent approach set out by DHS with private sector programs being modified to conform to the DHS approach. One commenter noted that the specification of RAMCAP may have created an unfair playing field for other firms wanting to visit the source company for RAMCAP.

Response: The Assistant Secretary will review and may approve an ASP upon a determination that it meets the requirements of this regulation and provides an equivalent level of security to the level of security established by this part. In its ASP submission, a facility will have to provide sufficient information about the proposed ASP to ensure that the Department can adequately perform a review and make an equivalency determination.

As described below, certain facilities may submit an ASP in lieu of an SVA, an ASP in lieu of a SSP, or both. Accordingly, the ASP option will only be available following the facility's submission, and Department's review, of the Top-Screen. An ASP for an SVA will need to satisfy the requirements provided in § 27.215, and an ASP for an SSP will need to satisfy the requirements provided in § 27.225. The ASP for the SSP will need to describe specific security measures, or metrics for measures, that will allow the ASP to be considered equivalent to an individually-developed SSP, and facilities implementing an ASP will be subject to DHS inspection against the terms of the ASP.

At this time, the Department will only permit Tier 4 facilities (found to be Tier 4 facilities following the Department's preliminary tiering decision pursuant to § 27.220(a)) to submit an ASP in lieu of an SVA. Tier 4 facilities may submit for review and approval the Sandia RAM for chemical facilities, the CCPS Methodology for fixed chemical facilities, or any methodology certified by CCPS as equivalent to CCPS and has equivalent steps, assumptions, and outputs and sufficiently addresses the risk-based performance standards and CSAT SVA potential terrorist attack scenarios. The Department is requiring Tier 1, Tier 2, and Tier 3 chemical facilities to use the CSAT SVA methodology for preliminary and final tiering. As discussed above in the summary of changes to Rule Provisions, this will provide a common platform for the analysis of vulnerabilities and will ensure that the Department has a consistent measure of risk across the industry. With respect to SSPs, the Department will permit facilities of all tiers to submit ASPs to satisfy the requirements of this rule.

The Department modified § 27.235 to reflect these requirements. The Department also amended the regulation to link the review and approval procedures for ASPs to the review and approval procedures for SVAs and SSPs.

D. Risk-Based Performance Standards

In the Advance Notice, DHS sought comment on the use of risk-based performance standards to address facility-identified vulnerabilities. The Advance Notice proposed that DHS require covered facilities to select, develop, and implement security measures to satisfy the risk-based performance standards in § 27.230. The measures sufficient to meet these standards would vary depending on the covered facility's risk-based tier. Facilities would address the performance standards in the facility's Site Security Plan, and DHS would verify and validate the facility's implementation of the Site Security Plan during an on-site inspection.

1. General Approach to Performance Standards

Comment: The majority of the commenters supported the proposed regulatory approach due to the flexibility that the risk-based performance standards provide to the regulated community in choosing security measures for their respective facilities. The proposed approach acknowledges the fact that each of the facilities faces different security challenges. A few commenters noted

that the goal of the performance standards should be to reduce vulnerabilities identified in the SVA, not necessarily reduce all potential consequences or mandate the use of specific countermeasures.

By contrast, some other commenters opposed the Department's proposed regulatory approach, noting various reasons: that the Advance Notice was too prescriptive in certain areas; that performance standards are open to interpretation and thus can become discretionary, interpretive, and sometimes arbitrary; that chemical companies may be allowed under the rule to make risk reduction determinations based on their available risk reduction budget, rather than on the actual elimination or reduction of the most serious risks; that the rule allows enormous flexibility and variability in the documents that facilities can submit to the Department, which could make program review difficult and hinder any comparative analysis of risk reduction efforts among similar sites.

Response: The Department's statutory authority mandates the issuance of performance standards. Section 550 requires the Department to issue interim final regulations ''establishing risk-based performance standards for security chemical facilities.'' *See* § 550(a). Also, as noted in the Advance Notice, Executive Order 12866 also directs federal agencies to use performance standards. *See* 71 FR 78276, 78283. Performance standards avoid prescriptive requirements, and although they provide flexibility, they still establish and maintain a non-arbitrary threshold standard that facilities will have to reach in order to gain DHS approval under the regulation. The ultimate purpose of the performance standards is to reduce vulnerabilities, and that is regardless of risk reduction budgets.

With respect to documentation, except as provided in § 27.235 for Alternative Security Programs, DHS is requiring facilities to electronically submit all documentation required for analysis and approval. Facilities will complete the Top-Screen, Security Vulnerability Assessment, and Site Security Plans through the online, Web-based CSAT system. This electronic submission will minimize the variability concerns and allow DHS to manage and protect information.

Comment: Regarding the application of the performance standards, some commenters thought that facilities should not have to address all performance standards (listed in § 27.230) in their Site Security Plan and should only have to address those performance standards that directly apply to its facility and its risk-based tier. One commenter thought that, in certain circumstances, a covered facility should be able provide adequate chemical security without implementing every one of the risk-based performance standards. The commenter stated that the regulations should allow for situations where the facility can demonstrate that, under its particular circumstances, one or more of the risk-based performance standards is unnecessary or redundant.

Response: Congress intended for the performance standards to provide facilities with a degree of flexibility in the selection of security measures, and the Department has tried to provide that flexibility throughout the rule. DHS expects that a facility will need to address only those performance standards that apply directly to their facility. In addition, DHS notes that there may be circumstances in which a facility needs not implement one or more of the risk-based performance standards and will still be able to provide adequate chemical security; the Department will work with these facilities on a case-by-case basis in these specific situations.

Comment: Several commenters stated that the proposed standards do not include clear security goals, outcomes, or results to measure increased security. They also asserted that DHS should develop a measurement of vulnerability or risk reduction. One commenter suggested that chemical facilities should identify operational and protection goals and that the protection system should be evaluated with respect to meeting these goals. Another commenter suggested that DHS express the performance standards in terms of overall vulnerability scores as measures via a common Security Vulnerability Assessment methodology. This alternative would allow facilities to devote their security expenses to those measures that would produce the greatest vulnerability reductions and would result, nationally, in the greatest amount of overall vulnerability reduction per dollar spent.

Response: DHS intends for the risk-based performance standards to provide facility owners with the flexibility to choose security measures in their Site Security Plan that will reduce the facility's level of risk. The Security Vulnerability Assessment process, and DHS's resulting placement of the facility within the tier structure, will provide facility owner-operators with an indication of their level of risk.

Comment: Many commenters supported DHS's intention to issue guidance to assist the regulated community in the interpretation and application of the proposed performance standards. They encouraged the Department to work with the regulated community on the development of such guidance. However, some of these same commenters also emphasized that, to effectuate Congress' intention that the chemical security requirements be risk-based performance standards rather than prescriptive requirements, DHS must explicitly make the guidance non-binding. Consistent with the comments about CVI, one commenter discussed the importance of limiting public access to the completed guidance since it could serve as a roadmap for terrorists.

Response: DHS intends to release non-binding guidance on the application of the performance standards in § 27.230 to the risk-based tiers of covered facilities. This guidance will contain sensitive information concerning anti-terrorism measures, and DHS will make that guidance available to those individuals and entities with an appropriate need for the document. DHS will provide the guidance to the House of Representatives Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs.

2. Comments About Specific Performance Standards

Comment: Several commenters requested clarification about the performance standards in proposed § 27.230(a). A few asked whether paragraph (a)(5) is intended to cover all Department of Transportation hazardous materials and whether it is intended to cover transportation and storage of hazardous materials. One suggested that paragraph (a)(5) should include a provision for securing and monitoring the storage of hazardous materials, in addition to securing and monitoring the shipping and receipt of hazardous materials. Commenters also requested that DHS have facilities report significant security incidents to local law enforcement in addition to the Department. Another commenter indicated that the Department should require the following additional elements in the performance standards: written job descriptions for security personnel, adequate response teams and resources, safe shutdown procedures, evacuation procedures, and decontamination facilities. In addition, another commenter asked that DHS define ''dangerous substances and devices'' as used in § 27.230(a)(3)(i), ''potentially dangerous chemicals'' as used in § 27.230(a)(6), and ''significant

security incidents'' and ''suspicious activities'' as used in §§ 27.230(a)(15) and 27.230(a)(16). Another commenter asked to whom facilities should report ''significant security incidents.''

Response: These comments relate to the measures that facilities must select, develop, and implement in their Site Security Plans. The Department will provide information in guidance to facilities on these measures. That might include information on the meaning of these terms, details on the parties to whom facilities should report security incidents and suspicious activities, and explanations about the role of local law enforcement (e.g., the Department's recognition that some investigations of potentially illegal conduct may be the role of local law enforcement).

In addition, DHS also notes that it has made a few changes to the regulatory context based on these comments. As discussed in the summary of regulatory text changes, the Department has revised paragraphs (a)(5), (8), (12), and (15).

Comment: Several comments discussed the need for approaches that address cyber security risks, with several asserting that it is not sufficient for DHS to consider security only from a physical perspective. Commenters opined that there were very few specific references to cyber security in the Advance Notice, even though it is important. Some commenters suggested that DHS should address cyber security in more detail in its own performance standard (i.e., a performance standard that only addresses cyber security), while others suggested that DHS should integrate cyber considerations into other performance standards. Other commenters asked DHS to identify the scope of ''cyber'' security and ''other sensitive computerized systems'' in paragraph (a)(8).

Commenters also raised other issues related to cyber security. One commenter mentioned that cyber or joint physical/cyber intrusions could create dangerous chemicals that did not previously exist. Consequently, commenters thought that DHS should address these contingencies in the screening process and/or issue an expansive list of chemicals. Other commenters noted that the RAMCAP approach was not designed to address control system cyber security. A few other commenters believed that the tiering approach is not appropriate for cyber security of control systems. Additionally, commenters mentioned that it is important to consider that facilities with interconnecting electronic systems could face additional threats as one site's vulnerability poses a risk to other connected sites.

Response: The Department recognizes that cyber security is an issue and has included cyber security as one of the performance standards that facilities must address in their Site Security Plans. Paragraph (c)(8) requires facilities to select, develop, and implement measures that ''deter cyber sabotage.'' In addition, the Department notes that it has implemented an assessment of cyber vulnerabilities for industrial control systems within the CSAT Security Vulnerability Assessment. The Department has accomplished this through the assistance of DHS's National Cyber Security Division (NCSD). DHS appreciates the complexity and uniqueness of addressing cyber security with chemical facilities and anticipates that the CSAT will mature over time, especially with the constructive feedback from interested and knowledgeable parties.

Comment: The Department received numerous comments on its use of the acronym ''SCADA'' in § 27.230(a)(8). Commenters asserted that SCADA refers to a central control system that monitors and controls a complete site or a system spread out over a long distance. They noted that using the term SCADA to represent cyber systems at chemical facilities is too narrow and suggested that the Department should replace the term SCADA with ''Industrial Control Systems.''

Response: While the Department had used the acronym ''SCADA'' (Supervisory Control and Data Acquisition) in the Advance Notice as shorthand for instrumented control systems in general, the Department agrees with the comments and has incorporated broader, more descriptive terminology into this performance standard. The Department has revised § 27.230(a)(8), so that it reads as follows: ''Each covered facility must select, develop, and implement measures designed to: * * * [d]eter cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, such as Supervisory Control and Data Acquisition (SCADA) systems, Distributed Control Systems (DCS), Process Control Systems (PCS), Industrial Control Systems (ICS), critical business systems, and other sensitive computerized systems.''

3. Variations in Performance Standards for Risk Tiers

Comment: Several commenters supported the use of risk-based tiers, with several recommending that DHS consult with industry in the development of specific performance standards for each tier. Various commenters favored the Department's proposal to place high-risk facilities in risk-based tiers and to prioritize the implementation phase-in and the level of regulatory scrutiny (i.e., frequency of regulatory reviews, inspections and SVA/SSP updates) based on the facility's risk and associated tier. Commenters noted that DHS should require facilities in higher risk tiers to develop more robust measures to meet the performance standards.

In contrast, a few other commenters had differing opinions. A small number of comments cautioned that performance standards should be consistent across all tiers, regardless of the level of risk. These commenters noted that DHS should adjust the specific measures, not the performance standards, to match the level of risk. In addition, one commenter stated that DHS should not establish risk-based tiers and should instead identify the criteria for those facilities that will be regulated and those that will not. If DHS were to establish tiers, that commenter thought DHS should limit the tiers to high or low risk.

Response: As discussed above in Section III(B)(3), DHS is creating four risk-based tiers, with the highest risk facilities in the top tier (i.e., Tier 1). The types and intensity of security measures (sufficient to satisfy the risk-based performance standards in the facility's Site Security Plan) will depend on the facility's tier. For facilities that present the greatest degree of risk, more rigorous security measures will be needed to satisfy the performance standards. The Department will use a higher level of regulatory scrutiny for facilities that present the highest risk.

DHS consulted with the chemical industry in developing the tier system and performance standards. In adopting the four tier system and applicable risk-based performance standards, DHS intends to employ a scalable performance standard across the tiers, i.e., within the same performance standard, a more robust set of security measures will be needed for a Tier 1 facility than for a Tier 2 facility, for a Tier 2 facility than for a Tier 3 facility, and so on. DHS will ensure that risk-based performance standards are applied consistently across each tier, but guidelines for each tier will vary.

Comment: A few commenters also supported the idea that a facility, which the Department has previously determined is ''high risk,'' can request that the Department move it to a lower tier if it has materially altered its operations in a way that significantly

lowers its potential vulnerabilities and consequences.

Response: Pursuant to § 27.205(b), ''if a covered facility previously determined to present a high level of security risk has materially altered its operations, it may seek a redetermination by filing a Request for Redetermination with the Assistant Secretary, and may request a meeting regarding the request.'' DHS has retained that provision in this interim final rule. This provision allows DHS to re-evaluate risk based upon changes at the facility in process, chemistry, or other factors. DHS, through the Assistant Secretary, intends to evaluate such proposed measures on a case-by-case basis.

In evaluating the redetermination, DHS will consider whether the planned action actually reduces risk (as opposed to simply ''moving'' the risk into the community around the facility) and does so without compromising security. Where these parameters are met, DHS will approve the plan and re-evaluate the tier placement for the facility in question. Pursuant to § 27.205(b), the Assistant Secretary will notify the facility of the Department's decision on the Request for Redetermination within 45 calendar days of receipt of such a Request or within 45 calendar days of a meeting regarding the Request.

Comment: One commenter noted that how performance standards vary across tiers would depend on the criteria used to establish the tiers.

Response: DHS will assess all facilities based upon worst plausible case scenarios as applicable to each facility.

4. Adoption of MTSA Provisions

The Advance Notice solicited comment on whether DHS should adopt various provisions from MTSA as elements of the chemical security program. In particular, DHS asked whether it should adopt the following performance standards in addition to the standards already listed in 6 CFR 27.230: 33 CFR 105.250 (Security systems and equipment maintenance), 33 CFR 105.255 (Security measures for access control); 33 CFR 105.260 (Security measures for restricted areas); 33 CFR 105.275 (Security measures for monitoring); 33 CFR 105.280 (Security incident procedures). *See* 71 FR 78276, 78284.

Comment: Of the several comments received on the request, the majority opposed adopting the standards, characterizing them as highly detailed and prescriptive and, as such, incompatible with the risk-based performance standards proposed for chemical facilities. A chemical industry association presented an analysis of the four MTSA standards and concluded that they were largely duplicative of, or potentially inconsistent with, existing categories of performance standards presented in the Advance Notice. The commenter stated that the MTSA standards were not performance standards, but mandatory particular security measures, in direct conflict with Section 550. Through a similar section-by-section analysis of the MTSA provisions, a chemical manufacturer found several provisions to be compatible with performance standards, but others too prescriptive or incompatible with activities in chemical facilities.

Another association representing chemical distributors stated that only a tiny fraction of its members relied on waterways to distribute chemicals and, accordingly, recommended against adoption of the standards.

Response: The Department agrees with the commenters who recommended against adopting the MTSA provisions referred to in the preamble of the Advance Notice. As the commenters noted, these provisions either duplicate current standards, conflict with current standards, or mandate particular security measures in conflict with the statute.

Comment: One association noted that, because many of its members had facilities on waterways, member companies often developed MTSA-type approaches to Security Vulnerability Assessments and Site Security Plans to establish some uniformity across facilities. Another commenter suggested that when an owner of multiple facilities has some covered by MTSA and others by the chemical security rules, MTSA could be an ASP if applied to non-MTSA facilities.

Response: Where the application of MTSA practices is sufficient, it may be considered a valid ASP. DHS will review and consider adoption of MTSA plans to non-MTSA facilities on a case-by-case basis. The Department does not intend to require duplication of effort where responsible facilities have implemented adequate security measures.

E. Background Checks

Under the Advance Notice, covered facilities would be required to perform appropriate background checks on and ensure appropriate credentials for facility personnel and, as appropriate, for unescorted visitors with access to restricted areas or critical assets.

Comment: Numerous commenters stated that chemical facilities already screen their employees for their own interests and in response to government programs. The commenters urged that the level of screening for existing employees and contractors should be commensurate with the access provided. While some commenters wanted existing employees who had undergone employee screening before hire to be ''grandfathered'' from any new requirements, other commenters thought that existing employees should be subject to screening when they are assigned to secure areas or have the potential to be reassigned. An association recommended checking current employees with less than five years seniority within six months of the effective date of the program and more senior employees within one year.

Several commenters argued that, extending the proposed requirements to contractors, subcontractors, truck drivers, and delivery and repair personnel, and others who are frequently on site, would create serious difficulties because of the large numbers of individuals in these categories, the need to have them available on short notice, redundancy of existing credentials, cost of new credentialing, and delay while screening is completed. Chemical companies explained that they rely heavily on contractors and expect the contracting company to be responsible for assuring that their employees meet security requirements. Commenters suggested that officers hired by the facility supervise contractors and sub-contractors without background checks.

The commenters also addressed the types of background checks that DHS is considering, including the personal information required, and whether name checks against the Terrorist Screening Database and fingerprint-based checks for terrorism, criminal history, or immigration status would be required. A number of commenters urged DHS to tailor the degree of scrutiny to the degree of employee access to sensitive locations. Private screening firms described systems that collect more detailed information and enhanced verification depending on the applicant's access. Operators of private screening systems state that they typically rely on the database screens for candidates with potential terrorist connections. A chemical industry association supported screening of chemical facility employees for terrorism, criminal records, and immigration status.

One commenter explained that biometric testing in a chemical environment can fail because of smudging and deterioration of fingerprints over time, while another

believed that adequate field testing had not been completed. Another commenter explained that biometrics and other verification techniques will not foil a person who has stolen an identity to pass the screen. The commenter recommended that authentication techniques, in addition to validation and verification, be applied to applicants with access to secure locations. In response to the proposed use of a list of disqualifying crimes to reject applications for clearance, a number of commenters urged DHS to restrict the crimes to those that were most clearly linked to potential for terrorism. The commenters, both unions and chemical companies, argued that loyal employees can lose their jobs or fail to qualify for hire because of misdemeanors, such as missing a few months of child support, or crimes that are not good predictors of the potential for terrorism. One commenter recommended adoption of an appeal process that allows a disqualified person to explain why he or she is no longer at risk, similar to the process under MTSA regulations.

The preamble also requested comment on whether the access provisions of the Transportation Worker Identification Credential (TWIC) Program, Hazardous Materials Endorsement (HME), ATF requirements, or other structured programs should apply to chemical facility security programs. A few commenters supported the concept that the screening required for the TWIC program should be acceptable for the chemical security program. Indeed, many chemical facilities are on bodies of water and employees were already compliant with the TWIC program. Another commenter took the opposite position that the TWIC program did not provide the customization available in existing screening systems to grade the level of screening based on employment and assignment decision. Numerous comments maintained that an employee or contractor who was credentialed under the TWIC, HME, ATF, or similar programs should not need additional security screening under the chemical security program. Related comments requested portability of security checks for employees or contractors cleared by another chemical facility. One commenter recommended that DHS establish a national repository of cleared personnel to minimize redundancy and expense.

With respect to the question of whether the government should conduct background checks or whether the industry could use authorized third parties to conduct the checks, three commenters stated that third parties were already providing background checks for thousands of employees of chemical facilities. Other commenters, including organizations that provided screening services, maintained that existing programs for screening applicants and employees for chemical facilities were reliable, effective, and inexpensive. Another commenter wrote that one program operated through safety councils might be eligible as an alternate security program, although a chemical company suggested not using safety councils, because their standards were too lax.

A few commenters favored the government's undertaking background checks because, unlike private companies, the government has access to terrorist databases and FBI databases, and because the government, unlike employers, would be immune from legal challenges from a rejected employee. Opposition to government responsibility came from several commenters who were concerned about slow completion of background checks, and that the backlog might be exacerbated by a new chemical security program.

A few commenters, including three unions, strongly urged that the system provide an appeals process for affected applicants whose employment prospects in the chemical industry and elsewhere could be seriously affected by an erroneous determination. Private services noted that they notified applicants of adverse decisions and allowed them to contest the decisions.

Response: DHS believes that personnel surety is a key component of a successful chemical facility security program. This component of the performance standards will enhance security in what would otherwise be a significant potential vulnerability. In the Advance Notice, the Department requested comment on these components of a background check program: (1) What individuals should have a background check? (2) When should the check be required? (3) What type of background check should be conducted? And (4) Should the federal government conduct the check? We address each of these four issues below.

First, DHS agrees that the level of screening for employees and contractors should be commensurate with the access provided. As part of this approach, the facility shall identify critical assets and restricted areas and establish which employees and contactors may need unescorted access to those areas or assets, and thus must undergo a background check. A facility's approach to personnel surety, including its defined restricted areas, its critical assets, and a list of the employees requiring background checks, shall be detailed in the Site Security Plan that the facility submits to the Department for approval. The rule does not include a provision that would exempt certain employees from the personnel surety performance standard based on length of employment at the facility. Merely because an individual has worked in a chemical facility for a period of time without incident does not automatically mean that they do not pose a terrorism risk and should be given free access to restricted areas and critical assets without a background check. Allowing such access without a background check presents an unacceptable security risk, and is contrary to the performance standard on personnel surety. This is not to say, however, that employers may not consider an employee's prior history of employment and service in making personnel decisions. It should also be noted that nothing in this regulation prohibits a person that has been convicted of a misdemeanor offense from being employed at a high risk chemical facility.

Second, DHS views the background check process as one of the many pieces of the Site Security Plan, and as such, will require that it be completed and submitted with the Site Security Plan. Once the facility receives the Letter of Authorization under § 27.245 denoting preliminary approval of the Site Security Plan, the facility may then proceed with all necessary background checks, if it has not done so already. All employees required in the SSP to have a background check should be included in the initial submission and must be duly vetted in accordance with the plan. This should not cause any interruption in work.

Third, the Department understands that many covered facilities already perform background checks on employees and certain contractor employees, and with some modifications, will allow that process to continue. In order to perform an appropriate background check for the purpose of protecting critical assets and restricted areas of high risk chemical facilities from persons who pose a terrorist threat, the Department has made some modifications to the personnel surety performance standard in the regulation. The Department will consider appropriate open source background checks as an acceptable response to the background check performance standard. Specifically, the Department will consider as appropriate a background check process that verifies and validates identity; includes a

criminal history check of publicly or commercially available databases; verifies and validates legal authorization to work through the I–9 process; and includes measures designed to identify people with terrorist ties. This last standard can be achieved by checking against the consolidated Terrorist Screening Database (TSDB). The Department modified the performance standard at 6 CFR § 27.230(a)(12) to reflect these changes.

Fourth, while much of the background check process can be accomplished by commercial methods, the check of the Terrorist Screening Database is an inherently governmental function that necessarily includes a check of classified databases that are not commercially available. The Department will augment the background check in the SSP with a TSDB check. The Department has determined a TSDB check is necessary for the purpose of protecting critical assets and restricted areas of high risk chemical facilities from persons who pose a terrorist threat.

DHS will designate a secure portal or other method for the submission of application data for each employee or contractor for whom a TSDB check is required in the SSP. The Application data will be the name, date of birth, address, and citizenship, and if applicable, the passport number, DHS redress number,[1] and information concerning whether the person has a DHS credential or has previously applied for a DHS credential.

To minimize redundant background checks of workers, DHS agrees that a person who has successfully undergone a security threat assessment conducted by DHS and is in possession of a valid DHS credential such as a TWIC, HME, NEXUS, or FAST, will not need to undergo additional vetting by DHS. Even so, the facility shall submit the name and credential information for these persons along with the application data for other employees. Facilities shall not allow unescorted access to a critical asset or restricted area to a person in possession of a DHS credential unless information on that person has been submitted as discussed above.

DHS will screen each applicant and determine whether the applicant poses a security threat. Where appropriate, DHS will notify the facility and applicant via U.S. mail, with information concerning the nature of the finding and how the applicant may contest the finding. Applicants will have the opportunity to seek an adjudication proceeding and appeal under Subpart C.

F. Inspections and Audits

Numerous comments addressed the proposed provisions for auditing and inspecting chemical facilities to determine compliance and allowing certified third-party auditors to supplement DHS personnel at lower tier facilities. While DHS has responded, to the extent that it is able, to the comments below, DHS also notes that it will issue guidance that identifies appropriate processes for inspections and provides specifics about the records that must be made available to DHS upon request. *See* §§ 27.250(d) and 27.255. That guidance will provide further detail.

1. Inspections

Comment: Section 27.245(a) in the Advance Notice provided that DHS may ''enter, inspect, and audit the property, equipment, operations, and records of covered facilities.'' One commenter asserted that DHS should inspect and audit using an approved or preliminarily approved Site Security Plan and not on other criteria outside the scope of the Site Security Plan. In addition, commenters indicated that DHS need not inspect equipment and records related to operations outside the vulnerabilities identified in the facility's Security Vulnerability Assessment and protected in the Site Security Plan; the commenter thought that such inspections would go beyond what is required to ensure that high-risk chemical facilities are secure. In addition, one commenter requested that DHS revise the scope of inspection to property, equipment, operation, and records covered in a facility's Site Security Plan.

Response: During inspections, authorized DHS officials may inspect equipment, view and/or copy records, and audit records and/or operations. This section imposes an affirmative obligation on facilities to cooperate with authorized DHS officials, including inspectors, and allow inspections and audits. DHS will inspect a covered facility following DHS's preliminary approval of the facility's Site Security Plan. DHS may also inspect facilities outside of the Site Security Plan approval cycle if there are exigent circumstances or special security concerns. During the course of inspections, an inspector may ask a facility to demonstrate the effectiveness of a given security measure found in the facility's Site Security Plan. This will help the inspector to determine whether the facility has adequately implemented the risk-based performance standards in its Site Security Plan. With respect to requests for records, the Department expects that facilities will produce the records—whether located onsite at the facility, at corporate headquarters, or in any other location—that are relevant to the security of the facility. The Department has added some additional language in the rule about the production of records. *See* § 27.250(d)(4).

With respect to scope of inspections, DHS is not narrowing its scope to cover only those items covered in the facility's Security Vulnerability Assessment and Site Security Plan; DHS needs the appropriate discretion to inspect those items and areas that are related to the security of the facility. However, DHS has no intention of inspecting areas that are unrelated to security.

Comment: One industry association noted that § 27.245(b)(1) of the Advance Notice suggested that security measures (which DHS requires for final approval of the Site Security Plan) should be in place at the time that DHS inspects a facility. The commenter stated that, if facilities address vulnerabilities through capital improvements, facilities are unlikely to have these security measures in place within the stated time frame. In such cases, the commenter recommended that DHS use a timeline approach, detailing an implementation schedule of prioritized security measures, and include that timeline in a facility's Site Security Plan.

Response: The commenter is correct in noting that DHS expects that facilities will have met the requirements of § 27.225 (i.e., the facility will have developed and submitted a Site Security Plan, which the Department will have preliminarily approved) when the Department visits the facility for an inspection or audit. *See* § 27.250(b)(l). One of the purposes of the inspection is for the Department to determine whether facilities have adequately implemented their Site Security Plans.

However, the Department realizes that there may be circumstances where facilities will have to implement security measures through capital improvements, and that can take time. Based on the Department's assessment of risk at a given facility and the realities of getting security measures into place, the Department will work with facilities on a case-by-case basis. Where the Department believes that extra time is warranted, the Department will work with facilities to incorporate that time into the facility's Site Security

[1] A DHS redress number is issued by DHS to an individual who has successfully completed a redress inquiry, in which the inquiry resolved a previous false-positive match to a watch list record. Redress inquiries can be submitted directly to DHS as part of the DHS Traveler Redress Inquiry Program (DHS–TRIP).

Plan and into the Department's timeline for inspecting the facility.

Comment: Various commenters requested clarification about the time and manner provisions found in § 27.245(c) of the Advance Notice. Several commenters noted that the proposed regulations did not define the terms ''reasonable times'' or ''reasonable manner'' and asked the Department to define those terms. In addition, some commenters noted that the preamble provided a timeframe for inspections (''during regular business hours of 9 a.m. to 5 p.m.'') but that the Advance Notice text did not specify that timeframe. Other commenters indicated that DHS should clearly outline the regularity of audits and inspections that the Department will require for each tier.

Several other comments discussed the notice provisions in the rule. The Advance Notice provided that ''DHS will provide covered facility owners and operators with 24-hour advance notice before inspections, except where the Under Secretary or Assistant Secretary determines that an inspection without such notice is warranted by exigent circumstances and approves such inspection.'' *See* § 27.250(c). Several industry associations believe that 24-hour advance notice would not be a sufficient amount of time for facilities to arrange for the appropriate personnel to be available for the inspection. Commenters suggested that DHS provide more notice to facilities; requests ranged from three to seven days. Other commenters requested that, in addition to notifying the facility, DHS also provide local emergency responders and local agencies tasked with regulating hazardous materials facilities with a 24-hour advance notice as a courtesy.

Others commented on the concept of unannounced inspections. A member of Congress objected to the restrictions on unannounced inspections, asserting that the provision was a near-preclusion of random audits, because approval by senior officials (i.e., the Under Secretary for Preparedness or Assistant Secretary for Infrastructure Protection) would make unannounced audits exceedingly rare. Moreover, focusing such unannounced audits exclusively on facilities (or geographic regions) where agency officials determine that ''exigent circumstances preclude notice'' presupposes that the agency is already in a position to know where exigent circumstances exist. As a result it would be far harder for the Department to determine actual rates of compliance with regulatory requirements. An industry commenter would support unannounced inspections for facilities that had significant deficiencies in the prior inspection or that have had an unusual number of breaches.

Response: DHS has retained the language that it used in the Advance Notice. Authorized DHS officials will conduct audits and inspections during reasonable times and in a reasonable manner. The nature of any given inspection will depend on the specific circumstances surrounding a particular facility's operations at a given point in time and will be considered in conjunction with available threat information.

Commenters asked for clarification on the times that DHS plans to conduct inspections. While DHS expects that it will conduct many of its inspections during the regular business hours of 9 a.m. to 5 p.m., DHS will not limit its inspections to regular business hours only. DHS must have the flexibility to respond to information, operations, and circumstances whenever they exist or develop, and so DHS may have to conduct inspections in the evening, at night, or during weekends. Security concerns are different at different times of the day and on different days of the week, and so DHS must be able to assess the different security measures that facilities put into place, pursuant to their Site Security Plans.

DHS has maintained the Advance Notice provision that gives facilities 24-hour advance notice before an inspection. In some circumstances, DHS may provide facilities with additional time. As a general matter, DHS believes that 24 hours is an appropriate and reasonable notice period, striking a balance between providing the Department with flexibility to determine compliance with this regulation and providing regulated entities with sufficient notice to prepare for an inspection. Some commenters suggested that DHS also provide advance notice about inspections to local emergency responders and local agencies. While DHS may choose to notify local emergency responders or other agencies on a case-by-case basis, DHS does not believe it is necessary to include a mandatory requirement in the rule.

Many commenters expressed concern that DHS is not able to conduct unannounced inspections. These concerns are unfounded: DHS will be able to conduct unannounced inspections when it complies with internal policy. While DHS has a general requirement for advance notice, DHS recognizes that there may be circumstances where advance notice is not possible.

To accommodate those circumstances, DHS has identified two exceptions. *See* § 27.250(c). DHS had identified one exception in the Advance Notice: If the Under Secretary determines that an inspection without notice is warranted by exigent circumstances, the Under Secretary or Assistant Secretary may approve such an inspection. The exigent circumstances may include threat information warranting immediate action. DHS adds a second exception in this interim final rule: If any delay in conducting an inspection might be seriously detrimental to security, and the Director of the Chemical Security Division, Office of Infrastructure Protection determines that an inspection without notice is warranted, the Field Operations supervisor may permit an inspector to conduct such inspection. This additional exception addresses the concerns of commenters who claimed the exception in the Advance Notice was too restrictive.

Comment: Some commenters noted that facilities may choose to validate any government-issued credential for the purpose of inspectors gaining entry onto a chemical facility. One commenter requested that, as part of the guidance, DHS include information on the security measures that will allow a facility to determine that the DHS officials or third party auditors are legitimate.

Response: DHS will handle this issue like other Federal agencies handle their respective inspectors and auditors. Individuals performing these inspections will carry Federal government credentials identifying themselves as having official authority to inspect. In addition, any chemical facility wishing to authenticate the identity of an individual purporting to represent DHS may contact the appropriate DHS Chemical Security Division official within the Office of Infrastructure Protection at DHS headquarters. In addition, the Department has provided some additional regulation text on the issue of inspector credentials. *See* § 27.250(d)(1).

Comment: Several commenters addressed the issue of training for inspectors. One commenter stated that it is DHS's role to ensure that inspectors and auditors are qualified in both physical security and chemical processes. Others noted that, if inspectors and auditors do not have a background in chemical manufacturing, then DHS must adequately train inspectors. Furthermore, that commenter encouraged DHS to utilize a cross functional team consisting of individuals with chemical process knowledge and physical security

background and include a local area first responder on each inspection team for each facility. The commenter noted that many facilities maintain a close relationship with local emergency responders. One commenter indicated that DHS inspectors should expect that chemical facilities may require them to complete a safety overview before being granted access to a facility; this is regardless of the training that DHS provides to its inspectors.

Response: DHS will use properly trained personnel to conduct inspections. During inspections, DHS intends to use teams consisting of Federal inspectors, many with backgrounds in law enforcement and physical security, and experts in chemical manufacturing. DHS will put inspectors through a rigorous training program, incorporating both classroom training and on-site visits, so that inspectors are informed on all aspects related to this regulatory program as well as on safety issues. These individuals will receive training on specific safety procedures, including OSHA's Hazardous Waste Operations and Emergency Response Standard (HAZWOPER), that they should use while visiting chemical facilities. If chemical facilities request that inspectors receive facility-specific safety briefings or training, the Department will work with facilities to accommodate those concerns, provided that the additional safety training is reasonable given the nature of the expected inspection.

2. Third-Party Auditors and Inspectors

Comment: Numerous chemical companies, industry associations, and State and local agencies requested clarification on the roles and responsibilities of third-party auditors. Several commenters pointed out that there is currently a lack of standards for third-party auditors, and some commenters noted that if DHS does not provide specific criteria for compliance, such audits will be very subjective. Several commenters asserted that there is a need for DHS to develop standards and requirements for third-party auditors, including requirements for certification, qualifications, independence, objectivity, training and re-training, confidentiality, ethical obligations, conflicts of interests, discipline procedures, and liability insurance.

Several commenters discussed the third-party auditor certification or approval process in detail. One commenter pointed out that DHS would have to develop either a professional registration or licensing for third-party auditors in order to establish a minimum level of competency for third-party auditors. Other commenters stated that training should include, among other things, information on physical security, chemical processes, and safety operations. One commenter recommended Sandia National Laboratory's Risk Assessment Methodology for Chemical Facilities (RAM–CF) training as an excellent review in all aspects of chemical facility operation and security. One pointed out that there is currently no certification for control system cyber security auditors. Another commenter added that any DHS third-party inspectors should have a strong background and experience with the agricultural retail/distribution segment of the chemical industry. The commenter encouraged DHS to work with industry associations and industry experts on establishing the proper criteria to select certified third-party auditors that will be used to inspect agricultural retail or distribution facilities determined to be covered by these regulations.

One commenter was concerned that DHS had not effectively addressed auditor independence and objectivity in the Advance Notice. To remedy this concern, the commenter suggested that DHS define third-party auditor and address auditor concepts such as due diligence, due professional care, auditor certification, auditor training, auditor indemnification, conformity assessment, audit/inspection methodology, etc.

Other commenters raised questions about third-party auditors and information protection. One commenter stated that all third-party auditors must be held to the same requirements and standards as applied to DHS officers and employees regarding the protection of confidential information; this includes information protected by law, such as PCII, Sensitive Security Information (SSI), or other applicable requirements. DHS should develop requirements and procedures, including the use of non-disclosure agreements, to prohibit disclosure or use of confidential information developed or obtained during the auditing process. One association, whose member companies already use third party audits, wanted confirmation that the use of third-party auditors would be in compliance with the CVI framework.

Three State agency commenters urged the Department to clarify that the third-party auditor provision includes qualified state and local assets to conduct audit inspections and assist with Security Vulnerability Assessments and Site Security Plans. One commenter would limit third-party auditors to appropriate state and local government officials with familiarity of the chemical process safety and security systems currently in place at the chemical facility in question to ensure the credibility and effectiveness of the inspection and auditing program. Some other commenters suggested that State and local entities could be a resource base for audits and site visits, including those of higher tier facilities.

Commenters asked several other specific questions about DHS's use of third-party auditors. A chemical company requested clarification on how DHS could delegate its authorities to third-parties. Another commenter wanted the ability to seek legal remedies against third-party auditors. Other commenters raised the question of who would pay for third-party auditors, suggesting that DHS should.

Some commenters argued for the use of third-party audits at any chemical facility regardless of its tier ranking. One commenter noted that the eventual requirements for certification should be stringent, creating confidence that the auditor will be just as capable as DHS inspectors of auditing or inspecting a high-risk facility. The commenter suggested that, as a result, a certified third-party auditor should also be allowed to conduct inspections at ''high'' or ''higher'' risk facilities. Other commenters noted that allowing third-party auditors to perform work at any chemical facility, regardless of its tier, will increase the ability of DHS to rapidly and effectively review security plans at chemical facilities by making sure sufficient numbers of inspectors are available at any given time.

Other commenters opposed DHS's use of third-party auditors altogether. A chemical industry commenter opposed DHS's use of consultants, contractors, or vendors to perform audits and inspections of facilities based on concerns about confidentiality and conflicts of interest. The commenter asserted that DHS-trained personnel are best suited to understand the complexities of security in affected facilities and to understand the importance of sensitive business information provided to DHS. Consequently, the commenter urged DHS not to initiate the proposed program without the appropriate level of staff, training, and resources necessary to implement enforcement. One commenter preferred that DHS officials, not officials from other government agencies or non-governmental organizations, conduct third-party inspections or audits to assess compliance; the commenter asserted that consistency of audits can

only be maintained if one agency, using the same inspection and/or audit procedures, performs the work. Several other commenters disagreed with the concept of third-party auditors unless they were under contract to DHS and met DHS hiring standards and training certifications. They felt that if such an activity is important, then DHS should carry out the activity itself.

Response: The Department recognizes that there are many important and complex issues surrounding the use of third-party auditors. Those issues include questions about whether it is appropriate for DHS to use third-party auditors and if so, for which tiers of facilities; what the standards and requirements would be for those third-party auditors; and who would pay for third-party auditors. DHS continues to take these issues under advisement. DHS intends to issue a future rulemaking providing the details about its plans to use third-party auditors. In developing its proposed rule, DHS will consider these comments about third-party auditors. Until that time, DHS will use its own inspectors for conducting inspections and audits.

G. Recordkeeping

Comment: One commenter suggested that the recordkeeping and reporting requirements be strengthened for process malfunctions or any attempted terrorist attack; the need for emergency response, safe shut down, evacuation and decontamination procedures in case of an attack or malfunction be defined; and effective training requirements for workers in covered facilities be required.

Response: Recordkeeping requirements under this new authority focus on security and will capture many of the issues identified by the commenter. Recordkeeping requirements regarding incidents under process safety, including shut down/start up, are outside of the scope of this regulation.

Comment: One commenter asked for guidance regarding what would constitute a reportable ''security incident'' or ''suspicious incident.'' The commenter noted that DOT has provided helpful guidance for reporting and recordkeeping under HM–232.

Response: The Department will provide facility owners with guidance on these and other terms used in the recordkeeping section.

Comment: Another commenter suggested that § 27.250(a)(4) include a reference to NFPA 731, Standard for the Installation of Electronic Premises Security Systems (2006 edition), Chapter 9, Testing and Inspections. The commenter supported the recommendation by pointing out that all NFPA codes and standards are developed through the voluntary consensus process and are accredited by the American National Standards Institute (ANSI); that Congress, in several cases has mandated the adoption of NFPA codes and standards and that Public Law 104–113, as described in OMB Circular A119, mandated that voluntary consensus codes and standards be used when they are applicable and to ensure that chemical facility safety be the primary concern.

Response: Voluntary consensus approaches to chemical facility security will be addressed in guidance. However, the Department cannot mandate specific security measures under this authority.

Comment: One chemical association found the requirements for recordkeeping to be excessive. Concerning training, the commenter stated that the location of the session and the name and qualifications of the trainer were not important, and the requirement for attendees' signatures would cause headaches if attendees leave without signing. Also, many of these requirements seem to prevent the use of web-based training. With respect to the drill and exercise provision, the commenter believed that a comprehensive list of participants is more challenging than it might appear, since drills and exercises frequently involve persons in multiple locations. Finally, recording the name and qualifications of every maintenance technician is overly burdensome and extremely difficult to document. According to the commenter, this proposed requirement would lead to inadvertent non-compliance due to its inherent complexity. The commenter urged that the recordkeeping requirements, at most, track the MTSA requirements (33 CFR § 105.225), which are less detailed and only require records to be maintained for two years.

Response: Memorializing minimal information about training, drills, exercise, and maintenance is important for a facility to assist in the analysis and review of its security efforts, and DHS does not agree that these requirements are overly burdensome or excessive given the potential risks in this sector. The recordkeeping requirements address specific issues that arise in chemical facilities, and a three year period is consistent with the anticipated audit and review cycle under this rule.

Comment: An industry association argued that, in light of existing DOT requirements, no additional training and recordkeeping requirements are needed for battery transportation. Further, any training and recordkeeping requirements that are made applicable to drivers hauling covered chemicals should be the responsibility of the transportation firms, not the facilities they service.

Response: There are no specific requirements for recordkeeping of transportation activities in this rule.

H. Orders

Comment: Various commenters mentioned the remedies in proposed §§ 27.300, 27.305, 27.310, and 27.315. An industry group indicated that the rule should provide adequate protection for recipients of penalty and cessation orders, including the opportunity for an adjudicatory hearing before a neutral hearing officer. The commenter suggested that the rule make clear that the burden of proof lies with DHS, not the facility; that facilities may be represented by counsel; that the facility is entitled to present evidence on its behalf; that there be an orderly process for the hearing officer to make a decision on the basis of the record presented, including a record of decision and for intra-agency appeal of the hearing officer's decision before it becomes final. Finally, a trade association pointed out a typographical error in proposed §§ 27.305(b) and 27.310(a).

Response: The Department has substantially revised the regulatory text in Subpart C, which includes Orders, adjudications, and appeals. The Department directs commenters to the revised regulatory text in Subpart C, as well as summary of those changes in § II(B) Rule Provisions. In sum, the Department has included adjudicatory procedures for a proceeding before a neutral hearing officer whereby facilities and others may be represented by counsel and may present evidence. The procedures provide that the burden of proof rests with the Assistant Secretary and that a record will be compiled for an appeal within DHS.

Comment: Several others provided input on cessation orders. A local government agency indicated that an Order to Cease Operations likely would be litigated immediately after issuance, and questioned how non-compliance during the lengthy litigation period would be remedied. Another commenter recommended that DHS add a provision stating that it would not enforce an order to cease operations within 30 days of a final action, which would allow the facility time to seek judicial review. An industry commenter stated that DHS's professional assessment that a chemical facility was in total violation of the security requirements should result in

an initial audit of what is required at that particular site to be in compliance. If, after a reasonable time, the facility does not come into compliance, then DHS should consider temporary closure until compliance is attained. An association expressed concern that DHS should consider whether a facility's products are critical to the economy, chemical industry, or national security before imposing fines or issuing a notice to cease operations.

Response: As noted above, the Department has substantially revised the regulatory text in Subpart C, which includes the provisions on Orders, adjudications, and appeals. Consistent with the statement in the Advance Notice, the Department realizes that an Order to Cease Operations would likely be litigated immediately after issuance. *See* 71 FR 78276, 78287.

I. Adjudications and Appeals

Comment: While commenters generally supported the processes proposed for objections and appeals, some thought that DHS should strengthen and expand the objections and appeals provisions. Several commenters suggested that DHS include additional provisions to the objections and appeals sections. One commenter recommended that DHS revise the rule to include a full description of the administrative review process, including the procedures to which all parties and the adjudicating official must adhere. Another commenter recommended that the Under Secretary and the Deputy Secretary have the authority to delegate their responsibilities as adjudicating officials.

One commenter stated that the burden of proof should lie with DHS, not the order recipient, that recipients may be represented by counsel, that the recipient is entitled to present evidence on its behalf, that there be an orderly process for the hearing officer to make a decision on the basis of the record presented, including a record of decision, and for intra-agency appeal of the hearing officer's decision before it becomes final.

Response: DHS has reorganized the adjudications and appeals procedures, as discussed in the summary of rule provision changes to Subpart C. *See* § II(B). Given that the rule already provides consultation opportunities, coupled with the fact that the Department has greatly modified its adjudications provisions, the Department believes it is unnecessary to retain the objections provisions from the Advance Notice (proposed §§ 27.205(c), 27.220(b), and 27.240(c) and has thus removed them from the interim final rule. Of course, consultations are still available pursuant to various provisions in the rule including § 27.120(b).

In addition, DHS now expressly spells out new procedures for adjudications and appeals. In particular, DHS has added adjudicatory procedures for a proceeding before a neutral hearing officer whereby facilities and others may be represented by counsel and may present evidence. The procedures provide that the burden of proof rests with the Assistant Secretary and that a record will be compiled for an appeal within DHS. The Secretary is expressly authorized to appoint individuals to serve as a neutral hearing officer. The Secretary and others retain their existing authority to delegate duties and responsibilities.

Comment: Another commenter suggested that DHS revise the rule to provide some guidance and limitation on the number of requests that a facility will be permitted to make for additional information and on the maximum extent to which DHS will toll timeframes. One commenter noted that although there is authority for the Assistant Secretary to ask the facility for more information, there is no mechanism for the facility to seek further explanation that is needed for purposes of arguing its objection.

Response: The revisions of the procedures substantially address these comments. The adjudications provisions empower a hearing officer to make decisions on the information to be accepted into each hearing record.

Comment: Another commenter stated that, under the Advance Notice, a facility had the option of using the appeal procedure (instead of the objection procedure) for challenging the disapproval of its SSP. The Advance Notice stated that orders are stayed until the administrative appeal is completed, but the Advance Notice did not provide specifically for the disapproval of a SSP to be stayed pending the administrative appeal. The commenter suggested that DHS should make such a stay explicit.

Another commenter argued that, because timelines are short, facilities will be forced to complete the SVA and SSP regardless of the outcome of the appeal, thus rendering the appeals process moot. If a facility objects to a determination, whether it is opposing either the overall assessment of ''high risk'' or the specific tier assignment, one commenter recommended that DHS should issue a decision on objection before the facility is required to implement any additional measures—including both the SVA and SSP.

Response: The addition of the factual adjudication procedure, with provisions on the effectiveness of administrative actions during adjudications and appeals, substantially address these comments. The adjudications and appeals sections provide that, absent exigent circumstances, Orders are stayed pending the completion of proceedings.

Comment: Another commenter indicated that §§ 27.205(c)(1), 27.220(b)(1), and 27.240(c)(1) (of the Advance Notice) cite ''within 20 calendar days'' as the deadline for filing objections regarding the high risk determination, risk-based tiering, and disapproval of site security plans. In contrast, §§ 27.215(c), 27.305(d), and 27.320(b)–(d) (of the Advance Notice) cite ''within 30 calendar days'' for certain deadlines regarding notification, appeals, and payments of civil penalties. The commenter believed that having two different deadlines for various actions under the regulatory program is burdensome to both DHS and the regulated facilities, and requested that all ''within 20 calendar days'' be amended to ''within 30 calendar days'' to provide more consistency within the Department's regulatory program. Another commenter urged that an appeal must be filed within 30 calendar days of when the order is issued should be changed to within 30 calendar days of when the order is served. *See* § 27.320(b) of the Advance Notice.

Response: The Department's revisions to the adjudications and appeals provisions substantially address these comments. The rule continues to permit consultations but does not set hard and fast time periods for such consultations. *See, e.g.*, § 27.120(b), § 27.240(b), and § 27.245(b). With respect to the time periods for adjudications and appeals, the revised procedures provide that adjudications and appeals must be commenced with stated time periods after ''notification.'' *See, e.g.*, § 27.310(b)(2) or § 27.345(b)(2).

Comment: One commenter recommended that the regulations provide specifically that DHS would make available to the public non-confidential summaries of determinations on appeals. The commenter also recommended that the regulations contain specific statements that objections and appeals may be submitted as CVI.

Response: The adjudication and appeal sections contemplate that the hearing officer or appeal officer will make the necessary decisions concerning the handling of CVI. There is nothing in the procedure to prevent a facility or other person from relying on CVI.

J. Information Protection: Chemical-terrorism Vulnerability Information (CVI)

The Advance Notice identified a category of Chemical-terrorism Vulnerability Information (CVI) and set forth rules governing the maintenance, safeguarding, and disclosure of information and records that constitute CVI.

1. General

Comment: Several commenters maintained that the proposed rule undermined enforcement, accountability, and the credibility of the program through excessive secrecy. One of these commenters thought that the proposed regulations pose a threat to existing right-to-know laws, while another stated that people might be well aware of security gaps and vulnerabilities at specific facilities, and yet would have no official channel to communicate concerns to DHS.

Response: As Congress recognized in section 550(c), protecting CVI from public disclosure is crucial to DHS's ability to ensure that chemical facilities are as secure as possible against a terrorist attack. CVI information may reveal, among other things, current vulnerabilities or other details of a chemical facility's security capabilities that could be exploited by terrorists. In addition, limited and controlled public disclosure of CVI is essential to fostering the necessary relationship and information flow between the government and private sector. Indeed, because the chemical security regime relies to an extent in the first instance on the veracity and completeness of the information provided by chemical facilities, it is of the utmost importance that those facilities are comfortable that such information—which may include proprietary information—will not be unduly exposed to public view.

In crafting the Advance Notice, DHS attempted to balance these concerns with the desire to enhance information sharing, as appropriate. We believe that the rule adequately does this by ensuring that any entities or individuals with a ''need to know,'' including appropriate State and local officials, will have access to the necessary CVI, while, at the same time, and consistent with congressional intent, protecting CVI from public disclosure that would undermine the government's ability to ensure the security of chemical facilities.

To the extent that this approach conflicts with existing state ''right to know'' or ''sunshine'' laws, we believe that such laws are preempted by this IFR. At this time, we do not intend to displace or otherwise affect any provisions of Federal statutes, including the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001 *et seq.*, or section 112(r) and 114 of the Clean Air Act of 1990, as amended, 42 U.S.C. 7412(r), 7414, sections 308 and 402 of the Clean Water Act, 33 U.S.C. 1318, 1342, and section 104(e)(7) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9604.

We also believe that any potential gaps in a facility's security will be addressed through the government's close involvement with chemical facilities as a result of this rule.

2. Disclosure of CVI

Comment: While some of the commenters found the provisions to be inadequately protective of chemical industry information, others found the disclosure rules to be too restrictive. A few commenters urged the Department to include language requiring notifications to facilities in cases of CVI disclosure to unauthorized parties. The commenters noted that a facility has a need to know if sensitive information pertaining to its site has been or might have been disclosed. A commenter, concerned over how the CVI rules may affect third-party audits of security measures and documents that may be submitted to the Department as Alternative Security Plans, requested an interpretation of DHS's approach. Taking the point further, another commenter did not believe it was in a company's best interest to provide copies of CVI to outside parties, as currently allowed under the proposed rule. The commenter would prefer the proposed rule be amended to require CVI be made readily available to authorized Department representatives only when they conduct on-site visits. One commenter encouraged the Department to adopt non-disclosure protections for verbally transmitted or obtained CVI. The commenter noted that information sharing among a covered facility and authorized individuals may require verbal communication as much as it will require written communication. To further protect against disclosure, some commenters believed that proposed § 27.400(j) should be enhanced so that it has a meaningful deterrent effect and establishes consequences that reflect the seriousness of the violation. The commenter suggested that the Department adopt administrative penalties similar to those outlined by 6 CFR 29.9(d).

In addition, some commenters requested provisions to protect whistleblowers by stating that no criminal charges be associated with disclosing information marked as CVI in manner complying with whistleblower protections.

Response: Under § 27.400(c)(3) of the Advance Notice, ''any person who * * * receives or gains access to what they know or should reasonably know constitutes CVI'' is a ''covered person'' and therefore has a duty to protect that CVI in the manner provided in § 27.400(d). This includes the duty to promptly inform the Assistant Secretary ''when a covered person becomes aware that CVI has been released to persons without a need to know * * *.'' *See* § 27.400(d)(7). We expect that in the event DHS is so notified, it will notify the affected chemical facility.

To the extent DHS determines that it is appropriate to use third-party auditors in the future for certain chemical facilities, the auditors will have a ''need to know'' under § 27.400(e)(1)(i) as persons who ''require[ ] access to specific CVI to carry out chemical security activities * * * directed by the Department.'' Moreover, under § 27.400(e)(3), DHS retains the discretion to require that any individuals with a need to know, including third-party auditors, complete appropriate background checks before obtaining access to CVI. We believe that these safeguards are sufficient to ensure that CVI is adequately protected from improper disclosure, even if it may be handled by third-party auditors.

Section 27.400(b) of the Advance Notice, which defines CVI, currently is ambiguous as to whether it includes information conveyed verbally as well as in written form. DHS believes that concerns over public disclosure of CVI are the same regardless of the manner in which the information is conveyed. Accordingly, we have amended this section to read as follows: ''In accordance with section 550(c) of the Department of Homeland Security Appropriations Act of 2007, the following information, whether transmitted verbally, electronically, or in written form, shall constitute CVI.''

We believe that § 27.400(j) gives the Department broad latitude to craft a civil remedy sufficient to deter the unauthorized disclosure of CVI. The IFR does not provide for any criminal penalties for disclosure of CVI.

3. Scope of CVI

Comment: A number of commenters expressed concern regarding the scope of CVI. The commenters wanted the interim final rule to declare that

information developed under other requirements of law or regulation cannot be designated as CVI under this program. Similarly, a commenter suggested that DHS narrow the scope of CVI by removing from the rule § 27.400(b)(9), which defines CVI to include ''[a]ny other information that the Secretary, in his discretion, determines warrants the protections set forth in this part.''

Response: As outlined in the Advance Notice, the Department intends CVI to include only that information developed and/or submitted pursuant to Section 550(c). Accordingly, any information resulting from other statutory regimes is not considered CVI. The Department believes, however, that the Secretary must retain the discretion provided in § 27.400(b)(9). As the Department and private sector gain more experience with the chemical security regime set forth herein, the Department may determine that other types of information, not covered in the current definition of CVI, require similar protection. Section 27.400(b)(9) is also necessary to cover any unique or novel information that the Department may deem, on a case-by-case basis, requires protection from public disclosure.

4. Relation of CVI to Other Categories of Protected Information and FOIA

Comment: Some commenters were confused by the different categories of protected information. One commenter stated that the proposed regulations are not sufficiently clear on the relationship of CVI to SSI and other relevant methods of information protection. The commenter indicated that the interim final rule should clarify how these information protection regimes will relate to each other. A few commenters believed that the creation of the new CVI category of information protection is redundant and unnecessary given that current protections, such as SSI, are adequate options for the Department to implement the statutory restrictions. One commenter noted that the ''Safeguards'' classification for the Nuclear Sector seems to parallel the proposed ''CVI'' classification for the Chemical Sector. The commenter questioned whether the Department is considering inventing new security classifications for each of the 15 Critical Infrastructure Protection Sectors. The commenter would prefer that the Department develop a new Category of Information Classification for all 17 sectors for security-specific or security-related information that are, at a minimum, the same as those for the current ''Safeguards'' classification program.

Two commenters recommended that the interim final rule clarify that CVI protections would be in addition to any other applicable bases for nondisclosure of information under the Freedom of Information Act (FOIA), such as the Trade Secrets Act and its protections are for confidential business information. Another commenter noted the provision gives the Department discretion to refuse release of part of a record under FOIA that contains no CVI, when another part of the same document contains CVI. The commenter suggests that this proposal is at odds with longstanding FOIA mandates and practice. Furthermore, the commenter noted that, if a portion of a requested record contains no CVI and is reasonably segregable from other parts of the record that do, there is no authority or justification for withholding that CVI-free portion unless some other FOIA exemption or exclusion applies.

Response: It is the Department's view that the language of Section 550(c) calls for a unique information protection regime. As stated in the preamble of the Advance Notice, in creating CVI, the Department looked to and drew on various aspects of those information protection regimes currently in existence, including, SSI, PCII and SGI. Moreover, as the Advance notice makes clear, the Department intended CVI to track the existing SSI regime in certain respects and indeed, borrowed somewhat from that regime's structure and provisions (e.g., requiring a ''need to know,'' storage in a secure container, etc.) None of these regimes, however, is sufficient to accommodate the protections Congress called for in Section 550(c), most notably, that any information developed pursuant to Section 550(c) be treated as classified information in the course of enforcement proceedings. For this and other reasons, the Department developed CVI, which is separate and distinct from SSI, PCII, SGI or any other pre-existing information protection regime.

Section 550(c) pertains only to chemical facilities and thus this rule does not speak to the handling of other critical infrastructure sectors. That said, the Department does not take the creation of a new information protection regime lightly, especially in light of the President's Memorandum for Heads of Executive Departments and Agencies of December 16, 2005, entitled ''Guidelines and Requirements in Support of the Information Sharing Environment.'' Absent express direction from Congress, as in Section 550(c), the Department is reluctant to create additional regimes.

In drafting the rule, the Department did not intend for its restrictions on public disclosure to displace separate and additional statutory restrictions on the public disclosure of confidential business information.

The terms and structure of Section 550 clearly preclude public disclosure of CVI. For this reason, it is the Department's view that CVI, like SSI and PCII, is exempt from FOIA disclosure under Exemption 3 of FOIA. *See* 5 U.S.C. 552(b)(3). Exemption 3 provides, in part, that information is exempt from disclosure by operation of another statute, provided that such statute either: ''(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) * * * provided that such statute refers to particular types of matters to be withheld.'' *Id.* Section 550(c) provides in relevant part that ''information developed under this section, including vulnerability assessments, site security plans, and other security related information, records, and documents, shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46 [the Maritime Transportation Security Act (MTSA)] * * *.'' MTSA states that ''information developed under this chapter is not required to be disclosed to the public.'' 46 U.S.C. 70103. Under this language, it is conceivable that the government has discretion to release information to the public. *See Church of Scientology of Calif.* v. *U.S. Postal Serv.*, 633 F.2d 1327, 1330 (9th Cir. 1980). As stated in the Advance Notice, however, ''information developed'' under MTSA is treated as SSI and, unlike MTSA, the statute governing SSI (49 U.S.C. 114(s)) states that the government ''shall prescribe regulations *prohibiting the disclosure of information* * * *.'' (Emphasis added.) This language has been interpreted as constituting the ''absolute'' prohibition required to invoke the exception of Subsection (A). *See Chowdhury* v. *Northwest Airlines Corp.,* 226 F.R.D. 608, 611 (N.D. Cal. 2004).

To the extent that there is some ambiguity as to which statute should govern for purposes of an Exemption 3 analysis, it is our view that the SSI statute most accurately reflects Congress's intent in section 550(c) and that, therefore, CVI should be exempt from FOIA disclosure under subsection (A) of Exemption 3. Nevertheless, we need not resolve the issue at this time because it is also our view that the language of section 550(c), which

provides meaningful limits on the universe of information subject to withholding, is sufficient to justify withholding CVI from FOIA disclosure under subsection (B) of Exemption 3. *Cf. Fin. Corp.* v. *Donovan,* 830 F.2d 1132, 1138 (D.C. Cir. 1989) (holding provision of Trade Secrets Act failed to qualify for subsection (B) exemption because of ''exceedingly broad,'' ''oceanic,'' and ''encyclopedic'' quality of the Act). The Department believes that it adequately expresses this conclusion in § 27.400(g)(1), which states that: ''Except as otherwise provided in this section, *and notwithstanding the Freedom of Information Act (5 U.S.C. 552),* the Privacy Act (5 U.S.C. 552a), and other laws, records containing CVI are not available for public inspection or copying, nor does DHS release such records without a need to know.'' (Emphasis added.) Moreover, even if FOIA did apply to CVI, we believe that it would be exempt from disclosure, *inter alia,* as ''homeland security information'' under FOIA Exemption 2. *See* 5 U.S.C. 552(b)(2).

The commenters' concern that, if a document is portion marked to signify both CVI and non-CVI, the Department intends to withhold the entire document under FOIA, is not supported by the Advance Notice. Section 27.400(g)(2) states to the contrary that: ''If a record is marked to signify both CVI and information that is not CVI, DHS, on a proper Freedom of Information Act request, may disclose the record with the CVI redacted, provided the record is not otherwise exempt under the Freedom of Information Act or Privacy Act.'' The use of ''may'' in this context was intended as permissive, assuming such disclosure is otherwise appropriate.

5. Sharing CVI With State and Local Officials, the Public, and Congress

Comment: Several comments sought greater access to CVI. Commenters stated that the Department should share CVI with State and local officials. Others noted that the definitions of ''covered persons'' and ''need-to-know'' were overly narrow and heightened their concern that the Department would not provide information to State and local officials. One commenter noted that, to the extent information is shared directly with State or local officials, DHS should enter into agreements with them to ensure that CVI is sufficiently protected. Other commenters agreed that the Department should impose strict controls for the use of any facility-specific information by States and local governments. A commenter stated that information that is provided to California local agencies may be subject to the California Public Records Act, which if true, means that CVI in California may not be protected.

A commenter recommended that the Department develop a method to share certain information with the public, such as whether a facility is in compliance with the security program, because the people who live in close proximity to a chemical facility deserve to know. The commenter recommended the disclosure of the Letters of Approval issued upon completion of a site inspection and audit. The Letters of Approval could be stripped of any sensitive information, but still provide some assurance that facilities are complying with security requirements. Finally, other commenters stated that the interim final rule should make clear that DHS is not authorized to withhold information from either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress.

Response: Congress clearly intended that CVI would be shared with State and local officials, including law enforcement officials and first responders, in appropriate cases. Section 550(c) states that ''this subsection does not prohibit the sharing of such information, as the Secretary deems appropriate, with State and local government officials possessing the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this section, provided that such information may not be disclosed pursuant to any State or local law.'' And the Department made clear in the preamble to the Advance Notice that ''[t]he Secretary shall administer this Section consistent with section 550, including appropriate sharing with State and local officials, law enforcement officials, and first responders.'' *See* 71 FR 78276, 78289. Furthermore, the importance of sharing CVI with appropriate State and local officials is reflected in the structure of the rule. For example, it is expected that chemical facilities will coordinate extensively with state and local officials—including the sharing of relevant CVI—in the course of completing the SSPs required under § 27.225. It is the Department's view, therefore, that the language in the rule is sufficiently broad to accomplish this task. For example, we believe that State and local officials, including law enforcement officials and emergency responders, fall within § 27.400(e)(1)(i)'s definition of those with a need to know because they will require access to CVI to ''carry out chemical facility security activities approved, accepted, funded, recommended, or directed by the Department.'' Yet because many commenters have requested clarification on this point, the Department amends the § 27.400(e)(1) to read as follows: ''A person, including a State or local official, has a need to know CVI in each of the following circumstances. * * *''

As stated above, to the extent any state law requires the public disclosure of information that is deemed CVI, it is the Department's view that such laws are preempted by this rule.

At this time the Department does not intend to provide a means of notifying the public about local chemical facilities. We will continue to consider this issue as the program progresses, however, and issue a subsequent notice if necessary.

This rule does not attempt to displace or create any new law concerning the Department's ability to withhold information from Congress.

6. Litigation

Comment: With respect to availability of CVI during litigation, some commenters supported the preamble statement that, in enforcement cases, the defendant and its counsel would have access to relevant CVI to enable them to prepare a full defense. Another commenter supported the Department's proposal to prohibit the disclosure of CVI in civil litigation unrelated to Section 550 enforcement. Yet another commenter stated that, according to the proposed rule, information on routine chemicals used and produced in processes would be treated as CVI, and thus disclosed in litigation only in extraordinary circumstances. The commenter noted that, because personal injury and workers' compensation claims are the consequences of handling many toxic substances, this provision would appear to bring these actions to an absolute halt, since these cases cannot be prosecuted without precise knowledge of the toxic substances at issue. Finally, a commenter cautioned the Department to limit those provisions governing disclosure in civil or criminal litigation to the authority delegated to the Department. The commenter saw nothing in the statute delegating the authority to issue binding regulations to govern a judicial proceeding. The commenter did think it helpful for the Department to publish regulations that express its own policies and interpretations, thereby affording others guidance as to what the Department's preferred practices will be when litigation arises.

Response: As stated above, Section 550(c) requires CVI to be treated as classified information in the context of

any enforcement proceedings. This novel mandate reflects the seriousness with which Congress viewed the protection of CVI from unnecessary disclosure in administrative or judicial enforcement proceedings and, by extension, any civil litigation unrelated to Section 550. The Department approach balances this concern with the need for individuals to have access to certain CVI, as appropriate, to defend themselves in enforcement proceedings.

That said, it is not clear that the type of information involved in a worker's compensation or tort claim would necessarily constitute CVI. The mere reference to a type of chemical may not readily fit into one of the categories of information under §§ 27.400(b)(1)–(9). However, even if it did, under § 27.400(i)(6), the Secretary retains the discretion to release CVI in such proceedings.

As explained in the preamble to the Advance Notice, Section 550(c) states generally that CVI shall be treated as ''classified material'' in the context of any enforcement proceedings. Congress did not specify, though, whether the Department should look to the rules governing classified material in civil litigation or criminal litigation. The Department chose to mirror in large part the handling of classified material in civil litigation under 18 U.S.C. 2339B. It remains the Department's view that this is a reasoned approach to effectuating Congress's intent.

7. Protection of CVI

Comment: Other comments sought technical changes to make the rule more secure or user-friendly including: Prohibiting the transmission of CVI using electronic systems unless DHS is able to provide Military Grade/Quality Encryption Devices/Systems to the private sector or provide access to government locations where this equipment is available for private sector use; extending the safeguards that the CVI provisions require in proposed § 27.400(d)(1) concerning ''secure container[s], such as a safe,'' to establishing secure databases; modifying requirements for marking every page of a CVI document with the words ''CHEMICAL-TERRORISM VULNERABILITY INFORMATION'' and a lengthy warning statement; allowing facilities to mark only those pages of a document containing the CVI and the warning statement only be provided once per record, with per page reference to it as needed; indicating DHS's intention to destroy, return, or permit reclassification of Top-Screen data pursuant to proposed § 27.400(k).

Response: The Department believes that the protective measures required by §§ 27.400(d) and (f) are sufficient to adequately protect CVI.

K. Preemption

Comment: Section 27.405(a) of the Advance Notice proposed to preempt State and local laws, rules, and court decisions that conflict with, hinder, pose an obstacle to, or frustrate the regulation. Several chemical companies and associations endorsed the proposed preemption of State and local regulations because they believe that national risk-based, performance standards could be undercut by specification standards imposed by the States. These commenters expressed the concern that companies with multi-state operations could be subject to a confusing array of State programs. One commenter argued that varying State regulations also provide varying levels of protection, which the commenter did not think was Congress's intent. Other commenters noted that Maritime Transportation Security Act (MTSA), which applies to facilities located on waterways, including chemical facilities, contains an express preemption provision.

An equal number of comments from advocacy groups, State agencies, and Members of Congress opposed the Department's position on preemption. These commenters cited the lack of express language in Section 550 and the legislative history to support their position that Congress did not intend to grant DHS express or implied authority to preempt State laws and regulations. A few commenters referred to a body of case law indicating a ''presumption against preemption.'' Other commenters, including Members of Congress, suggested Congress intended to resolve the issue of preemption in future chemical facility security legislation. Commenters also urged DHS to delete § 27.405 and allow the courts to determine the preemptive effect of the Department's chemical facility regulations.

A few commenters were concerned that the language in § 27.405 was so broad that it might be construed to preempt State health, safety, and environmental regulations. Similarly, one State requested that DHS modify the final provision to avoid any inadvertent preemption of Federal, State, or local health, safety, and environmental regulations.

A few comments were directed at the appeals procedures for preemption decisions. One commenter disagreed with the lack of benchmarks that DHS would use to determine if preemption was called for and another added that the interim final rule should specify a reasonable time period for a decision to be rendered and for the decision to constitute a final administrative decision so that judicial relief could be sought. One association stated that the preemption decision process and appeals procedures did not include State government, thereby excluding the parties whose laws, rules, and public interests are most affected. The commenter proposed including a mandatory consultation process between the State and the facility before the DHS appeal, a joint hearing opportunity with the facility and State before DHS, a written decision, and State access to a judicial appeal for an adverse decision.

Response: Please see the section below entitled ''Executive Order: 13132: Federalism'' for a response to these comments and a discussion of preemption.

L. Implementation of the Rule

Comment: The preamble stated that DHS is considering a phased implementation of the program. Several industry commenters and a State agency supported phased implementation because they agreed that DHS should take action on the most critical facilities first. One commenter warned that problems and issues should be addressed prior to implementation, and another commenter requested that DHS define what tiers apply to which phases. Two members of Congress asked DHS to clarify implementation for high-risk facilities beyond Phase I.

Response: The Department will immediately and quickly address the highest risk facilities. At the same time, the Department will reach out to a broader class of facilities, (numbering in the many thousands), to gather information necessary for the Department to make risk-based tiering decisions.

M. Other Issues

1. Whistleblower Protection

Comment: Many commenters thought that this regulation should provide ''whistleblower protection.'' They explained that the regulation should protect employees that provide information on a facility's security and safety from employer retaliation. Commenters suggested that workers are on the front lines, and therefore in the best position to participate in the development of Security Vulnerability Assessments and Site Security Plans. Commenters suggested that DHS create a system which would allow

individuals to report vulnerabilities, shortcomings, and failures without the fear of retaliation from the company. Commenters requested that DHS change regulatory text to provide whistleblower protection to employees, with some suggesting that DHS should include the protections found in H.R. 5695 and S. 2145.

Response: Section 550 did not give DHS authority to provide whistleblower protection, and so DHS has not incorporated specific whistleblower protections into this regulation. The Department does, however, value frank information concerning security vulnerabilities. Employees with daily involvement at high-risk facilities can certainly be a valuable source of information. In the interest of providing some mechanism for employees to alert the Department about information at their employer's chemical facility, the Department intends to establish a telephone line through which individuals can submit security concerns to the Department. The Department will provide callers with the option of remaining anonymous.

2. Inherently Safer Technology

Comment: The Department received numerous comments on the issue of inherently safer technologies (IST) options. Several commenters, including advocacy groups, unions, academics, State agencies, and other officials, strongly encouraged DHS to consider safer technologies as well as physical countermeasures. A few commenters, including members of Congress, suggested that the Department should address the use of ISTs, even though Section 550 was silent on the issue. Many of these commenters urged DHS to include provisions in the rule that would encourage chemical facilities to consider implementing safer processes and using safer chemicals as a method to improve site security through the reduction of risk. They suggested that DHS require chemical companies to analyze and report on safer technologies in their Site Security Plans. These commenters asserted that substituting safer chemicals, processes, practices, or technologies not only contributes to severity (i.e., can minimize the consequences associated with an accident at or attack on a chemical facility), but has the potential to greatly minimize the physical security costs a chemical facility would otherwise have to assume. Other commenters pointed out that ISTs are the best tools available to completely mitigate facility vulnerabilities and safeguard communities.

In contrast, other commenters rejected the use of any IST requirements. Some argued that inherently safer technologies are an environmental construct and should not be implicitly or explicitly required for security. One association expressed concern that requirements for safer technologies could shift rather than reduce risk and/or limit the production of certain chemicals. In addition, some commenters urged DHS to avoid including any ''pseudo-IST mandates'' in the rule; the commenter thought that DHS had inadvertently done so.

Response: Section 550 prohibits the Department from disapproving a site security plan ''based on the presence or absence of a particular security measure,'' including inherently safer technologies. *See* Section 550(a). Even so, covered chemical facilities are certainly free to consider IST options, and their use may reduce risk and regulatory burdens.

3. Delegation of Responsibility

Comment: Another commenter strongly recommended that DHS consider delegating oversight responsibility to State governments, along with appropriate levels of Federal funding to support homeland security efforts. Interested states could petition DHS, and DHS would grant delegated authority on a discretionary basis. The commenter suggested that DHS could retain oversight authority, but would delegate programmatic responsibility and commit resources to authorized States. The commenter likened the arrangement to the one that the EPA uses to handle air and water regulations and the one that the Nuclear Regulatory Commission runs with its ''Agreement State'' program. Another State agency commenter noted that California has promulgated a successful chemical safety program built on partnering State and local regulatory interests with chemical industry hazard mitigation activities.

Response: The Department has contemplated the issue of delegating authority to State governments, and has decided not to do so. If the Department reconsiders the issue in the future, it will provide notice of any such decision.

4. Interaction With Other Federal Rules and Programs

Comment: Many commenters pointed out potential overlap between this rule and other Federal agency rules. As one commenter stated, many Federal agencies have some involvement in chemical facility security, including DHS (including the U.S. Coast Guard and TSA), the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF), the Departments of State, Commerce, and Transportation (including its modal administrations), EPA, and OSHA. Other commenters encouraged DHS to build upon the existing EPCRA and the Risk Management Program (RMP) regulatory programs, because of their proven records of success and the important health, safety, and environmental purposes that they serve.

One commenter noted that DOT has security plan requirements in 49 CFR Part 172, Subpart I and that several of the DHS performance standards overlap with the DOT security plan requirements. One commenter asserted that the proposal in the Advance Notice attempted to cover up knowledge of toxic dangers by potentially ''gutting the worker and public right-to-know provisions'' of existing Federal and State laws, including the Occupational Safety and Health Act and the Emergency Planning and Community Right-to-Know Act (EPCRA). In addition, some of these commenters were concerned that preemption and CVI classification will restrict information flow and access currently available through these Federal regulatory programs.

Several commenters expressed concern that, although DHS intends that this rule not affect other laws regulating manufacture, sale, use, and disposal of chemicals, it is unclear how the DHS security planning and enforcement can avoid impacting the environmental, occupational, trade, and other rules already regulating the same facilities. Potential conflicts also affect first responders. Since past conflicts over authority have tended to diminish program effectiveness, the commenter wonders how such conflicts can be avoided. Solutions offered by commenters include a more explicit statement on conflict resolution in the final rules, an inter-agency coordination process to resolve conflicts, or memoranda of agreement with agencies having concurrent authority.

Response: The Department is aware that potential overlap exists between this rule and existing Federal rules and programs. In the Advance Notice, the Department acknowledged that overlap and included an extensive discussion of existing and proposed Federal programs that are related to chemical security. *See* § I of the Advance Notice, ''Brief History of Federal Pre-Existing Chemical Security Tools and Programs.''

Section 550 provides that ''[n]othing in this section shall be construed to

supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.'' In the Advance Notice, after acknowledging that the ATF regulates the purchase, possession, storage, and transportation of explosives, the Department indicated that it did not intend for these regulations to interfere with ATF's current authorities. *See* 71 FR 78276, 78290. Likewise, the Department does not intend for these regulations to impede the authorities of other Federal agencies. With respect to this regulatory program, DHS will work closely with the Department of Energy, EPA, OSHA, ATF and other federal agencies. Where there is concurrent jurisdiction, the Department will work closely with other Federal agencies to ensure that regulated facilities can comply with applicable regulations while minimizing any duplication. As the program develops, the Department will consider the necessity of various formalized arrangements, such as an inter-agency coordination process, to resolve jurisdictional questions or conflicts.

5. Third-Party Actions

Comment: Several commenters supported the Advance Notice discussion of the statutory prohibition against third party actions to enforce any provision of the chemical security rules. *See* § 27.410 and Section 550(d). A State commenter wrote that the prohibition might be construed to prevent State actions against the Department to enforce the regulations, a position that the commenter believed to be contrary to congressional intent. The commenter agreed that the statutory language would bar a State from taking enforcement action against an owner or operator for violation of these regulations, but it saw no support in the statute to bar State action against the Department (or other non-owners or non-operators). According to the commenter, this interpretation exceeds the scope of Section 550 and is therefore an unnecessary limitation on private rights of action. Commenters asserted that a plain reading of Section 550 indicates that Congress limited judicial review in only two ways: (1) By prohibiting Section 550 from being asserted as a jurisdictional basis for a cause of action; and (2) by providing that only the Secretary of Homeland Security has the right to bring enforcement actions against ''owners and operators.'' The commenters said they do not believe that Congress intended to prohibit other statutory causes of actions (such as review pursuant to the Administrative Procedure Act).

Members of Congress also challenged the broad scope of DHS's position on third-party suits, because it would block basic challenges to DHS under the Administrative Procedure Act. The commenters believed that § 27.410(a) was an unnecessary limitation on private rights of action. One Member of Congress explained that Congress intended to limit the provision to citizen suits against chemical facilities for failure to comply with the Department's chemical security rules.

One commenter strongly supported the Department's discussion of the prohibition of private rights of action to enforce the provisions of Section 550. The commenter believed that the availability of enforcement actions should be limited to avoid unnecessary and potentially frivolous lawsuits that attempt to enforce chemical facility security requirements that are outside the reach of the government's authority. Some commenters supported the DHS provision because they believed that third party actions should be limited and that the Department should have the sole discretion of when and how to enforce these regulations. One commenter stated that neither DHS nor regulated chemical facilities should be distracted from their purpose of minimizing the possibility of a catastrophic terrorist incident by concerns about how their actions implementing Section 550 might be used in private tort litigation. One industry organization supported § 27.410(b), which allows a chemical facility to petition DHS to provide ''the Department's view in any litigation involving any issues or matters regarding this Part.'' The commenter noted that DHS is in a unique position, in light of its Section 550 authorities and expertise, to provide its views regarding a chemical facility's security efforts.

A labor union expressed concern that § 27.410(a) grants immunity to chemical facilities from actions by third parties to enforce any provisions of the rule. The labor union thought that it may act as an open invitation to chemical facilities to disregard provisions in the rules or in security plans that are meant to protect maritime activities from unduly burdensome or improper application of security procedures. The labor union explained that ''[w]here damages are incurred by maritime-related businesses or mariners as a result of improper action of chemical facilities under color of enforcing their security plans, the injured parties should not be denied the normal recourse of the U.S. legal system.''

Response: In § 27.410 of the Advance Notice, the Department set out two principles: (1) the chemical security regulations did not on their own terms create any additional rights of action for any person other than the Secretary; and (2) relevant parties may seek a statement from the Department of its views in any litigation involving the chemical security regulatory program. The Department has decided to adopt these provisions as proposed in the Advance Notice.

In the preamble to the Advance Notice, the Department also stated its view that Section 550(d) prohibits any party other than the Secretary from enforcing the provisions of Section 550. The Department also stated its view that Section 550(d) prohibits actions brought to compel the Department to take a specific action to enforce Section 550. Although the Department does not find it necessary to codify these views in the Code of Federal Regulations, they remain the views of the Department after considering the comments received. In Section 550(d), Congress provided in clear terms its intent to prevent parties other than the Secretary from making enforcement decisions under Section 550. This intent would be thwarted if parties could seek indirectly to have particular enforcement measures taken by bringing suit against the Department. Such suits would also pose difficulties involving the information protections of Section 550 and its implementing regulations. In short, the terms and structure of Section 550 provide the Secretary with critical discretion in implementing the chemical security program. It would be inappropriate to curtail that discretion through lawsuits. *See generally Norton* v. *Southern Utah Wilderness Alliance,* 542 U.S. 55 (2004).

6. Judicial Review

Comment: Several commenters, including Members of Congress, urged DHS to incorporate the right to judicial review in the interim final rule and clarify the judicial remedies available. One commenter mentioned that the right to judicial review was expressly stated in prior legislative proposals. Another commenter believed that the District Courts have jurisdiction to consider whether a facility presents a ''high level of security risk.'' Other commenters discussed judicial review in the context of preemption, urging the Department to provide facilities with the opportunity for judicial review of Departmental decisions pursuant to § 27.405. Finally, one commenter

recommended that the rule provide that if the adjudicating official fails to reach a decision within the timeframes provided by the proposed rule, then the administrative review process is deemed completed and all administrative remedies exhausted, so as to afford the facility the ability to challenge the Department's decision in a District Court.

Response: The Department does not have authority to create jurisdiction in the district courts for review of Department decisions. Jurisdiction is created by provisions of law other than these regulations. Nor does the Department have authority to create specific judicial remedies through rulemaking. Decision-making authority with respect to preemption is discussed below in the portion of this preamble related to Federalism. As discussed there, courts have the ability in appropriate contexts to review the Department's opinions as they relate to preemption. This interim final rule does not augment the administrative law default principles that govern appropriate action if the Department does not make decisions in the timeframes specified in this interim final rule.

7. Guidance and Technical Assistance

Comment: Some industry commenters noted that guidance, information, and education were essential for the success of the program. A chemical company commented that facilities should have the opportunity to review and comment on any guidance provided to them by DHS. Several industry associations made the same comment and stated the need for guidance to provide direction and advice but not to become either enforceable or limiting in the security measures that a facility may employ.

One commenter suggested that there be sufficient time to respond to the guidance prior to developing a security plan. Commenters suggested that DHS draft guidance on aspects of the regulation and that such guidance be as detailed and specific as possible.

One commenter believed that, while agency guidance is procedurally easier to issue because agencies typically issue it without notice and comment, due process, or other protections afforded by rulemaking under the Administrative Procedure Act, this ''pseudo-rulemaking'' can be referenced in enforcement actions, imposing cost burdens, or creating other compliance liabilities. Another commenter appreciated the fact that the guidance would specify the security measures that facilities could take to meet the proposed standards while not mandating any particular measures that facilities should use. Commenters recommended that DHS follow the OMB Bulletin entitled ''Agency Good Guidance Practices,'' which establishes policies and procedures for the development, issuance, and use of significant guidance documents by Executive Branch departments and agencies.

Response: DHS believes that guidance will play an important role in this regulatory program. The Department's guidance will provide examples of specific measures that facilities may use to address the performance standards in the rule. Because this rule is based on performance standards and not on prescriptive measures, guidance is particularly important. The guidance will aid in informing the regulated community of ways to satisfy the performance standards without imposing additional requirements not found in these regulations.

The Department will designate the guidance document as CVI. The guidance document will contain specific anti-terrorism measures designed to mitigate or prevent terrorist attacks, as well as other sensitive information. This type of information is not appropriate for public disclosure under Section 550 and the regulations issued hereunder.

With respect to comments regarding OMB's Bulletin on Agency Good Guidance Practices, the Department notes that it will apply the Bulletin as appropriate.

Comment: The availability of technical assistance to facilities not placed in the top tier was requested by an industry association.

Response: Technical assistance will be available for all covered facilities as resources permit. Section 27.120 establishes requirements for a Coordinating Official who will provide guidance to facilities in all tiers, as necessary and to the extent that resources permit.

8. Miscellaneous Comments

Comment: One commenter recommended that DHS engage and work with Congress to enact a more comprehensive and meaningful chemical security law as soon as possible, and under no circumstances beyond the three year expiration of interim authority.

Response: The Department has aggressively sought this authority, and on October 4, 2006, Congress provided that authority. The Department will continue to work with Congress on chemical security matters.

Comment: One commenter supported the position that continued funding of this program would, in effect, reauthorize the program beyond the three years noted in the statute and that DHS may amend the interim final rule if necessary. Another commenter did not support this position and stated that the statute was clear that the regulatory authority expires after three years. That commenter also urged the Department to engage in notice and comment rulemaking for any future modifications to the interim final rule.

Response: The Department will, to the extent required by law, engage in notice and comment rulemaking in the event that changes are made to this interim final rule.

Comment: Commenters suggested a process by which facilities can exit the program if they make sufficient changes to their operations. In addition, a chemical company and an industry association questioned how the results from vulnerability assessments could be used to allow a facility to exit the program.

Response: To address the issue of exiting the program, the Department added § 27.120(d). It provides that covered facilities may request a consultation with the Department if their facility, processes, or types or quantities of chemicals change in such a way that they believe their obligations under this part may be impacted. For a discussion of this provision, see § II(B) above.

Comment: Various commenters raised issues related to data security, specifically in the context of the Department's web-based CSAT applications. One commenter thought that DHS should be able to provide Military Grade/Quality Encryption Devices/Systems for the private sector to use to submit information. Until that time, the commenter requested that DHS receive information only in paper form or discs produced on stand-alone computers.

Response: DHS recognizes the data security issues that commenters have raised. DHS realizes that there is a risk, both on the sending of information and the receiving of information, when transmitting data over the Internet. DHS has weighed the risk to the data collection approach against the risk of collecting the data through paper submissions and concluded that the web-based approach was the best.

DHS is concerned about data security and has taken a number of steps to protect both the data that will be collected through the CSAT program and the process of collection. The security of the data has been the system

designers' number one priority. The site that the Department will use to collect submissions is equipped with hardware encryption that requires Transport Layer Security (TLS), as mandated by the latest Federal Information Processing Standard (FIPS). The encryption devices have full Common Criteria Evaluation and Validation Scheme (CCEVS) certifications. CCEVS is the implementation of the partnership between the National Security Agency and the National Institute of Standards (NIST) to certify security hardware and software.

Upon completing any part of the CSAT (whether the Top-Screen, Security Vulnerability Assessment, or Site Security Plan), the facility will click a ''submit'' button, which calls a routine to encrypt the data on the server using a one way key. Properly-executed public key encrypted data is very secure, and the implementation that DHS has used complies with the NIST 800–57 requirements for security. The key to decrypt the data does not exist outside of facilities that are isolated from the public internet. The key is connected only through a dedicated, restricted, government network that cannot connect to the public internet. Once a facility submits a Top-Screen (or SVA or SSP), the data is no longer available unencrypted.

Comment: A few commenters indicated that the Advance Notice lacked meaningful worker involvement. According to some of the commenters, the rule does not ensure meaningful front line worker and union participation during risk assessments, during the development of the Site Security Plans, in the inspection process, or as part of ongoing consideration of safety and security concerns. One commenter felt that this omission occurred despite the fact that it is the front line employee whose life is on the line first if there is a catastrophic release.

Response: There is nothing in the rule that prohibits chemical facilities from involving employees in their security efforts. Many facilities may find it beneficial to include employees in their respective efforts to comply with this regulation (e.g., identifying security vulnerabilities, developing Site Security Plans). However, the Department is not mandating participation by any particular type of employee, and the Department does not think it is wise to specify any employees that must be involved. The Department will leave those decisions to facilities, as they will best understand the types and functions of employees at their facility and the extent to which any given type of employee may be able to contribute.

Comment: A commenter noted that a strong enforcement program is essential.

Response: The Department agrees with the commenter and will vigorously enforce these regulations.

Comment: A few commenters sought immediate phased-in implementation of a national re-routing and a ban on toxic by inhalation (TIH) storage wherever feasible. Although the commenters stated that re-routing is the first and fastest step in eliminating catastrophic vulnerabilities in the chemical sector, the commenters thought it should ideally be done in tandem with the use of safe technology, which could in turn eliminate ultra-hazardous substances in our rail system.

Response: These comments are beyond the scope of this rulemaking, which addresses chemical facility anti-terrorism standards. However, DHS points out that there are current DHS and other Federal initiatives to address materials that are toxic by inhalation. On December 21, 2006, TSA issued a Notice of Proposed Rulemaking on Rail Transportation Security. *See* 71 FR 76852. The rule applies, in part, to tank cars containing materials that are poisonous by inhalation (PIH) as defined in 49 CFR § 171.8. (Note that the PIH is synonymous with TIH). *See* proposed 49 CFR § 1580.100(b). Also, on December 21, 2006, one of the Department of Transportation's modal administrations, the Pipelines and Hazardous Materials Administration (PHMSA), issued a Notice of Proposed Rulemaking titled ''Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Material Shipments.'' *See* 71 FR 76834. PHMSA's proposed regulation would include requirements for rail carriers to use data to analyze safety and security risks along rail transportation routes where certain hazardous materials (including PIH materials) are used.

Comment: Some commenters raised questions regarding specific funding for programs such as the BZPP Webcam Pilot Program.

Response: Those comments are beyond of the scope of this rulemaking, which addresses chemical facility anti-terrorism standards.

N. Regulatory Evaluation

Comment: Commenters believe that DHS has underestimated this cost to the chemical sector and that DHS should consider other costs beyond capital costs, such as additional physical security.

Response: In the Advance Notice, DHS did not attempt to estimate the full cost of complying with the regulation. Instead, DHS placed in the docket a stand-alone document titled ''Capital Cost Information for Public Comment,'' which provides specific cost estimates for a potential suite of capital security investments, such as fences and perimeter lighting. DHS fully understands that, in addition to capital costs, facilities may also incur non-capital costs, including the costs of additional personnel (*e.g.*, security guards) and the costs of preparing assessments and plans. The costs that DHS has estimated for compliance with the interim final rule do indeed include both the capital costs and non-capital costs.

DHS also notes that while a few commenters thought the costs DHS presented were too low, commenters did not generally provide specific information regarding which costs may have been too low or additional information that would have assisted the Department in reconsidering the costs presented with the Advance Notice. Consequently, while DHS did re-evaluate the costs presented with the Advance Notice in response to these comments, DHS believes that the costs presented in the Advance Notice are reasonable approximations, and they remain unchanged in the interim final rule.

Some commenters indicated that cost recovery for implementation can be difficult under certain government contracts. Such comments are outside of the scope of this rulemaking.

Comment: Commenters also expressed concern that the high costs will give an unfair advantage to larger companies, because these associated costs will be harder for smaller companies (like local farmers) to absorb.

Response: The Department notes, in general, that it may be more difficult for smaller companies to absorb increased costs than larger companies. However, the security measures required by this interim final rule are not ''command and control'' type measures. Instead, they are risk-based performance measures that will allow a high degree of flexibility for small entities that own high-risk chemical facilities. These risk-based performance measures will allow high-risk chemical facilities to tailor a specific regulatory compliance regime that could minimize the compliance costs to their respective facilities. DHS also notes that certain chemical facilities have already voluntarily spent a significant amount of financial resources to increase their security. This interim final rule, by establishing a

baseline level of security across tiers, will serve to minimize any competitive advantage that may be currently enjoyed by those companies that are under-investing in security.

Comment: One commenter noted that in order to quantify the benefits of the rule, DHS must make assumptions about the threats to the public, which injects uncertainty into the calculation of actual benefits.

Response: The Department agrees that it is difficult to quantify the ''actual benefits'' of this interim final rule. DHS has included a qualitative discussion of the benefits of this rule in the regulatory analysis of Executive Order 12886, which is located in Section IV of the preamble to this rule.

Comment: Commenters noted that the idea of a model facility is indeed a good proposal but worried that there is insufficient time to implement the changes this proposal would entail.

Response: DHS agrees that the idea of model facilities is a good proposal. The cost estimate of the interim final rule is based on the concept of the ''model facility'' as it was used by the Coast Guard to estimate the cost of their Maritime Transportation Security Act of 2002 Facility Security final rule. *See* 68 FR 60515 (Oct. 22, 2003).

Comment: The Small Business Administration (SBA), Office of Advocacy, commented that DHS should prepare an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, after issuing the interim final rule or if DHS makes subsequent changes to the rule once it is promulgated. SBA explained that the RFA process is an extremely valuable tool for agencies to use when assessing the impact of a rule on small businesses and other small entities.

Response: The RFA mandates that an agency conduct an analysis when an agency is required to publish a notice of proposed rulemaking. *See* 5 U.S.C. 603(a). In this case, the Department is not required to publish a notice of proposed rulemaking: By directing the Secretary to issue ''interim final regulations'', Congress authorized the Secretary to proceed without the traditional notice-and-comment required by the Administrative Procedure Act. *See* 71 FR 78276, 78277, and 78292 (Dec. 28, 2006).

DHS did, however, consider the impacts of this rule on small entities. The Regulatory Assessment, which is available in the public docket, contains our analysis of the impacts of this rule on small entities. After consideration of the percentage of small entities that may have to comply with the risk-based performance standards required by this rule and the compliance costs explained in the Regulatory Assessment, we have determined that this rule may have a significant economic impact on a substantial number of small entities. See ''Regulatory Flexibility Act'' section below.

IV. Regulatory Analyses

A. Executive Order 12866: Regulatory Planning and Review

This rule is considered to be an economically significant regulatory action under Executive Order 12866, because it will result in the expenditure of over $100 million in any one year. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB). A Regulatory Assessment which more thoroughly explains the assumptions used to generate the cost of this interim final rule is available in the docket as indicated under **ADDRESSES**. A summary of the Regulatory Assessment follows:

Cost Assessment Summary

Section 550 requires the Secretary of Homeland Security to promulgate ''interim final regulations establishing risk-based performance standards for security of chemical facilities * * *.'' He must do so ''[n]o later than six months'' from the date of enactment of this new authority, i.e. by April 4, 2007. Consequently, the methodology chosen to analyze the cost of the interim final rule was chosen with the six month congressional deadline in mind. In order to quickly analyze the cost of the interim final rule, DHS relied on readily available information and drew upon the knowledge of professionals employed by DHS who have extensive knowledge of the chemical industry. In addition, on December 28, 2006, DHS published an Advance Notice, which outlined our costing methodology and also placed in the docket our estimates of capital costs for potential security investments in order to seek meaningful public comment.

We have reviewed the methodology used by the U.S. Coast Guard to analyze the cost of the MTSA Facility Security final rule at 68 FR 60515 (Oct. 22, 2003), and, due to the similarities between the MTSA Facility final rule and this interim final rule, we believe that this methodology has merit and should be used in this rulemaking. The MTSA Facility Security final rule estimated the cost of performance standards on several thousand unique facilities. Similarly, the interim final rule will estimate the costs of risk-based performance standards to several thousand unique facilities. The Coast Guard found it impractical to attempt to estimate compliance costs for each individual facility and instead developed costs based on 16 ''model facilities.'' Each of the several thousand facilities was placed into one of the 16 different subgroups for which compliance costs were then estimated. Once the compliance costs for the 16 ''model facilities'' were calculated, estimating the cost of the regulation was relatively straightforward.

As this regulation is not a ''command and control'' regulation, owners and/or operators will have considerable flexibility in how they choose to comply with its requirements. As owners and/or operators will have discretion on how to best meet the risk-based performance objectives, the cost assessment makes broad assumptions regarding the percentage of facilities that will choose to implement or continue certain security measures and the costs of those security measures. For example, many facility owners and/or operators will choose such measures as building fences, enhancing perimeter lighting, and hiring additional security guards in order to comply with the risk-based performance standards. In order to estimate the cost of the interim final regulation, we made assumptions regarding the specific percentage of facilities that will choose to implement certain security measures, such as fences and perimeter lighting.

We expect that chemical facility owners and/or operators will take full advantage of the flexibility that these risk-based performance standards will provide and will conduct facility-specific and company-specific analyses to determine the most cost-effective method to comply with the requirements of this interim final regulation. As a result of these internal analyses, facilities are likely to identify various means of meeting the risk-based performance standards applicable to their facility and tier. It is possible that some percentage of facilities will find the most-cost effective method to comply with the requirements will be to implement business and related production, processing or equipment changes such as to no longer make certain chemicals or to change their process to use a less concentrated or less hazardous form of a listed chemical. Such process changes, however, are very facility-, business- and process-specific. Those that involve changes in chemistry or processes may take several years of design, testing and re-permitting before they can become operational. Others may be easily and immediately implemented. However, because process changes are so facility-

and business-specific, DHS has no way of estimating how many facilities may ultimately implement such measures for the purpose of estimating compliance costs. Consequently, DHS is basing its estimate of compliance costs on commonly used security measures that are broadly applicable to a wide range of high risk chemical facilities, such as the purchase of fences, the purchase of perimeter lighting, and the employment of security guards.

For the purposes of good practices or regulations promulgated by other Federal or State agencies, many chemical facility owners and/or operators have already spent a substantial amount of money and resources to upgrade and improve security. The costs shown below do not include the costs of security measures already implemented to enhance security. The costs shown here are intended to represent the marginal cost incurred by owner and/or operators as a result of the interim final rule.

DHS's preliminary estimate of the number of high risk chemical facilities that will be covered by the risk-based performance measures required by the interim final rule ranges from 1,500 to 6,500 chemical facilities. It is important to stress that this estimate is simply DHS's best guess based on currently available information. Within this range of 1,500 to 6,500 potentially covered chemical facilities, DHS is estimating 5,000 facilities as its best guess of covered facilities for the purpose of generating the cost estimate required by Executive Order 12866.

Using the point estimate of 5,000 facilities, the estimated present value cost of this interim final rule is $3.6 billion dollars over the period 2006–2009 [2] (7 percent discount rate). For the purposes of illustration, we also have calculated the cost of the interim final rule over the ten year period 2006–2015. Over the period 2006–2015, DHS estimates the present value cost of this interim final rule would be $8.5 billion assuming 5,000 covered facilities.

Benefits Assessment

This interim final rule allows DHS to implement Section 550 of the Homeland Security Appropriations Act of 2007. The first sentence of Section 550 mandates the Secretary to issue interim final regulations establishing risk-based performance standards requiring the performance of vulnerability assessments and the development and implementation of site security plans. Section 550 establishes the parameters of the Federal government's first regulatory program to secure chemical facilities against possible terrorist attack.

The threat of a terrorist attack against high-risk chemical facilities is real. However, due to the economics of externalities, the free market may not provide adequate incentives for chemical facilities to make a socially optimal investment in the full range of measures that would reduce the probability of a successful terrorist attack. Externalities are a cost or benefit from an economic transaction experienced by parties ''external'' to the transaction. In the case of chemical facilities, since the consequences of an attack or other security incident may be significantly larger than what would be suffered by the owner of the facility itself, the private market may not generally provide the incentive for profit-maximizing firms to unilaterally spend the socially optimal amount of resources to prevent or mitigate a terrorist attack. Since companies nevertheless will likely suffer serious consequences in the case of a terrorist attack, many certainly have invested significant resources in implementing security measures, and this analysis recognizes those resource expenditures. In a competitive marketplace, however, a firm will not normally choose to make some additional investment in security over their privately optimal amount, since they would consequently be choosing to increase its cost of production and would be at a disadvantage when competing with companies that have chosen not to make a similar investment in security. As this interim final rule will require high-risk chemical facilities to be held to the same risk-based performance standards according to their risk-based tier, the competitive advantage that may be currently enjoyed by those companies that are under-investing in security measures would be expected to disappear.

Need for Increased Security at High-Risk Chemical Facilities

There is much publicly-available information that indicates an attack on a chemical facility is a credible threat with dire consequences:

- According to the Government Accountability Office, experts agree that the Nation's chemical facilities present an attractive target for terrorists who are intent on causing massive damage. Many facilities house toxic chemicals that could become airborne and drift to surrounding communities if released or could be stolen and used to create a weapon capable of causing harm. Terrorist attacks involving the theft or release of certain chemicals could have a significant impact on the health and safety of millions of Americans. The disaster at Bhopal, India in 1984, when methyl isocyanate gas—a highly toxic chemical—leaked from a tank, reportedly killing about 3,800 people and injuring anywhere from 150,000 to 600,000 others, illustrates the potential threat to public health from a chemical release.[3]
- The Department of Justice has concluded that the risk of terrorists attempting in the foreseeable future to cause an industrial chemical release is both real and credible. Terrorists or other criminals are likely to view the potential of a chemical release from an industrial facility as a relatively attractive means to cause mass casualties to the populace and/or large scale damage to property. DOJ notes that there have been successful efforts by foreign militaries and certain terrorist groups indigenous to other countries to cause releases from industrial facilities using bombs. Those efforts have in effect converted the facilities into makeshift WMD. Some of these releases have inflicted damage on the surrounding communities. Moreover, the evacuations that were triggered by the attempted and successful releases of industrial chemicals produced panic and disruption among the targeted population. These are precisely the goals of a terrorist.[4]
- In April 27, 2005, testimony before the Senate Committee on Homeland Security and Governmental Affairs regarding the vulnerability of America to a chemical attack, a Brookings Institution Visiting Fellow testified. The testimony stated that ''of all the various remaining civilian vulnerabilities in America today, one stands alone as uniquely deadly, pervasive, and susceptible to a terrorist attack: toxic-inhalation-hazard (TIH) industrial chemicals, such as chlorine, ammonia, phosgene, methyl bromide, hydrochloric and various other acids.'' In addition, the testimony indicated,

[2] Section 550(b) of the Act states: ''Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section: *Provided, That* the authority provided by this section shall terminate three years after the date of enactment of this Act.''

[3] GAO, *Homeland Security: Federal and Industry Efforts Are Addressing Security Issues at Chemical Facilities, but Additional Action is Needed,* GAO–05–631T (Washington, DC: April 2005).

[4] *Department of Justice Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated With Posting Off-Site Consequence Analysis Information on the Internet,* April 18, 2000.

''the casualty potential of a terrorist attack against a large TIH chemical container near a population center is comparable to that of a fully successful terrorist employment of an improvised nuclear device or effective biological weapon. The key difference is that TIH chemical containers are substantially easier to attack than improvised nuclear devices or effective biological weapons are to acquire or fabricate.'' [5]

• In April 27, 2005, testimony before the Senate Committee on Homeland Security and Governmental Affairs regarding the vulnerability of America to a chemical attack, a Senior Fellow for National Security Studies at the Council on Foreign Relations testified. The testimony stated ''Of the carefully selected potential targets that al Qaeda or its imitators might seek to attack, the chemical industry should be at the top of the list. There are hundreds of chemical facilities within the United States that represent the military equivalent of a poorly guarded arsenal of weapons of mass destruction.'' [6]

• A recent Congressional Research Service Report discussed trends in chemical terrorism and discussed evidence that U.S. chemical facilities may be used by terrorists to gain access to chemicals. One of the 1993 World Trade Center bombers, Nidal Ayyad, became a naturalized U.S. citizen and worked as a chemical engineer in the chemical industry, from which he used company stationery to order chemical ingredients to make the bomb.'' [7]

• Information contained in the Congressional Record states that U.S. chemical trade publications were found in one of the caves where Osama bin Laden had hidden.[8]

Qualitative Benefits of the Risk-Based Performance Standards

As explained previously, Section 550 requires the Secretary of Homeland Security to promulgate ''interim final regulations establishing risk-based performance standards for security of chemical facilities * * *.'' Section 27.230 establishes these standards. Below is a discussion of the qualitative benefits of these risk-based performance standards:

• By securing and monitoring the perimeter of the facility, site personnel are better able to detect, delay, and respond to individuals or groups who seek unauthorized access to the site or its restricted areas. A well-secured perimeter deters intruders from seeking to gain access. By limiting acce3ss through control points, the facility can more easily and effectively control who enters and leaves the site. Additionally, securing and monitoring restricted areas or potentially critical targets within the facility reduces the likelihood of theft of chemicals because adversaries risk observation arriving and leaving the premises. Control of gates by guards or observation of the perimeter allows facility personnel to know who is entering and leaving the site and in what vehicles. Access control points permit the facility to check persons and vehicles seeking entrance to the site and confirm their legitimate business.

• Controlling access to the site including the screening and/or inspection of individuals and vehicles as they enter and exit the facility serves to deter and detect unauthorized introduction or removal of substances and devices that may cause a dangerous chemical reaction, explosion, or other release to harm facility personnel or the surrounding community. A regular system of identification checks will help guards and other facility personnel recognize those personnel authorized to be on the site and identify those individuals who should not be granted access.

• Deterring vehicles from entering the facility or restricted access areas will reduce the likelihood that an adversary will detonate a vehicle-borne improvised explosive device inside the facility. Appropriate methods of deterring vehicles form unauthorized entry provide additional time for local law enforcement response or otherwise delay or prevent the vehicle from entering the site to cause harm.

• Securing and monitoring the shipping and receiving of hazardous chemicals will improve inventory control, product stewardship and security against theft, diversion and tampering. In addition, improved inventory control and control of transportation containers on site decreases the likelihood that a foreign substance could be introduced into feedstock, incidental chemicals, or products leaving the site that could later react with the chemical to cause a significant on- or off-site reaction to damage process equipment or cause a release of a hazardous material to harm onsite personnel or the community.

• Deterring the theft or possible diversion of potentially hazardous chemicals will prevent loss of chemicals from the site. Such measures provide security benefits as well as improving inventory controls especially for chemicals that can be used directly as a chemical weapon or can be used to produce such a weapon.

• Deterring insider sabotage prevents the facility's own property and activities from being used by a potential terrorist against the facility. Examining the background of employees or contractors who may be planning acts of sabotage assists in preventing an *in situ* release of hazardous chemicals, damage to process units manufacturing chemicals or tampering with chemicals that could cause an offsite impact. Ascertaining that visitors and contractors have legitimate business onsite and are escorted when necessary increases the control of the site in general and reduces the likelihood of sabotage or theft.

• The deterrence of cyber sabotage will benefit the facility by preventing unauthorized onsite or remote access to critical process controls, site security, business systems, or SCADA systems (if significant consequences can be generated by the manipulation of the process controls/systems). Appropriate controls will allow the detection of unauthorized access and unauthorized modification of information (hacking).

• Developing and exercising an emergency plan to respond to security incidents internally and with local law enforcement and first responders (*i.e.*, emergency medical technicians (EMTs), fire, police) benefits the facility by preparing it to take quick and decisive action in the event of an attack or other breach of security. Establishing relationships with local law enforcement improves responder understanding of the layout and of hazards associated with the facility and strengthens relationships with the community.

• Maintaining effective monitoring, communications and warning systems allows the facility to notify internal personnel and local responders in a timely manner about security incidents. Regular tests, repairs and improvements to the warning and communications system increase the reliability of such systems and will improve response time.

• When the facility provides proper security training, exercises and drills, facility personnel are better able to respond to suspicious behavior, attempts to enter or attack a facility, or

[5] Statement of Richard A. Falkenrath, Visiting Fellow, The Brookings Institution, before the United States Committee on Homeland Security and Governmental Affairs (April 27, 2005).

[6] Statement of Stephen E. Flynn, PhD, Jeane J. Kirkpatrick Senior Fellow for National Security Studies, Council on Foreign Relations, before the United States Committee on Homeland Security and Governmental Affairs (April 27, 2005).

[7] CRS Report for Congress, *Chemical Facility Security,* Updated August 2, 2006.

[8] Bond, Christopher. Statement on S.2579. *Congressional Record,* Daily Edition, June 5, 2002, p. S5044.

other malevolent acts by insiders or intruders. Well trained personnel who practice how to react can more effectively detect and delay intruders and provide increased measures of deterrence against unauthorized acts. Establishing relationships with local law enforcement improves responder understanding of the layout and hazard associated with the facility and strengthens relationships with the community.

• The ability to escalate the levels of security measures for periods of elevated threat will provide the facility with the capacity to increase security measures to better protect against known increased threats or generalized increased threat levels declared by the federal government. By maintaining the ability to increase security measures, the facility does not have to expend time and resources on more robust security measures unless and until warranted.

• A facility addressing specific threats, vulnerabilities or risks identified by the Assistant Secretary will decrease the likelihood of a successful attack on its facility, personnel, products or community. Any additional performance standards specified by the Secretary will increase the facilities ability to deter, detect, delay and respond to specific and general threats against its security.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is required to publish a notice of proposed rulemaking. *See* 5 U.S.C. 603(a). An RFA analysis, however, is not required when an agency is not required to publish a notice of proposed rulemaking, as is the case here. By directing the Secretary to issue ''interim final regulations'' Congress authorized the Secretary to proceed without the traditional notice-and-comment required by the Administrative Procedure Act. *See* 71 FR 78276, 78277, and 78292.

Even though a Regulatory Flexibility Analysis is not required for this rule, DHS did consider the impacts of this rule on small entities. The Regulatory Assessment, which is available in the public docket, contains this analysis of the impacts of this rule on small entities. A portion of the analysis is summarized below.

At this time, DHS's preliminary estimate of the number of high risk chemical facilities that will be covered by the risk-based performance measures required by the rule ranges from 1,500 to 6,500. This estimate is based on currently available information. After chemical facilities with certain risk profiles complete the Top-Screen, DHS will have a better understanding of how many and which specific chemical facilities will be deemed to be ''high-risk'' for the purposes of the rule. Also, in meeting the risk-based performance standards required by this rule, facilities will have a large degree of flexibility in choosing specific security enhancements. We expect that chemical facility owners and/or operators will use this flexibility to minimize the cost of this rule to their operations. These uncertainties make it very difficult to estimate the extent of the economic impact of this rule on small entities.

Even so, strictly for the purposes of analyzing the impact of this rule on small entities, DHS has selected from the EPA RMP database a sample of 350 facilities that may be required to comply with the risk-based performance standards required by the rule. We researched these 350 facilities using Reference USA and LexisNexis and found detailed information (*i.e.,* annual revenue, number of employees, and parent company information) for 326 (93%) of them. Of the 326 facilities for which we were able to find detailed information, our analysis of the data indicates that 118 (36%) fit the Small Business Administration's definition of a small entity. If we assume that the 24 companies for which we could find no information are also small entities, the percentage of these facilities which are owned by small entities could be 41 percent. Table 1 below provides revenue ranges of the118 small entities.

TABLE 1.—PERCENTAGE OF SMALL ENTITIES BY REVENUE

Revenue	Number of small entities	Percent of small entities
$0–$999,999	11	9.3
$1,000,000–$4,999,999	14	11.9
$5,000,000–$9,999,999	12	10.2
$10,000,000–$19,999,999	15	12.7
$20,000,000–$49,999,999	23	19.5
$50,000,000–$99,999,999	9	7.6
$100,000,000–$999,999,999	31	26.3
> $1Billion	3	2.5
Total	118	100.0

After consideration of the percentage of small entities that may have to comply with the risk-based performance standards required by this rule and the compliance costs explained in the Regulatory Assessment, we have determined that this rule may have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132: Federalism

1. Background

Executive Order 13132 requires DHS to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Between the publication of the Advance Notice and this Interim Final Rule, the Department has complied with this instruction in two ways. The Department specifically sought public comment on issues involving preemption. Additionally, after issuing its proposal, the Department specifically invited a number of groups representing the interests of States and their legislators to meet with the Department to discuss the proposed regulations. These groups were: the National League of Cities, the National Association of Counties, the National Conference of State Legislators, the County Executives of America, the International City/County Management Association, the American Legislative Exchange Council, the National Emergency Management Association/ CSG Council of State Governments, the International Association of Emergency Managers, the National Governors

Association, and the United States Conference of Mayors.

The Department received numerous comments in response to its invitations. States, the private sector, academia, various interest groups, and individual members of Congress submitted comments. The commenters were divided in their views of the proposed approach on preemption. A number of commenters favored the Department's proposal, while others opposed it. Some commenters misunderstood the Department's position on preemption or the current state of the case law on preemption. As discussed below, the Department is clarifying its approach on preemption in certain respects. Specifically, we confirm: the propriety of discussing the Department's view on preemption, though Congress was silent on the question; that the type of preemption called for by Section 550 is not field preemption, but conflict preemption; and that the Department will further assist in the process of determining whether a non-Federal regulation is preempted by providing opinions regarding the impact of that regulation on the Federal scheme.

2. Propriety of Department's Views on Preemption

As an initial matter, some commenters, including Members of Congress, suggested that, since Congress was silent on preemption, the Department's rulemaking should be silent as well. The comments on this subject touch on two important subtopics: who (*i.e.*, which government structure) should determine the preemptive effect of Section 550 and the regulatory program promulgated under its authority; and what law, if any, the regulatory program under Section 550 might preempt.

In Section 550, Congress did not expressly speak to the issue of preemption. Preemption questions following statutory silence on preemption are not novel. Courts and agencies have previously faced and dealt with who decides preemption issues in the face of congressional silence. It is helpful to recall that, as a general matter, Congress often provides the Executive Branch with authority to administer a regulatory program while leaving gaps or ambiguities in the authorizing law. When this happens, the Supreme Court has long recognized that agencies have the responsibility, within the general delegation, to formulate policy and make rules to fill those gaps and interpret the ambiguities. *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (''The power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly by Congress.'') (ellipses in original; citation omitted). Agencies, not only the courts, exercise their expertise to fill in the gaps and interpret the ambiguities. *See id.* at 843 & n.11 (''If, however, the court determines that Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute * * * Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding.''). And even if a court interprets an ambiguous statute before an agency promulgates rules to fill the gaps or interpret the ambiguities, the court's interpretation does not necessarily restrict the agency's ability to adopt a different interpretation in the future. *See National Cable & Telecomm. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 982 (2005).

This does not mean to slight the courts' role in the interpretive process. As the Supreme Court has stated, ''The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent.'' *Chevron,* 467 U.S. at 843 n.9.

With respect to the issue of preemption in particular, the Supreme Court has applied these same principles regarding Congress, the courts and the agencies. *See, e.g., Fidelity Fed. Sav. and Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 151–54 (1982). ''Federal regulations have no less pre-emptive effect than federal statutes * * * A pre-emptive regulation's force does not depend on express congressional authorization to displace state law.'' *Id.* at 153–54. The Supreme Court, and lower courts, have given deference to agencies that define, through regulation, the scope of preemption. *See, e.g.*, *id.*; *Wachovia Bank, N.A.* v. *Burke,* 414 F.3d 305 (2d Cir. 2005).

So although some commenters claimed that the Department lacks the authority to address the issue of preemption in its regulations or later-issued opinions, this assertion is simply not consistent with current law. Federal agencies have historically published their views on the preemptive effect of federal law in a number of contexts. *See*, *e.g.*, *In re Wireless Consumers Alliance, Inc.*, 15 F.C.C.R. 17,021 (Aug. 14, 2000) (administrative agency opinion on preemptive effect of federal law); 1999 WL 303948 (April 20, 1999) (U.S. Department of Labor Release discussing views on preemption of state laws). We anticipate that the courts will ultimately resolve any preemption question, with an appropriate level of deference to the position of the agency.

Some comments urged the Department to avoid preemption after looking to a canon of interpretation involving a presumption against preemption. This presumption, however, typically exists ''in areas of regulation that are traditionally allocated to states and are of particular local concern.'' *Wachovia Bank, N.A.*, 414 F.3d at 314; *see also United States* v. *Locke*, 529 U.S. 89 (2000). As noted in the Advance Notice, measures to prevent terrorist attacks against the Nation's critical infrastructure do not involve an area traditionally regulated by the States. Very few state and local jurisdictions currently regulate security at chemical facilities.

The Department recognizes that courts sometimes look to legislative intent with respect to the issue of preemption—decisions in this area are replete with such references. *See*, *e.g.*, *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996). In the context of Section 550, however, it is very difficult to discern that intent. The legislative history on the point is mixed, with various Members of Congress making floor statements that are not consistent with each other. *See*, *e.g.*, Cong. Rec. H7967 (daily ed. Sept. 29, 2006) (statement of Rep. King) (''the intention is not to preempt the ability of the States'') and Cong. Rec. S10619 (daily ed. Sept. 29, 2006) (statement of Sen. Voinovich) (''I feel strongly that this provision sets that uniform set of rules and in so doing, impliedly preempts further regulation by State rules or laws.'') In addition, it is particularly difficult to gauge congressional intent on one relatively short, page-and-a half authorizing provision in a lengthy appropriations act that runs over 100 pages. To be sure, individual members of Congress—including some members substantially involved in homeland security issues—have expressed strong views on preemption. But can it really be said that legislative intent may be discerned on the silent aspect of one authorizing section of a lengthy appropriations act? *Cf. Chrysler Corp.* v. *Brown*, 441 U.S. 281, 311–12 (1979); *Castaneda-Gonzalez* v. *INS*, 564 F.2d 417, 424 (D.C. Cir. 1977).

As an additional consideration, the Department notes that if it were to disclaim any preemptive effect of the regulatory program under Section 550, it would create an inconsistency with the Department's own regime for regulating chemical facilities under the MTSA. In its regulations under MTSA, the Department has stated its view that the principles of conflict preemption apply. *See* 68 FR 60468 (Oct. 22, 2003). Congress has charged the Department with implementing the security programs under both MTSA and Section 550, and the Department seeks to implement these programs in a consistent and logical manner.

3. No Field Preemption

Some commenters feared—and others hoped—that the Department's approach to preemption would wholly displace state and local laws. This is incorrect. The Department does not in this interim final rule claim that the ''field preemption'' doctrine applies in this regulatory context. The Department does not view its regulatory scheme as one which so fully occupies the field as to pre-empt any state law touching the same subject.

This is clear from the statutory text. For example, the authority granted in Section 550 calls for the federal regulations to apply to facilities that present ''high levels of security risk'' as determined by the Secretary. The Department does not, therefore, have authority under Section 550 to regulate facilities that may, in the Secretary's view, present other than high levels of security risk. Some facilities may not be deemed by the Department as presenting a high risk. These facilities may be regulated by States provided such regulation is not otherwise in conflict with the federal program. In addition, as mentioned in the comments, Section 550 specifically allows the Secretary to approve alternative security programs that may have been submitted in response to State or local authorities.

4. Principles of Conflict Preemption

Even for high risk facilities, the approach outlined in the Advance Notice, and further developed here, is one of conflict preemption. Conflict preemption is established in the Constitution and has been developed in case law (*see, e.g., Geier* v. *American Honda Motor Co.,* 529 U.S. 861, 873 (2000); *Fidelity Fed. Sav. and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 152 (1982); *Surrick* v. *Killion*, 449 F.3d 520, 530–31 (3d Cir. 2006)), and the well-known standards of conflict preemption—which are captured in the regulatory text at § 27.405—apply to Section 550 and this regulation.

After considering comments, however, the Department has modified certain of its prior statements on preemption as potentially too broad. In the Advance Notice, the Department noted that Section 550 compels the Department to preserve chemical facilities' flexibility to choose security measures to reach the appropriate security outcome. The Department went on to say that a State measure frustrating this balance ''will be preempted.'' The Department has decided, however, that clarification is in order, as this regulation is not intended to be the equivalent of ''field preemption'' for facilities determined to be high risk. Instead, it is only meant to indicate that the regulation is not to be conflicted by, interfered with, hindered by or frustrated by State measures, under long-standing legal principles.

Only a few jurisdictions have developed security regulations (rather than health, safety, and environmental regulations) governing chemical sites. While we have not canvassed all existing state laws and regulations, currently we have no reason to conclude that any such non-Federal measure is being applied in a way that would impede the performance standards or other provisions of Section 550 and this Interim Final Rule. However, concrete conclusions about the effect of state laws and the application of preemption principles will require an understanding of future, factual contexts in which those laws are applied. The Department will consider any problems that arise in this regard in a more particularized manner.

Consistent with the approach outlined in the Advance Notice, the Department will entertain requests for its views on particular state or local laws, which will be issued by way of an opinion. In addition to the approach described in the Advanced Notice, the Department will seek the input and views of a State before finalizing the Department's view of preemption with respect to such State's laws. *See* § 27.405(d)(3). It will be helpful for the Department to seek the views of the relevant States if an opinion on preemption is requested under these regulations. Additionally, the Department would, time permitting, seek public notice and comment before formulating its views on a particular preemption question, consistent, of course, with the congressional mandate to protect from public disclosure information submitted under Section 550. The Department, however, declines to add additional procedural formalities to the regulation as it relates to preemption.

Certain commenters asked that the Advance Notice be more clear in delineating what state laws are not to be preempted. The Department does not intend to preempt existing health, safety and environmental regulations. In the future, however, if state or local governments enact security laws or promulgate security regulations under the rubric of health, safety, or environmental protections, those laws and regulations will be measured against the standard described in § 27.405. Of course, non-Federal regulations that fall below federal performance standards will not diminish the federal requirements that covered facilities must meet.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. The Department sought input from state and local governments during the comment period and hosted a meeting with state and local representatives on February 6, 2007. A list of participants and short description of the meeting is in the docket.

This interim final rule would result in expenditure by the private sector of $100 million (adjusted annually for inflation) or more in any one year. At this time, however, we do not have enough information regarding the specific facilities that will be required to comply with the rule's risk-based performance standards in order to know if this interim final rule will impose an enforceable duty upon State, local, and tribal governments of $100 million (adjusted annually for inflation) or more in any one year. DHS has conducted a ''Regulatory Assessment,'' which explains the economic effects of the rule. The ''Regulatory Assessment'' is summarized in the section entitled ''Executive Order 12866,'' and a copy may be found in the public docket for this IFR.

As explained in the ''Regulatory Assessment,'' DHS's preliminary estimate of the total number of high-risk chemical facilities that will be covered by the risk-based performance measures required by this rule ranges from 1,500 to 6,500 chemical facilities. This estimate is based on currently available information. After chemical facilities fitting certain risk profiles complete the Top-Screen risk assessment methodology (which will be accessible through a secure Department website), DHS will better understand how many and which specific chemical facilities will be deemed to be ''high-risk'' for the purposes of this rule. For the purposes of this discussion, we believe this rule may require certain municipalities that own and/or operate power generating facilities to purchase security enhancements, but at this time we do not know the extent of the financial impact.

E. Paperwork Reduction Act

This interim final rule contains collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). ''Collection of information,'' as defined in 5 CFR 1320.3(c), includes reporting, record keeping, monitoring, posting, labeling, and other similar actions.

Under Section 550 of the DHS Appropriations Act, the Department will use the Chemical Security Assessment Tool (CSAT) system to collect and analyze key data from chemical facilities to: (1) Identify facilities that present a high level of risk, (2) Support the facility-specific judgment for preliminary and final tier high risk determinations, (3) Specify the facility-specific security concerns that facilities must address in their SVAs and SSPs, and (4) Collect the facility-specific security measures, activities, and systems for judging compliance against the risk based performance standards. DHS will submit the collections for SVAs and the SSPs during the summer months.

This rule introduces a new collection, 1670–NEW, with two new forms: User Registration (DHS 9002 (1/07)) and Top Screen (DHS 9007 (2/07)). As such, DHS has submitted the following information requirements to OMB for its review:

Title: Chemical Security Assessment Tool (CSAT): User Registration.

OMB Control Number: 1670_NEW

Summary of Collection of Information: Section 550 provided the Department with the authority to regulate high risk chemical facilities. Further, it requires that the Secretary of the Department of Homeland Security identify high risk facilities and provide for the protection of the information regarding and provided by those facilities. DHS has identified the CSAT system as the Information Technology (IT) system it will use to obtain and quantify this key risk data from facilities. The Department will begin collecting information upon the effective date of this interim final rule.

Use of: The Department will use the registration information as a basis for providing chemical facilities access to the CSAT system.

Need for Information: The Department needs the information from the User Registration form to identify and vet requests to access the CSAT system.

Description of the Respondents: DHS anticipates that there will be 40,000 respondents in the first year. The respondents will be the owners and operators of the chemical facilities that will need to submit information through the CSAT system.

Frequency of Response: On Occasion.

Annual Burden Estimate: Each facility is estimated to have a burden of 44.5 minutes to complete DHS Form 9002 (1/07). The annual hour burden is estimated to be 22,250.

Title: Chemical Security Assessment Tool (CSAT): Top Screen.

Summary of Collection of Information: Section 550 provided the Department with the authority to regulate high risk chemical facilities. Further, it requires that the Secretary of the Department of Homeland Security identify high risk facilities and provide for the protection of the information regarding and provided by those facilities. DHS has identified the CSAT system as the Information Technology (IT) system it will use to obtain and quantify this key risk data from facilities. The Department will begin collecting information upon the effective date of this interim final rule.

Use of: The CSAT is the Department's system for collecting and analyzing key data from chemical facilities to: (1) Identify facilities that present a high level of risk, (2) Support the facility-specific judgment for preliminary and final tier determinations, and (3) Specify the facility-specific security concerns that facilities must address in their SVAs and SSPs.

Respondents (including number of): DHS anticipates there will be 40,000 respondents in the first year. The respondents will be chemical facilities that possess, or plan to possess, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criteria identified by the Department.

Frequency: Most facilities will complete the Top-Screen once. The Department will require facilities that are determined to be high risk to periodically resubmit the Top-Screen.

Burden of Response: Depending upon the size of the facility, the burden rates will vary. The estimated burden hours for the different facility types are detailed in the table below. The combined hour burden for all facilities completing the Top-Screen is estimated to be 1,230,550. The combined annual cost burden for the User Registration and the Top-Screen is $110,003,900.

TABLE 2.—SUMMARY OF BURDEN HOURS FOR CONDUCTING USER REGISTRATION (DHS FORM 9002 (1/07)) AND TOP SCREEN (DHS FORM 9007 (2/07))

Type of facility	Number of facilities	Hour burden per facility	Total hour burden
Open Large	9,327	39.5	368,400
Merchant Wholesalers	432	30	13,000
Facilities with only 1–2 chemicals	7,968	25.5	203,200

TABLE 2.—SUMMARY OF BURDEN HOURS FOR CONDUCTING USER REGISTRATION (DHS FORM 9002 (1/07)) AND TOP SCREEN (DHS FORM 9007 (2/07))—Continued

Type of facility	Number of facilities	Hour burden per facility	Total hour burden
Other	22,273	30	668,200
Total			1,252,800

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), we have submitted a copy of the interim final rule to OMB for its review of the collections of information. Due to the circumstances surrounding this final rule, we ask for emergency processing.

DHS is soliciting comments to:

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by July 9, 2007. Direct the comments to the address listed in the **ADDRESSES** section of this document. Also, fax a copy of the comments to the Office of Information and Regulatory Affairs, Office of Management and Budget at 202–395–6974, Attention: Nathan Lesser, DHS Desk Officer; and send via electronic mail to *oira_submission@omb.eop.gov.*

A comment to OMB is most effective if OMB receives it within 30 days of publication. DHS will publish the OMB control number for this information collection in the **Federal Register** after OMB approves it.

Under the protections provided by the PRA, as amended, 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.

F. National Environmental Policy Act

In the Advance Notice, the Department reviewed the rulemaking process with regard to the National Environmental Policy Act (NEPA). *See* 71 FR 78276, 78294 (Dec. 28, 2006). Specifically, the Department considered the short timeframe to issue these interim final regulations and the statutory mandate, which directed that each chemical facility develop and implement site security plans, with the proviso that the facility could select layered security measures to appropriately address the vulnerability assessment and the risk-based performance standards for security of the facility. Additionally, Congress mandated that the Secretary could not disapprove a site security plan based on the presence or absence of a particular security measure, but only on the failure to satisfy a risk-based performance standard.

Chemical facilities are of a wide variety of designs and sizes, and are located in a wide range of geographic settings, communities, and natural environments. The Department is not funding or directing specific measures under these regulations, but issuing performance standards. Consequently, the Department currently has no way to determine the action the chemical facility will take to meet the standards, and what effect any action might have on the environment. Even if the Department could predict the actions the facilities would take in response to the standards, it is likely facilities would take widely varying actions to comply, based upon type of facility, geographic location, existing infrastructure, etc.

We received no comments objecting to this conclusion during the comment period, and further, no comments on this matter were raised during the Environmental Organizations Forum the Department hosted on January 17, 2007. Accordingly, the information needed to conduct an Environmental Impact Statement is not available at this time and, in any event, the Department could not reasonably conduct an Environmental Impact Statement within the six months time allotted for issuance of the interim final regulations.

List of Subjects in 6 CFR Part 27

Chemical security, Facilities, Reporting and recordkeeping, Security measures.

The Interim Final Rule

■ For the reasons set forth in the preamble, the Department of Homeland Security adds Part 27 to Title 6, Code of Federal Regulations, to read as follows:

Title 6—Department of Homeland Security

Chapter 1—Department of Homeland Security, Office of the Secretary

PART 27—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

Subpart A—General

Sec.

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27.410 Third party actions.
Appendix A to Part 27—DHS Chemicals of Interest

Authority: Pub. L. 109–295, sec. 550.

Subpart A—General

§ 27.100 Purpose.

The purpose of this Part is to enhance the security of our Nation by furthering the mission of the Department as provided in 6 U.S.C. § 111(b)(1) and by lowering the risk posed by certain chemical facilities.

§ 27.105 Definitions.

As used in this part:

Alternative Security Program or ASP shall mean a third-party or industry organization program, a local authority, state or Federal government program or any element or aspect thereof, that the Assistant Secretary has determined meets the requirements of this Part and provides for an equivalent level of security to that established by this Part.

Assistant Secretary shall mean the Assistant Secretary for Infrastructure Protection, Department of Homeland Security or his designee.

Chemical Facility or facility shall mean any establishment that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criteria identified by the Department. As used herein, the term chemical facility or facility shall also refer to the owner or operator of the chemical facility. Where multiple owners and/or operators function within a common infrastructure or within a single fenced area, the Assistant Secretary may determine that such owners and/or operators constitute a single chemical facility or multiple chemical facilities depending on the circumstances.

Chemical Security Assessment Tool or CSAT shall mean a suite of four applications, including User Registration, Top-Screen, Security Vulnerability Assessment, and Site Security Plan, through which the Department will collect and analyze key data from chemical facilities.

Chemical-terrorism Vulnerability Information or CVI shall mean the information listed in § 27.400(b).

Coordinating Official shall mean the person (or his designee(s)) selected by the Assistant Secretary to ensure that the regulations are implemented in a uniform, impartial, and fair manner.

Covered Facility or Covered Chemical Facility shall mean a chemical facility determined by the Assistant Secretary to present high levels of security risk, or a facility that the Assistant Secretary has determined is presumptively high risk under § 27.200.

Department shall mean the Department of Homeland Security.

Deputy Secretary shall mean the Deputy Secretary of the Department of Homeland Security or his designee.

Director of the Chemical Security Division or Director shall mean the Director of the Chemical Security Division, Office of Infrastructure Protection, Department of Homeland Security or any successors to that position within the Department or his designee.

General Counsel shall mean the General Counsel of the Department of Homeland Security or his designee.

Operator shall mean a person who has responsibility for the daily operations of a facility or facilities subject to this Part.

Owner shall mean the person or entity that owns any facility subject to this Part.

Present high levels of security risk and high risk shall refer to a chemical facility that, in the discretion of the Secretary of Homeland Security, presents a high risk of significant adverse consequences for human life or health, national security and/or critical economic assets if subjected to terrorist attack, compromise, infiltration, or exploitation.

Risk profiles shall mean criteria identified by the Assistant Secretary for determining which chemical facilities will complete the Top-Screen or provide other risk assessment information.

Screening Threshold Quantity or STQ shall mean the quantity of a chemical of interest, upon which the facility's obligation to complete and submit the CSAT Top-Screen is based.

Secretary or Secretary of Homeland Security shall mean the Secretary of the Department of Homeland Security or any person, officer or entity within the Department to whom the Secretary's authority under Section 550 is delegated.

Terrorist attack or terrorist incident shall mean any incident or attempt that constitutes terrorism or terrorist activity under 6 U.S.C. 101(15) or 18 U.S.C. 2331(5) or 8 U.S.C. 1182(a)(3)(B)(iii), including any incident or attempt that involves or would involve sabotage of chemical facilities or theft, misappropriation or misuse of a dangerous quantity of chemicals.

Tier shall mean the risk level associated with a covered chemical facility and which is assigned to a facility by the Department. For purposes of this part, there are four risk-based tiers, ranging from highest risk at Tier 1 to lowest risk at Tier 4.

Top-Screen shall mean an initial screening process designed by the Assistant Secretary through which chemical facilities provide information to the Department for use pursuant to § 27.200 of these regulations.

Under Secretary shall mean the Under Secretary for National Protection and Programs, Department of Homeland Security or any successors to that position within the Department or his designee.

§ 27.110 Applicability.

(a) This Part applies to chemical facilities and to covered facilities as set out herein.

(b) This Part does not apply to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Pub. L. 107–295, as amended; Public Water Systems, as defined by Section 1401 of the Safe Drinking Water Act, Pub. L. 93–523, as amended; Treatment Works as defined in Section 212 of the Federal Water Pollution Control Act, Pub. L. 92–500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

§ 27.115 Implementation.

The Assistant Secretary may implement the Section 550 program in a phased manner, selecting certain chemical facilities for expedited initial processes under these regulations and identifying other chemical facilities or types or classes of chemical facilities for other phases of program implementation. The Assistant Secretary has flexibility to designate particular chemical facilities for specific phases of program implementation based on potential risk or any other factor consistent with this Part.

§ 27.120 Designation of a coordinating official; Consultations and technical assistance.

(a) The Assistant Secretary will designate a Coordinating Official who will be responsible for ensuring that these regulations are implemented in a uniform, impartial, and fair manner.

(b) The Coordinating Official and his staff shall provide guidance to covered facilities regarding compliance with this Part and shall, as necessary and to the extent that resources permit, be available to consult and to provide technical assistance to an owner or operator who seeks such consultation or assistance.

(c) In order to initiate consultations or seek technical assistance, a covered

facility shall submit a written request for consultation or technical assistance to the Coordinating Official or contact the Department in any other manner specified in any subsequent guidance. Requests for consultation or technical guidance do not serve to toll any of the applicable timelines set forth in this Part.

(d) If a covered facility modifies its facility, processes, or the types or quantities of materials that it possesses, and believes that such changes may impact the covered facility's obligations under this Part, the covered facility may request a consultation with the Coordinating Official as specified in paragraph (c).

§ 27.125 Severability.

If a court finds any portion of this Part to have been promulgated without proper authority, the remainder of this Part will remain in full effect.

Subpart B—Chemical Facility Security Program

§ 27.200 Information regarding security risk for a chemical facility.

(a) *Information to determine security risk.* In order to determine the security risk posed by chemical facilities, the Secretary may, at any time, request information from chemical facilities that may reflect potential consequences of or vulnerabilities to a terrorist attack or incident, including questions specifically related to the nature of the business and activities conducted at the facility; information concerning the names, nature, conditions of storage, quantities, volumes, properties, customers, major uses, and other pertinent information about specific chemicals or chemicals meeting a specific criterion; information concerning facilities' security, safety, and emergency response practices, operations, and procedures; information regarding incidents, history, funding, and other matters bearing on the effectiveness of the security, safety and emergency response programs, and other information as necessary.

(b) *Obtaining information from facilities.* (1) The Assistant Secretary may seek the information provided in paragraph (a) of this section by contacting chemical facilities individually or by publishing a notice in the **Federal Register** seeking information from chemical facilities that meet certain criteria, which the Department will use to determine risk profiles. Through any such individual or **Federal Register** notification, the Assistant Secretary may instruct such facilities to complete and submit a Top-Screen process, which may be completed through a secure Department Web site or through other means approved by the Assistant Secretary.

(2) A facility must complete and submit a Top-Screen in accordance with the schedule provided in § 27.210 if it possesses any of the chemicals listed in Appendix A to this part at the corresponding Screening Threshold Quantities.

(3) Where the Department requests that a facility complete and submit a Top-Screen, the facility must designate a person who is responsible for the submission of information through the CSAT system and who attests to the accuracy of the information contained in any CSAT submissions. Such submitter must be an officer of the corporation or other person designated by an officer of the corporation and must be domiciled in the United States.

(c) *Presumptively High Risk Facilities.* (1) If a chemical facility subject to paragraph (a) or (b) of this section fails to provide information requested or complete the Top-Screen within the timeframe provided in § 27.210, the Assistant Secretary may, after attempting to consult with the facility, reach a preliminary determination, based on the information then available, that the facility presumptively presents a high level of security risk. The Assistant Secretary shall then issue a notice to the entity of this determination and, if necessary, order the facility to provide information or complete the Top-Screen pursuant to these rules. If the facility then fails to do so, it may be subject to civil penalties pursuant to § 27.300, audit and inspection under § 27.250 or, if appropriate, an order to cease operations under § 27.300.

(2) If the facility deemed ''presumptively high risk'' pursuant to paragraph (c)(1) of this section completes the Top-Screen, and the Department determines that it does not present a high level of security risk under § 27.205, its status as ''presumptively high risk'' will terminate, and the Department will issue a notice to the facility to that effect.

§ 27.205 Determination that a chemical facility ''presents a high level of security risk.''

(a) *Initial Determination.* The Assistant Secretary may determine at any time that a chemical facility presents a high level of security risk based on any information available (including any information submitted to the Department under § 27.200) that, in the Secretary's discretion, indicates the potential that a terrorist attack involving the facility could result in significant adverse consequences for human life or health, national security or critical economic assets. Upon determining that a facility presents a high level of security risk, the Department shall notify the facility in writing of such initial determination and may also notify the facility of the Department's preliminary determination of the facility's placement in a risk-based tier pursuant to § 27.220(a).

(b) *Redetermination.* If a covered facility previously determined to present a high level of security risk has materially altered its operations, it may seek a redetermination by filing a Request for Redetermination with the Assistant Secretary, and may request a meeting regarding the Request. Within 45 calendar days of receipt of such a Request, or within 45 calendar days of a meeting under this paragraph, the Assistant Secretary shall notify the covered facility in writing of the Department's decision on the Request for Redetermination.

§ 27.210 Submissions schedule.

(a) *Initial Submission.* The timeframes in paragraphs (a)(2) and (a)(3) of this section also apply to covered facilities that submit an Alternative Security Program pursuant to § 27.235.

(1) *Top-Screen.* Facilities shall complete and submit a Top-Screen within the following time frames:

(i) This paragraph is operative on the date that the Department publishes a final Appendix A. Unless otherwise notified, within 60 calendar days of the effective date of Appendix A for facilities that possess any of the chemicals listed in Appendix A at the corresponding STQs, or within 60 calendar days for facilities that come into possession of any of the chemicals listed in Appendix A at the corresponding STQs; or

(ii) Within the time frame provided in any written notification from the Department or specified in any subsequent **Federal Register** notice.

(2) *Security Vulnerability Assessment.* Unless otherwise notified, a covered facility must complete and submit a Security Vulnerability Assessment within 90 calendar days of written notification from the Department or within the time frame specified in any subsequent **Federal Register** notice.

(3) *Site Security Plan.* Unless otherwise notified, a covered facility must complete and submit a Site Security Plan within 120 calendar days of written notification from the Department or within the time frame specified in any subsequent **Federal Register** notice.

(b) *Resubmission Schedule for Covered Facilities.* The timeframes in this subsection also apply to covered facilities who submit an Alternative Security Program pursuant to § 27.235.

(1) *Top-Screen.* Unless otherwise notified, Tier 1 and Tier 2 covered facilities must complete and submit a new Top-Screen no less than two years, and no more than two years and 60 calendar days, from the date of the Department's approval of the facility's Site Security Plan; and Tier 3 and Tier 4 covered facilities must complete and submit a Top-Screen no less than 3 years, and no more than 3 years and 60 calendar days, from the date of the Department's approval of the facility's Site Security Plan.

(2) *Security Vulnerability Assessment.* Unless otherwise notified and following a Top-Screen resubmission pursuant to paragraph (b)(1) of this section, a covered facility must complete and submit a new Security Vulnerability Assessment within 90 calendar days of written notification from the Department or within the time frame specified in any subsequent **Federal Register** notice.

(3) *Site Security Plan.* Unless otherwise notified and following a Security Vulnerability Assessment resubmission pursuant to paragraph (b)(2) of this section , a covered facility must complete and submit a new Site Security Plan within 120 calendar days of written notification from the Department or within the time frame specified in any subsequent **Federal Register** notice.

(c) The Assistant Secretary retains the authority to modify the schedule in this Part as needed. The Assistant Secretary may shorten or extend these time periods based on the operations at the facility, the nature of the covered facility's vulnerabilities, the level and immediacy of security risk, or for other reasons. If the Department alters the time periods for a specific facility, the Department will do so in written notice to the facility.

(d) If a covered facility makes material modifications to its operations or site, the covered facility must complete and submit a revised Top-Screen to the Department within 60 days of the material modification. In accordance with the resubmission requirements in § 27.210(b)(2) and (3), the Department will notify the covered facility as to whether the covered facility must submit a revised Security Vulnerability Assessment, Site Security Plan, or both.

§ 27.215 Security vulnerability assessments.

(a) *Initial Assessment.* If the Assistant Secretary determines that a chemical facility is high-risk, the facility must complete a Security Vulnerability Assessment. A Security Vulnerability Assessment shall include:

(1) Asset Characterization, which includes the identification and characterization of potential critical assets; identification of hazards and consequences of concern for the facility, its surroundings, its identified critical asset(s), and its supporting infrastructure; and identification of existing layers of protection;

(2) Threat Assessment, which includes a description of possible internal threats, external threats, and internally-assisted threats;

(3) Security Vulnerability Analysis, which includes the identification of potential security vulnerabilities and the identification of existing countermeasures and their level of effectiveness in both reducing identified vulnerabilities and in meeting the applicable Risk-Based Performance Standards;

(4) Risk Assessment, including a determination of the relative degree of risk to the facility in terms of the expected effect on each critical asset and the likelihood of a success of an attack; and

(5) Countermeasures Analysis, including strategies that reduce the probability of a successful attack or reduce the probable degree of success, strategies that enhance the degree of risk reduction, the reliability and maintainability of the options, the capabilities and effectiveness of mitigation options, and the feasibility of the options.

(b) Except as provided in § 27.235, a covered facility must complete the Security Vulnerability Assessment through the CSAT process, or through any other methodology or process identified or issued by the Assistant Secretary.

(c) Covered facilities must submit a Security Vulnerability Assessment to the Department in accordance with the schedule provided in § 27.210.

(d) *Updates and Revisions.* (1) A covered facility must update and revise its Security Vulnerability Assessment in accordance with the schedule provided in § 27.210.

(2) Notwithstanding paragraph (d)(1) of this section, a covered facility must update, revise or otherwise alter its Security Vulnerability Assessment to account for new or differing modes of potential terrorist attack or for other security-related reasons, if requested by the Assistant Secretary.

§ 27.220 Tiering.

(a) *Preliminary Determination of Risk-Based Tiering.* Based on the information the Department receives in accordance with §§ 27.200 and 27.205 (including information submitted through the Top-Screen process) and following its initial determination in § 27.205(a) that a facility presents a high level of security risk, the Department shall notify a facility of the Department's preliminary determination of the facility's placement in a risk-based tier.

(b) *Confirmation or Alteration of Risk-Based Tiering.* Following review of a covered facility's Security Vulnerability Assessment, the Assistant Secretary shall notify the covered facility of its final placement within a risk-based tier, or for covered facilities previously notified of a preliminary tiering, confirm or alter such tiering.

(c) The Department shall place covered facilities in one of four risk-based tiers, ranging from highest risk facilities in Tier 1 to lowest risk facilities in Tier 4.

(d) The Assistant Secretary may provide the facility with guidance regarding the risk-based performance standards and any other necessary guidance materials applicable to its assigned tier.

§ 27.225 Site security plans.

(a) The Site Security Plan must meet the following standards:

(1) Address each vulnerability identified in the facility's Security Vulnerability Assessment, and identify and describe the security measures to address each such vulnerability;

(2) Identify and describe how security measures selected by the facility will address the applicable risk-based performance standards and potential modes of terrorist attack including, as applicable, vehicle-borne explosive devices, water-borne explosive devices, ground assault, or other modes or potential modes identified by the Department;

(3) Identify and describe how security measures selected and utilized by the facility will meet or exceed each applicable performance standard for the appropriate risk-based tier for the facility; and

(4) Specify other information the Assistant Secretary deems necessary regarding chemical facility security.

(b) Except as provided in § 27.235, a covered facility must complete the Site Security Plan through the CSAT process, or through any other

methodology or process identified or issued by the Assistant Secretary.

(c) Covered facilities must submit a Site Security Plan to the Department in accordance with the schedule provided in § 27.210.

(d) *Updates and Revisions.* (1) When a covered facility updates, revises or otherwise alters its Security Vulnerability Assessment pursuant to § 27.215(d), the covered facility shall make corresponding changes to its Site Security Plan.

(2) A covered facility must also update and revise its Site Security Plan in accordance with the schedule in § 27.210.

(e) A covered facility must conduct an annual audit of its compliance with its Site Security Plan.

§ 27.230 Risk-based performance standards.

(a) Covered facilities must satisfy the performance standards identified in this section. The Assistant Secretary will issue guidance on the application of these standards to risk-based tiers of covered facilities, and the acceptable layering of measures used to meet these standards will vary by risk-based tier. Each covered facility must select, develop in their Site Security Plan, and implement appropriately risk-based measures designed to satisfy the following performance standards:

(1) *Restrict Area Perimeter.* Secure and monitor the perimeter of the facility;

(2) *Secure Site Assets.* Secure and monitor restricted areas or potentially critical targets within the facility;

(3) *Screen and Control Access.* Control access to the facility and to restricted areas within the facility by screening and/or inspecting individuals and vehicles as they enter, including,

(i) Measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate an attack or actions having serious negative consequences for the population surrounding the facility; and

(ii) Measures implementing a regularly updated identification system that checks the identification of facility personnel and other persons seeking access to the facility and that discourages abuse through established disciplinary measures;

(4) *Deter, Detect, and Delay.* Deter, detect, and delay an attack, creating sufficient time between detection of an attack and the point at which the attack becomes successful, including measures to:

(i) Deter vehicles from penetrating the facility perimeter, gaining unauthorized access to restricted areas or otherwise presenting a hazard to potentially critical targets;

(ii) Deter attacks through visible, professional, well maintained security measures and systems, including security personnel, detection systems, barriers and barricades, and hardened or reduced value targets;

(iii) Detect attacks at early stages, through countersurveillance, frustration of opportunity to observe potential targets, surveillance and sensing systems, and barriers and barricades; and

(iv) Delay an attack for a sufficient period of time so to allow appropriate response through on-site security response, barriers and barricades, hardened targets, and well-coordinated response planning;

(5) *Shipping, Receipt, and Storage.* Secure and monitor the shipping, receipt, and storage of hazardous materials for the facility;

(6) *Theft and Diversion.* Deter theft or diversion of potentially dangerous chemicals;

(7) *Sabotage.* Deter insider sabotage;

(8) *Cyber.* Deter cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, such as Supervisory Control and Data Acquisition (SCADA) systems, Distributed Control Systems (DCS), Process Control Systems (PCS), Industrial Control Systems (ICS), critical business system, and other sensitive computerized systems;

(9) *Response.* Develop and exercise an emergency plan to respond to security incidents internally and with assistance of local law enforcement and first responders;

(10) *Monitoring.* Maintain effective monitoring, communications and warning systems, including,

(i) Measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained;

(ii) Measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and

(iii) Measures to allow the facility to promptly identify and respond to security system and equipment failures or malfunctions;

(11) *Training.* Ensure proper security training, exercises, and drills of facility personnel;

(12) *Personnel Surety.* Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets, including,

(i) Measures designed to verify and validate identity;

(ii) Measures designed to check criminal history;

(iii) Measures designed to verify and validate legal authorization to work; and

(iv) Measures designed to identify people with terrorist ties;

(13) *Elevated Threats.* Escalate the level of protective measures for periods of elevated threat;

(14) *Specific Threats, Vulnerabilities, or Risks.* Address specific threats, vulnerabilities or risks identified by the Assistant Secretary for the particular facility at issue;

(15) *Reporting of Significant Security Incidents.* Report significant security incidents to the Department and to local law enforcement officials;

(16) *Significant Security Incidents and Suspicious Activities.* Identify, investigate, report, and maintain records of significant security incidents and suspicious activities in or near the site;

(17) *Officials and Organization.* Establish official(s) and an organization responsible for security and for compliance with these standards;

(18) *Records.* Maintain appropriate records; and

(19) Address any additional performance standards the Assistant Secretary may specify.

(b) [Reserved]

§ 27.235 Alternative security program.

(a) Covered facilities may submit an Alternate Security Program (ASP) pursuant to the requirements of this section. The Assistant Secretary may approve an Alternate Security Program, in whole, in part, or subject to revisions or supplements, upon a determination that the Alternate Security Program meets the requirements of this Part and provides for an equivalent level of security to that established by this Part.

(1) A Tier 4 facility may submit an ASP in lieu of a Security Vulnerability Assessment, Site Security Plan, or both.

(2) Tier 1, Tier 2, or Tier 3 facilities may submit an ASP in lieu of a Site Security Plan. Tier 1, Tier 2, and Tier 3 facilities may not submit an ASP in lieu of a Security Vulnerability Assessment.

(b) The Department will provide notice to a covered facility about the approval or disapproval, in whole or in part, of an ASP, using the procedure specified in § 27.240 if the ASP is intended to take the place of a Security Vulnerability Assessment or using the procedure specified in § 27.245 if the ASP is intended to take the place of a Site Security Plan.

§ 27.240 Review and approval of security vulnerability assessments.

(a) *Review and Approval.* The Department will review and approve in writing all Security Vulnerability Assessments that satisfy the requirements of § 27.215, including Alternative Security Programs submitted pursuant to § 27.235.

(b) If a Security Vulnerability Assessment does not satisfy the requirements of § 27.215, the Department will provide the facility with a written notification that includes a clear explanation of deficiencies in the Security Vulnerability Assessment. The facility shall then enter further consultations with the Department and resubmit a sufficient Security Vulnerability Assessment by the time specified in the written notification provided by the Department under this section. If the resubmitted Security Vulnerability Assessment does not satisfy the requirements of § 27.215, the Department will provide the facility with written notification (including a clear explanation of deficiencies in the SVA) of the Department's disapproval of the SVA.

§ 27.245 Review and approval of site security plans.

(a) *Review and Approval.* (1) The Department will review and approve or disapprove all Site Security Plans that satisfy the requirements of § 27.225, including Alternative Security Programs submitted pursuant to § 27.235.

(i) The Department will review Site Security Plans through a two-step process. Upon receipt of Site Security Plan from the covered facility, the Department will review the documentation and make a preliminary determination as to whether it satisfies the requirements of § 27.225. If the Department finds that the requirements are satisfied, the Department will issue a Letter of Authorization to the covered facility.

(ii) Following issuance of the Letter of Authorization, the Department will inspect the covered facility in accordance with § 27.250 for purposes of determining compliance with the requirements of this Part.

(iii) If the Department approves the Site Security Plan in accordance with § 27.250, the Department will issue a Letter of Approval to the facility, and the facility shall implement the approved Site Security Plan.

(2) The Department will not disapprove a Site Security Plan submitted under this Part based on the presence or absence of a particular security measure. The Department may disapprove a Site Security Plan that fails to satisfy the risk-based performance standards established in § 27.230.

(b) When the Department disapproves a preliminary Site Security Plan issued prior to inspection or a Site Security Plan following inspection, the Department will provide the facility with a written notification that includes a clear explanation of deficiencies in the Site Security Plan. The facility shall then enter further consultations with the Department and resubmit a sufficient Site Security Plan by the time specified in the written notification provided by the Department under this section. If the resubmitted Site Security Plan does not satisfy the requirements of § 27.225, the Department will provide the facility with written notification (including a clear explanation of deficiencies in the SSP) of the Department's disapproval of the SSP.

§ 27.250 Inspections and audits.

(a) *Authority.* In order to assess compliance with the requirements of this Part, authorized Department officials may enter, inspect, and audit the property, equipment, operations, and records of covered facilities.

(b) Following preliminary approval of a Site Security Plan in accordance with § 27.245, the Department will inspect the covered facility for purposes of determining compliance with the requirements of this Part.

(1) If after the inspection, the Department determines that the requirements of § 27.225 have been met, the Department will issue a Letter of Approval to the covered facility.

(2) If after the inspection, the Department determines that the requirements of § 27.225 have not been met, the Department will proceed as directed by § 27.245(b) in ''Review and Approval of Site Security Plans.''

(c) *Time and Manner.* Authorized Department officials will conduct audits and inspections at reasonable times and in a reasonable manner. The Department will provide covered facility owners and/or operators with 24-hour advance notice before inspections, except

(1) If the Under Secretary or Assistant Secretary determines that an inspection without such notice is warranted by exigent circumstances and approves such inspection; or

(2) If any delay in conducting an inspection might be seriously detrimental to security, and the Director of the Chemical Security Division determines that an inspection without notice is warranted, and approves an inspector to conduct such inspection.

(d) *Inspectors.* Inspections and audits are conducted by personnel duly authorized and designated for that purpose as ''inspectors'' by the Secretary or the Secretary's designee.

(1) An inspector will, on request, present his or her credentials for examination, but the credentials may not be reproduced by the facility.

(2) An inspector may administer oaths and receive affirmations, with the consent of any witness, in any matter.

(3) An inspector may gather information by reasonable means including, but not limited to, interviews, statements, photocopying, photography, and video- and audio-recording. All documents, objects and electronically stored information collected by each inspector during the performance of that inspector's duties shall be maintained for a reasonable period of time in the files of the Department of Homeland Security maintained for that facility or matter.

(4) An inspector may request forthwith access to all records required to be kept pursuant to § 27.255. An inspector shall be provided with the immediate use of any photocopier or other equipment necessary to copy any such record. If copies can not be provided immediately upon request, the inspector shall be permitted immediately to take the original records for duplication and prompt return.

(e) *Confidentiality.* In addition to the protections provided under CVI in § 27.400, information received in an audit or inspection under this section, including the identity of the persons involved in the inspection or who provide information during the inspection, shall remain confidential under the investigatory file exception, or other appropriate exception, to the public disclosure requirements of 5 U.S.C. 552.

(f) *Guidance.* The Assistant Secretary shall issue guidance identifying appropriate processes for such inspections, and specifying the type and nature of documentation that must be made available for review during inspections and audits.

§ 27.255 Recordkeeping requirements.

(a) Except as provided in § 27.255(b), the covered facility must keep records of the activities as set out below for at least three years and make them available to the Department upon request. A covered facility must keep the following records:

(1) *Training.* For training, the date and location of each session, time of day and duration of session, a description of the training, the name and qualifications of the instructor, a clear, legible list of attendees to include the attendee signature, at least one other unique identifier of each attendee receiving the

training, and the results of any evaluation or testing.

(2) *Drills and exercises.* For each drill or exercise, the date held, a description of the drill or exercise, a list of participants, a list of equipment (other than personal equipment) tested or employed in the exercise, the name(s) and qualifications of the exercise director, and any best practices or lessons learned which may improve the Site Security Plan;

(3) *Incidents and breaches of security.* Date and time of occurrence, location within the facility, a description of the incident or breach, the identity of the individual to whom it was reported, and a description of the response;

(4) *Maintenance, calibration, and testing of security equipment.* The date and time, name and qualifications of the technician(s) doing the work, and the specific security equipment involved for each occurrence of maintenance, calibration, and testing;

(5) *Security threats.* Date and time of occurrence, how the threat was communicated, who received or identified the threat, a description of the threat, to whom it was reported, and a description of the response;

(6) *Audits.* For each audit of a covered facility's Site Security Plan (including each audit required under § 27.225(e)) or Security Vulnerability Assessment, a record of the audit, including the date of the audit, results of the audit, name(s) of the person(s) who conducted the audit, and a letter certified by the covered facility stating the date the audit was conducted.

(7) *Letters of Authorization and Approval.* All Letters of Authorization and Approval from the Department, and documentation identifying the results of audits and inspections conducted pursuant to § 27.250.

(b) A covered facility must retain records of submitted Top-Screens, Security Vulnerability Assessments, Site Security Plans, and all related correspondence with the Department for at least six years and make them available to the Department upon request.

(c) To the extent necessary for security purposes, the Department may request that a covered facility make available records kept pursuant to other Federal programs or regulations.

(d) Records required by this section may be kept in electronic format. If kept in an electronic format, they must be protected against unauthorized access, deletion, destruction, amendment, and disclosure.

Subpart C—Orders and Adjudications

§ 27.300 Orders.

(a) *Orders Generally.* When the Assistant Secretary determines that a facility is in violation of any of the requirements of this Part, the Assistant Secretary may take appropriate action including the issuance of an appropriate Order.

(b) *Orders Assessing Civil Penalty and Orders to Cease Operations.* (1) Where the Assistant Secretary determines that a facility is in violation of an Order issued pursuant to paragraph (a) of this section, the Assistant may enter an Order Assessing Civil Penalty, Order to Cease Operations, or both.

(2) Following the issuance of an Order by the Assistant Secretary pursuant to paragraph (b)(1) of this section, the facility may enter further consultations with Department.

(3) Where the Assistant Secretary determines that a facility is in violation of an Order issued pursuant to paragraph (a) of this section and issues an Order Assessing Civil Penalty pursuant to paragraph (b)(1) of this section, a chemical facility is liable to the United States for a civil penalty of not more than $25,000 for each day during which the violation continues.

(c) *Procedures for Orders.* (1) At a minimum, an Order shall be signed by the Assistant Secretary, shall be dated, and shall include:

(i) The name and address of the facility in question;

(ii) A listing of the provision(s) that the facility is alleged to have violated;

(iii) A statement of facts upon which the alleged instances of noncompliance are based;

(iv) A clear explanation of deficiencies in the facility's chemical security program, including, if applicable, any deficiencies in the facility's Security Vulnerability Assessment, Site Security Plan, or both; and

(v) A statement, indicating what action(s) the chemical must take to remedy the instance(s) of noncompliance; and

(vi) The date by which the facility must comply with the terms of the Order.

(2) The Assistant Secretary may establish procedures for the issuance of Orders.

(d) A facility must comply with the terms of the Order by the date specified in the Order unless the facility has filed a timely Notice for Application for Review under § 27.310.

(e) Where a facility or other person contests the determination of the Assistant Secretary to issue an Order, a chemical facility may seek an adjudication pursuant to § 27.310.

(f) An Order issued under this section becomes final agency action when the time to file a Notice of Application of Review under § 27.310 has passed without such a filing or upon the conclusion of adjudication or appeal proceedings under this subpart.

§ 27.305 Neutral adjudications.

(a) Any facility or other person who has received a Finding pursuant to § 27.230(a)(12)(iv), a Determination pursuant to § 27.245(b), or an Order pursuant to § 27.300 is entitled to an adjudication, by a neutral adjudications officer, of any issue of material fact relevant to any administrative action which deprives that person of a cognizable interest in liberty or property.

(b) A neutral adjudications officer appointed pursuant to § 27.315 shall issue an Initial Decision on any material factual issue related to a Finding pursuant to § 27.230(a)(12)(iv), a Determination pursuant to § 27.245, or an Order pursuant to § 27.300 before any such administrative action is reviewed on appeal pursuant to § 27.345.

§ 27.310 Commencement of adjudication proceedings.

(a) *Proceedings Instituted by Facilities or other Persons.* A facility or other person may institute proceedings to review a determination by the Assistant Secretary:

(1) Finding, pursuant to the § 27.230(a)(12)(iv), that an individual is a potential security threat;

(2) Disapproving a Site Security Plan pursuant to § 27.245(b); or

(3) Issuing an Order pursuant to § 27.300(a) or (b).

(b) *Procedure for Applications by Facilities or other Persons.* A facility or other person may institute Proceedings by filing a Notice of Application for Review specifying that the facility or other person requests a Proceeding to review a determination specified in paragraph (a) of this section.

(1) An Applicant institutes a Proceeding by filing a Notice of Application for Review with the office of the Department hereinafter designated by the Secretary.

(2) An Applicant must file a Notice of Application for Review within seven calendar days of notification to the facility or other person of the Assistant Secretary's Finding, Determination, or Order.

(3) The Applicant shall file and simultaneously serve each Notice of Application for Review and all

subsequent filings on the Assistant Secretary and the General Counsel.

(4) An Order is stayed from the timely filing of a Notice of Application for Review until the Presiding Officer issues an Initial Decision, unless the Secretary has lifted the stay due to exigent circumstances pursuant to paragraph (d) of this section.

(5) The Applicant shall file and serve an Application for Review within fourteen calendar days of the notification to the facility or other person of the Assistant Secretary's Finding, Determination, or Order.

(6) Each Application for Review shall be accompanied by all legal memoranda, other documents, declarations, affidavits, and other evidence supporting the position asserted by the Applicant.

(c) *Response.* The Assistant Secretary, through the Office of General Counsel, shall file and serve a Response, accompanied by all legal memoranda, other documents, declarations, affidavits and other evidence supporting the position asserted by the Assistant Secretary within fourteen calendar days of the filing and service of the Application for Review and all supporting papers.

(d) *Procedural Modifications.* The Secretary may, in exigent circumstances (as determined in his sole discretion):

(1) Lift any stay applicable to any Order under § 27.300;

(2) Modify the time for a response;

(3) Rule on the sufficiency of Applications for Review; or

(4) Otherwise modify these procedures with respect to particular matters.

§ 27.315 Presiding officers for proceedings.

(a) Immediately upon the filing of any Application for Review, the Secretary shall appoint an attorney, who is employed by the Department and who has not performed any investigative or prosecutorial function with respect to the matter, to act as a neutral adjudications officer or Presiding Officer for the compilation of a factual record and the recommendation of an Initial Decision for each Proceeding.

(b) Notwithstanding paragraph (a) of this section, the Secretary may appoint one or more attorneys who are employed by the Department and who do not perform any investigative or prosecutorial function with respect to this subpart, to serve generally in the capacity as Presiding Officer(s) for such matters pursuant to such procedures as the Secretary may hereafter establish.

§ 27.320 Prohibition on ex parte communications during proceedings.

(a) At no time after the designation of a Presiding Officer for a Proceeding and prior to the issuance of a Final Decision pursuant to § 27.345 with respect to a facility or other person, shall the appointed Presiding Officer, or any person who will advise that official in the decision on the matter, discuss *ex parte* the merits of the proceeding with any interested person outside the Department, with any Department official who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person.

(b) If, after appointment of a Presiding Officer and prior to the issuance of a Final Decision pursuant to § 27.345 with respect to a facility or other person, the appointed Presiding Officer, or any person who will advise that official in the decision on the matter, receives from or on behalf of any party, by means of an *ex parte* communication, information which is relevant to the decision of the matter and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to the *ex parte* communication within a time set by the Presiding Officer.

(c) The consideration of classified information or CVI pursuant to an in camera procedure does not constitute a prohibited ex parte communication for purposes of this subpart.

§ 27.325 Burden of proof.

The Assistant Secretary bears the initial burden of proving the facts necessary to support the challenged administrative action at every proceeding instituted under this subpart.

§ 27.330 Summary decision procedures.

(a) The Presiding Officer appointed for each Proceeding shall immediately consider whether the summary adjudication of the Application for Review is appropriate based on the Application for Review, the Response, and all the supporting filings of the parties pursuant to §§ 27.310(b)(5) and 27.310(c).

(1) The Presiding Officer shall promptly issue any necessary scheduling order for any additional briefing of the issue of summary adjudication on the Application for Review and Response.

(2) The Presiding Officer may conduct scheduling conferences and other proceedings that the Presiding Officer determines to be appropriate.

(b) If the Presiding Officer determines that there is no genuine issue of material fact and that one party or the other is entitled to decision as a matter of law, then the record shall be closed and the Presiding Officer shall issue an Initial Decision on the Application for Review pursuant to § 27.340.

(c) If a Presiding Officer determines that any factual issues require the cross-examination of one or more witnesses or other proceedings at a hearing, the Presiding Officer, in consultation with the parties, shall promptly schedule a hearing to be conducted pursuant to § 27.335.

§ 27.335 Hearing procedures.

(a) Any hearing shall be held as expeditiously as possible at the location most conducive to a prompt presentation of any necessary testimony or other proceedings.

(1) Videoconferencing and teleconferencing may be used where appropriate at the discretion of the Presiding Officer.

(2) Each party offering the affirmative testimony of a witness shall present that testimony by declaration, affidavit, or other sworn statement submitted in advance as ordered by the Presiding Officer.

(3) Any witness presented for further examination shall be asked to testify under an oath or affirmation.

(4) The hearing shall be recorded verbatim.

(b)(1) A facility or other person may appear and be heard on his own behalf or through any counsel of his choice who is qualified to possess CVI.

(2) A facility of other person individually, or through counsel, may offer relevant and material information including written direct testimony which he believes should be considered in opposition to the administrative action or which may bear on the sanction being sought.

(3) The facility or other person individually, or through counsel, may conduct such cross-examination as may be specifically allowed by the Presiding Officer for a full determination of the facts.

§ 27.340 Completion of adjudication proceedings.

(a) The Presiding Officer shall close and certify the record of the adjudication promptly upon the completion of:

(1) Summary judgment proceedings,

(2) A hearing, if necessary,

(3) The submission of post hearing briefs, if any are ordered by the Presiding Officer, and

(4) The conclusion of oral arguments, if any are permitted by the Presiding Officer.

(b) The Presiding Officer shall issue an Initial Decision based on the certified record, and the decision shall be subject to appeal pursuant to § 27.345.

(c) An Initial Decision shall become a final agency action on the expiration of the time for an Appeal pursuant to § 27.345.

§ 27.345 Appeals.

(a) *Right to Appeal.* A facility or any person who has received an Initial Decision under § 27.340(b) has the right to appeal to the Under Secretary acting as a neutral appeals officer.

(b) *Procedure for Appeals.* (1) The Assistant Secretary, a facility or other person, or a representative on behalf of a facility or person, may institute an Appeal by filing a Notice of Appeal with the office of the Department hereinafter designated by the Secretary.

(2) The Assistant Secretary, a facility, or other person must file a Notice of Appeal within seven calendar days of the service of the Presiding Officer's Initial Decision.

(3) The Appellant shall file with the designated office and simultaneously serve each Notice of Appeal and all subsequent filings on the General Counsel.

(4) An Initial Decision is stayed from the timely filing of a Notice of Appeal until the Under Secretary issues a Final Decision, unless the Secretary lifts the stay due to exigent circumstances pursuant to § 27.310(d).

(5) The Appellant shall file and serve a Brief within 28 calendar days of the notification of the service of the Presiding Officer's Initial Decision.

(6) The Appellee shall file and serve its Opposition Brief within 28 calendar days of the service of the Appellant's Brief.

(c) The Under Secretary may provide for an expedited appeal for appropriate matters.

(d) *Ex Parte Communications.* (1) At no time after the filing of a Notice of Appeal pursuant to paragraph (b)(1) of this section and prior to the issuance of a Final Decision on an Appeal pursuant to paragraph (f) of this section with respect to a facility or other person shall the Under Secretary, his designee, or any person who will advise that official in the decision on the matter, discuss *ex parte* the merits of the proceeding with any interested person outside the Department, with any Department official who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person.

(2) If, after the filing of a Notice of Appeal pursuant to paragraph (b)(1) of this section and prior to the issuance of a Final Decision on an Appeal pursuant to paragraph (f) of this section with respect to a facility or other person, the Under Secretary, his designee, or any person who will advise that official in the decision on the matter, receives from or on behalf of any party, by means of an *ex parte* communication, information which is relevant to the decision of the matter and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to the *ex parte* communication within a time set by the Under Secretary or his designee.

(3) The consideration of classified information or CVI pursuant to an in camera procedure does not constitute a prohibited *ex parte* communication for purposes of this subpart.

(e) A facility or other person may elect to have the Under Secretary participate in any mediation or other resolution process by expressly waiving, in writing, any argument that such participation has compromised the Appeal process.

(f) The Under Secretary shall issue a Final Decision and serve it upon the parties. A Final Decision made by the Under Secretary constitutes final agency action.

(g) The Secretary may establish procedures for the conduct of Appeals pursuant to this section.

Subpart D—Other

§ 27.400 Chemical-terrorism vulnerability information.

(a) *Applicability.* This section governs the maintenance, safeguarding, and disclosure of information and records that constitute Chemical-terrorism Vulnerability Information (CVI), as defined in § 27.400(b). The Secretary shall administer this section consistent with Section 550(c) of the Homeland Security Appropriations Act of 2007, including appropriate sharing with Federal, State and local officials.

(b) *Chemical-terrorism Vulnerability Information.* In accordance with Section 550(c) of the Department of Homeland Security Appropriations Act of 2007, the following information, whether transmitted verbally, electronically, or in written form, shall constitute CVI:

(1) Security Vulnerability Assessments under § 27.215;

(2) Site Security Plans under § 27.225;

(3) Documents relating to the Department's review and approval of Security Vulnerability Assessments and Site Security Plans, including Letters of Authorization, Letters of Approval and responses thereto; written notices; and other documents developed pursuant to §§ 27.240 or 27.245;

(4) Alternate Security Programs under § 27.235;

(5) Documents relating to inspection or audits under § 27.250;

(6) Any records required to be created or retained under § 27.255;

(7) Sensitive portions of orders, notices or letters under § 27.300;

(8) Information developed pursuant to §§ 27.200 and 27.205; and

(9) Other information developed for chemical facility security purposes that the Secretary, in his discretion, determines is similar to the information protected in § 27.400(b)(1) through (8) and thus warrants protection as CVI.

(c) *Covered Persons.* Persons subject to the requirements of this section are:

(1) Each person who has a need to know CVI, as specified in § 27.400(e);

(2) Each person who otherwise receives or gains access to what they know or should reasonably know constitutes CVI.

(d) *Duty to protect information.* A covered person must—

(1) Take reasonable steps to safeguard CVI in that person's possession or control, including electronic data, from unauthorized disclosure. When a person is not in physical possession of CVI, the person must store it in a secure container, such as a safe, that limits access only to covered persons with a need to know;

(2) Disclose, or otherwise provide access to, CVI only to persons who have a need to know;

(3) Refer requests for CVI by persons without a need to know to the Assistant Secretary;

(4) Mark CVI as specified in § 27.400(f);

(5) Dispose of CVI as specified in § 27.400(k);

(6) If a covered person receives a record or verbal transmission containing CVI that is not marked as specified in § 27.400(f), the covered person must—

(i) Mark the record as specified in § 27.400(f) of this section; and

(ii) Inform the sender of the record that the record must be marked as specified in § 27.400(f); or

(iii) If received verbally, make reasonable efforts to memorialize such information and mark the memorialized record as specified in § 27.400(f) of this section, and inform the speaker of any determination that such information warrants CVI protection.

(7) When a covered person becomes aware that CVI has been released to

persons without a need to know (including a covered person under § 27.400(c)(2)), the covered person must promptly inform the Assistant Secretary.

(8) In the case of information that is CVI and also has been designated as critical infrastructure information under Section 214 of the Homeland Security Act, any covered person in possession of such information must comply with the disclosure restrictions and other requirements applicable to such information under Section 214 and any implementing regulations.

(e) *Need to know.* (1) A person, including a State or local official, has a need to know CVI in each of the following circumstances:

(i) When the person requires access to specific CVI to carry out chemical facility security activities approved, accepted, funded, recommended, or directed by the Department.

(ii) When the person needs the information to receive training to carry out chemical facility security activities approved, accepted, funded, recommended, or directed by the Department.

(iii) When the information is necessary for the person to supervise or otherwise manage individuals carrying out chemical facility security activities approved, accepted, funded, recommended, or directed by the Department.

(iv) When the person needs the information to provide technical or legal advice to a covered person, who has a need to know the information, regarding chemical facility security requirements of Federal law.

(v) When the Department determines that access is required under §§ 27.400(h) or 27.400(i) in the course of a judicial or administrative proceeding.

(2) *Federal employees, contractors, and grantees.* (i) A Federal employee has a need to know CVI if access to the information is necessary for performance of the employee's official duties.

(ii) A person acting in the performance of a contract with or grant from the Department has a need to know CVI if access to the information is necessary to performance of the contract or grant. Contractors or grantees may not further disclose CVI without the consent of the Assistant Secretary.

(iii) The Department may require that non-Federal persons seeking access to CVI complete a non-disclosure agreement before such access is granted.

(3) *Background check.* The Department may make an individual's access to the CVI contingent upon satisfactory completion of a security background check or other procedures and requirements for safeguarding CVI that are satisfactory to the Department.

(4) *Need to know further limited by the Department.* For some specific CVI, the Department may make a finding that only specific persons or classes of persons have a need to know.

(5) Nothing in § 27.400(e) shall prevent the Department from determining, in its discretion, that a person not otherwise listed in § 27.400(e) has a need to know CVI in a particular circumstance.

(f) *Marking of paper records.* (1) In the case of paper records containing CVI, a covered person must mark the record by placing the protective marking conspicuously on the top, and the distribution limitation statement on the bottom, of—

(i) The outside of any front and back cover, including a binder cover or folder, if the document has a front and back cover;

(ii) Any title page; and

(iii) Each page of the document.

(2) Protective marking. The protective marking is: CHEMICAL-TERRORISM VULNERABILITY INFORMATION.

(3) *Distribution limitation statement.* The distribution limitation statement is: WARNING: This record contains Chemical-terrorism Vulnerability Information controlled by 6 CFR 27.400. Do not disclose to persons without a ''need to know'' in accordance with 6 CFR 27.400(e). Unauthorized release may result in civil penalties or other action. In any administrative or judicial proceeding, this information shall be treated as classified information in accordance with 6 CFR 27.400(h) and (i).

(4) *Other types of records.* In the case of non-paper records that contain CVI, including motion picture films, videotape recordings, audio recording, and electronic and magnetic records, a covered person must clearly and conspicuously mark the records with the protective marking and the distribution limitation statement such that the viewer or listener is reasonably likely to see or hear them when obtaining access to the contents of the record.

(g) *Disclosure by the Department—In general.* (1) Except as otherwise provided in this section, and notwithstanding the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and other laws, records containing CVI are not available for public inspection or copying, nor does the Department release such records to persons without a need to know.

(2) Disclosure of Segregatable Information under the Freedom of Information Act and the Privacy Act. If a record is marked to signify both CVI and information that is not CVI, the Department, on a proper Freedom of Information Act or Privacy Act request, may disclose the record with the CVI redacted, provided the record is not otherwise exempt from disclosure under the Freedom of Information Act or Privacy Act.

(h) *Disclosure in administrative enforcement proceedings.* (1) The Department may provide CVI to a person governed by Section 550, and his counsel, in the context of an administrative enforcement proceeding of Section 550 when, in the sole discretion of the Department, as appropriate, access to the CVI is necessary for the person to prepare a response to allegations contained in a legal enforcement action document issued by the Department.

(2) *Security background check.* Prior to providing CVI to a person under § 27.400(h)(1), the Department may require the individual or, in the case of an entity, the individuals representing the entity, and their counsel, to undergo and satisfy, in the judgment of the Department, a security background check.

(i) *Disclosure in judicial proceedings.* (1) In any judicial enforcement proceeding of Section 550, the Secretary, in his sole discretion, may, subject to § 27.400(i)(1)(i), authorize access to CVI for persons necessary for the conduct of such proceedings, including such persons' counsel, provided that no other persons not so authorized shall have access to or be present for the disclosure of such information.

(i) *Security background check.* Prior to providing CVI to a person under § 27.400(i)(1), the Department may require the individual to undergo and satisfy, in the judgment of the Department, a security background check.

(ii) [Reserved]

(2) In any judicial enforcement proceeding of Section 550 where a person seeks to disclose CVI to a person not authorized to receive it under paragraph (i)(1) of this section, or where a person not authorized to receive CVI under paragraph (i)(1) of this section seeks to compel its disclosure through discovery, the United States may make an ex parte application in writing to the court seeking authorization to—

(i) Redact specified items of CVI from documents to be introduced into evidence or made available to the

defendant through discovery under the Federal Rules of Civil Procedure;

(ii) Substitute a summary of the information for such CVI; or

(iii) Substitute a statement admitting relevant facts that the CVI would tend to prove.

(3) The court shall grant a request under paragraph (i)(2) of this section if, after in camera review, the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(4) If the court enters an order granting a request under paragraph (i)(2) of this section, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(5) If the court enters an order denying a request of the United States under paragraph (i)(2) of this section, the United States may take an immediate, interlocutory appeal of the court's order in accordance with 18 U.S.C. 2339B(f)(4), (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(6) Except as provided otherwise at the sole discretion of the Secretary, access to CVI shall not be available in any civil or criminal litigation unrelated to the enforcement of Section 550.

(7) Taking of trial testimony—

(i) Objection—During the examination of a witness in any judicial proceeding, the United States may object to any question or line of inquiry that may require the witness to disclose CVI not previously found to be admissible.

(ii) Action by court—In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any CVI, including—

(A) Permitting the United States to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry; and

(B) Requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(iii) Obligation of defendant—In any judicial enforcement proceeding, it shall be the defendant's obligation to establish the relevance and materiality of any CVI sought to be introduced.

(8) *Construction.* Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

(j) *Consequences of Violation.* Violation of this section is grounds for a civil penalty and other enforcement or corrective action by the Department, and appropriate personnel actions for Federal employees. Corrective action may include issuance of an order requiring retrieval of CVI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

(k) *Destruction of CVI.* (1) The Department of Homeland Security. Subject to the requirements of the Federal Records Act (5 U.S.C. 105), including the duty to preserve records containing documentation of a Federal agency's policies, decisions, and essential transactions, the Department destroys CVI when no longer needed to carry out the agency's function.

(2) *Other covered persons*—(i) *In general.* A covered person must destroy CVI completely to preclude recognition or reconstruction of the information when the covered person no longer needs the CVI to carry out security measures under paragraph (e) of this section.

(ii) *Exception.* Section 27.400(k)(2) does not require a State or local government agency to destroy information that the agency is required to preserve under State or local law.

§ 27.405 Review and preemption of State laws and regulations.

(a) As per current law, no law, regulation, or administrative action of a State or political subdivision thereof, or any decision or order rendered by a court under state law, shall have any effect if such law, regulation, or decision conflicts with, hinders, poses an obstacle to or frustrates the purposes of this regulation or of any approval, disapproval or order issued there under.

(1) Nothing in this part is intended to displace other federal requirements administered by the Environmental Protection Agency, U.S. Department of Justice, U.S. Department of Labor, U.S. Department of Transportation, or other federal agencies.

(2) [Reserved]

(b) State law, regulation or administrative action defined. For purposes of this section, the phrase ''State law, regulation or administrative action'' means any enacted law, promulgated regulation, ordinance, administrative action, order or decision, or common law standard of a State or any of its political subdivisions.

(c) *Submission for review.* Any chemical facility covered by these regulations and any State may petition the Department by submitting a copy of a State law, regulation, or administrative action, or decision or order of a court for review under this section.

(d) *Review and opinion*—(1) *Review.* The Department may review State laws, administrative actions, or opinions or orders of a court under State law and regulations submitted under this section, and may offer an opinion whether the application or enforcement of the State law or regulation would conflict with, hinder, pose an obstacle to or frustrate the purposes of this Part.

(2) *Opinion.* The Department may issue a written opinion on any question regarding preemption. If the question was submitted under subsection (c) of this part, the Assistant Secretary will notify the affected chemical facility and the Attorney General of the subject State of any opinion under this section.

(3) *Consultation with States.* In conducting a review under this section, the Department will seek the views of the State or local jurisdiction whose laws may be affected by the Department's review.

§ 27.410 Third party actions.

(a) Nothing in this Part shall confer upon any person except the Secretary a right of action, in law or equity, for any remedy including, but not limited to, injunctions or damages to enforce any provision of this Part.

(b) An owner or operator of a chemical facility may petition the Assistant Secretary to provide the Department's view in any litigation involving any issues or matters regarding this Part.

APPENDIX A TO PART 27.—DHS CHEMICALS OF INTEREST

Chemical of interest	Chemical Abstract Service (CAS) number	Screening threshold quantity (STQ) (lbs)
1,1,3,3,3-pentafluoro-2-(trifluoromethyl)-1-propene	382–21–8	Any Amount.
1,1-Dimethylhydrazine	57–14–7	11,250.

APPENDIX A TO PART 27.—DHS CHEMICALS OF INTEREST—Continued

Chemical of interest	Chemical Abstract Service (CAS) number	Screening threshold quantity (STQ) (lbs)
1,2-bis(2-chloroethylthio)ethane	3563–36–8	Any Amount.
1,3-bis(2-chloroethylthio)-n-propane	63905–10–2	Any Amount.
1,3-Butadiene	106–99–0	7,500.
1,3-Pentadiene	504–60–9	7,500.
1,4-bis(2-chloroethylthio)-n-butane	142868–93–7	Any Amount.
1,5-bis(2-chloroethylthio)-n-pentane	142868–94–8	Any Amount.
1-Butene	106–98–9	7,500.
1-Chloropropylene	590–21–6	7,500.
1H-Tetrazole	16681–77–9	2,000.
1-Pentane	109–67–1	7,500.
2,2-Dimethylpropane	463–82–1	7,500.
2-Butene	107–01–7	7,500.
2-Butene-cis	590–18–1	7,500.
2-Butene-trans	624–64–6	7,500.
2-chloroethylchloromethylsulfide	2625–76–5	Any Amount.
2-Chloropropylene	557–98–2	7,500.
2-Chlorovinyldichloroarsine	541–25–3	Any Amount.
2-Methyl-1-butene	563–46–2	7,500.
2-Methylpropene	115–11–7	7,500.
2-Pentene, (Z)-	627–20–3	7,500.
2-Pentene,(E)-	646–04–8	7,500.
3,3-dimethyl-2-butanol	464–07–3	Any Amount.
3-Methyl-1-butene	563–45–1	7,500.
3-Quinuclidinyl benzilate (BZ)	62869–69–6	Any Amount.
5-Nitrobenzotriazol	2338–12–7	2,000.
Acetaldehyde	75–07–0	7,500.
Acetone	67–64–1	2,000.
Acetone cyanohydrin, stabilized	75–86–5	2,000.
Acetyl bromide	506–96–7	2,000.
Acetyl chloride	75–36–5	2,000.
Acetyl iodide	507–02–8	2,000.
Acetylene	74–86–2	7,500.
Acrolein	107–02–8	3,750.
Acrylonitrile	107–13–1	15,000.
Acrylyl chloride	814–68–6	3,750.
Allyl alcohol	107–18–6	11,250.
Allylamine	107–11–9	7,500.
Allyltrichlorosilane, stabilized	107–37–9	2,000.
Aluminum bromide, anhydrous	7727–15–3	2,000.
Aluminum chloride, anhydrous	7446–70–0	2,000.
Aluminum phosphide	20859–73–8	2,000.
Ammonia (anhydrous)	7664–41–7	7,500.
Ammonia (conc. 20% or greater)	7664–41–7	15,000.
Ammonium nitrate (nitrogen concentration of 28%–34%)	6484–52–2	2,000.
Ammonium perchlorate	7790–98–9	2,000.
Ammonium picrate	131–74–8	2,000.
Amyltrichlorosilane	107–72–2	2,000.
Antimony pentafluoride	7783–70–2	2,000.
Arsenous trichloride	7784–34–1	Any Amount.
Arsine	7784–42–1	Any Amount.
Barium azide	18810–58–7	2,000.
bis(2-chloroethyl)ethylamine	538–07–8	Any Amount.
bis(2-chloroethyl)methylamine	51–75–2	Any Amount.
bis(2-chloroethyl)sulfide	505–60–2	Any Amount.
bis(2-chloroethylthio)methane	63869–13–6	Any Amount.
bis(2-chloroethylthioethyl)ether	63918–89–8	Any Amount.
bis(2-chloroethylthiomethyl)ether	63918–90–1	Any Amount.
bis(2-chlorovinyl)chloroarsine	40334–69–8	Any Amount.
Boron tribromide	10294–33–4	2,000.
Boron trichloride	10294–34–5	Any Amount.
Boron triflouride	7637–07–2	Any Amount.
Boron triflouride compound with methyl ether (1:1)	353–42–4	11,250.
Bromine	7726–95–6	7,500.
Bromine chloride	13863–41–7	Any Amount.
Bromine pentafluoride	7789–30–2	2,000.
Bromine trifluoride	7787–71–5	2,000.
Bromotrifluorethylene	598–73–2	7,500.
Butane	106–97–8	7,500.
Butene	25167–67–3	7,500.
Butyltrichlorosilane	7521–80–4	2,000.

APPENDIX A TO PART 27.—DHS CHEMICALS OF INTEREST—Continued

Chemical of interest	Chemical Abstract Service (CAS) number	Screening threshold quantity (STQ) (lbs)
Calcium dithionite	15512–36–4	2,000.
Calcium hydrosulfite	15512–36–4	2,000.
Calcium phosphide	1305–99–3	2,000.
Carbon disulfide	75–15–0	15,000.
Carbon monoxide	630–08–0	Any Amount.
Carbon oxysulfide	463–58–1	7,500.
Carbonyl fluoride	353–50–4	Any Amount.
Carbonyl sulfide	463–58–1	Any Amount.
Chlorine	7782–50–5	1,875.
Chlorine dioxide	10049–04–4	2,000.
Chlorine monoxide	7791–21–1	7,500.
Chlorine pentafluoride	13637–63–3	Any Amount.
Chlorine trifluoride	7790–91–2	Any Amount.
Chloroacetyl chloride	79–04–9	2,000.
Chloroform	67–66–3	15,000.
Chloromethyl ether	542–88–1	750.
Chloromethyl methyl ether	107–30–2	3,750.
Chloropicrin	76–06–2	Any Amount.
Chlorosulfonic acid	7790–94–5	2,000.
Chromium oxychloride	7803–51–2	2,000.
Crotonaldehyde	4170–30–3	15,000.
Crotonaldehyde, (E)-	123–73–9	15,000.
Cyanogen	460–19–5	Any Amount.
Cyanogen chloride	506–77–4	Any Amount.
Cyclohexylamine	108–91–8	11,250.
Cyclohexyltrichlorosilane	98–12–4	2,000.
Cyclopropane	75–19–4	7,500.
Cyclotetramethylenetetranitramine	2691–41–0	2,000.
Diazodinitrophenol	87–31–0	2,000.
Diborane	19287–45–7	Any Amount.
Dichlorosilane	4109–96–0	Any Amount.
Diethyl ethylphosphonate	78–38–6	Any Amount.
Diethyl N,N-dimethylphosphoramidate	2404–03–7	Any Amount.
Diethyl phosphate	762–04–9	Any Amount.
Diethyldichlorosilane	1719–53–5	2,000.
Diethyleneglycol dinitrate	693–21–0	2,000.
Difluoroethane	75–37–6	7,500.
Dimethyl ethylphosphonate	6163–75–3	Any Amount.
Dimethyl methylphosphonate	756–79–6	Any Amount.
Dimethyl phosphate	868–85–9	Any Amount.
Dimethylamine	124–40–3	7,500.
Dimethyldichlorosilane	75–78–5	2,000.
Dimethylphosphoramidodichloridate	677–43–0	Any Amount.
Dinitrogen tetroxide	10544–72–6	Any Amount.
Dinitroglycoluril	55510–04–8	2,000.
Dinitrophenol	25550–58–7	2,000.
Dinitroresorcinol	35860–51–6	2,000.
Dinitrosobenzene	25550–55–4	2,000.
Diphenyl-2-hydroxyacetic acid (aka benzilic acid)	76–93–7	Any Amount.
Diphenyldichlorosilane	80–10–4	2,000.
Dipicryl sulfide	2217–06–3	2,000.
Dodecyltrichlorosilane	4484–72–4	2,000.
Epichlorohydrin	106–89–8	15,000.
Ethane	74–84–0	7,500.
Ethyl acetylene	107–00–6	7,500.
Ethyl chloride	75–00–3	7,500.
Ethyl ether	60–29–7	7,500.
Ethyl mercaptan	75–08–1	7,500.
Ethyl nitrite	109–95–5	7,500.
Ethyl phosphonyl dichloride	1066–50–8	Any Amount.
Ethyl phosphonyl difluoride	753–98–0	Any Amount.
Ethylamine	75–04–7	7,500.
Ethyldiethanolamine	139–87–7	Any Amount.
Ethylene	74–85–1	7,500.
Ethylene oxide	75–21–8	Any Amount.
Ethylenediamine	107–15–3	15,000.
Ethyleneimine	151–56–4	7,500.
Ethyltrichlorosilane	115–21–9	2,000.
Fluorine	7782–41–4	Any Amount.
Fluorosulfonic acid	7789–21–1	2,000.

APPENDIX A TO PART 27.—DHS CHEMICALS OF INTEREST—Continued

Chemical of interest	Chemical Abstract Service (CAS) number	Screening threshold quantity (STQ) (lbs)
Formaldehyde (solution)	50–00–0	11,250.
Furan	110–00–9	3,750.
Germane	7782–65–2	Any Amount.
Germanium tetrafluoride	7783–58–6	Any Amount.
Guanyl nitrosaminoguanylidene hydrazine		2,000.
Guanyl nitrosaminoguanyltetrazene	109–27–3	2,000.
Hexaethyl tetraphosphate and compressed gas mixtures	757–58–4	Any Amount.
Hexafluoroacetone	684–16–2	Any Amount.
Hexanitrodiphenylamine	35860–31–2	2,000.
Hexanitrostilbene	20062–22–0	2,000.
Hexolite	121–82–4	2,000.
Hexotonal	107–15–3	2,000.
Hexyltrichlorosilane	928–89–2 6	2,000.
Hydrazine	302–01–2	11,250.
Hydrochloric acid (conc. 37% or greater)	7647–01–0	11,250.
Hydrocyanic acid	74–90–8	1,875.
Hydrogen	1333–74–0	7,500.
Hydrogen bromide, anhydrous	10035–10–6	Any Amount.
Hydrogen chloride (anhydrous)	7647–01–0	Any Amount.
Hydrogen cyanide	74–90–8	Any Amount.
Hydrogen fluoride/Hydrofluoric acid (conc. 50% or greater)	7664–39–3	750.
Hydrogen iodide, anhydrous	10034–85–2	Any Amount.
Hydrogen peroxide (concentration of at least 30%)	7722–84–1	2,000.
Hydrogen selenide	7783–07–5	Any Amount.
Hydrogen sulfide	7783–06–4	Any Amount.
Iodine pentafluoride	7783–66–6	2,000.
Iron, pentacarbonyl-	13463–40–6	1,875.
Isobutane	75–28–5	7,500.
Isobutyronitrile	78–82–0	15,000.
Isopentane	78–78–4	7,500.
Isoprene	78–79–5	7,500.
Isopropyl chloride	75–29–6	7,500.
Isopropyl chloroformate	108–23–6	11,250.
Isopropylamine	75–31–0	7,500.
Lead azide	13424–46–9	2,000.
Lead styphnate	15245–44–0	2,000.
Lithium amide	7782–89–0	2,000.
Lithium nitride	26134–62–3	2,000.
Magnesium aluminum phosphide		2,000.
Magnesium diamide	7803–54–5	2,000.
Magnesium phosphide	12057–74–8	2,000.
Mannitol hexanitrate, wetted	15825–70–4	2,000.
Mercury fulminate	628–86–4	2,000.
Methacrylonitrile	126–98–7	7,500.
Methane	74–82–8	7,500.
Methyl bromide	74–83–9	Any Amount.
Methyl chloride	74–87–3	7,500.
Methyl chloroformate	79–22–1	3,750.
Methyl ether	115–10–6	7,500.
Methyl formate	107–31–3	7,500.
Methyl hydrazine	60–34–4	11,250.
Methyl isocyanate	624–83–9	11,250.
Methyl mercaptan	74–93–1	Any Amount.
Methyl phosphonyl dichloride	676–97–1	Any Amount.
Methyl phosphonyl difluoride	676–99–3	Any Amount.
Methyl thiocyanate	556–64–9	15,000.
Methylamine	74–89–5	7,500.
Methylchlorosilane	993–00–0	Any Amount.
Methyldichlorosilane	75–54–7	2,000.
Methyldiethanolamine	105–59–9	Any Amount.
Methylphenyldichlorosilane	149–74–6	2,000.
Methyltrichlorosilane	75–79–6	2,000.
N,N-diisopropyl-2-aminoethyl chloride hydrochloride	4261–68–1	Any Amount.
N,N-diisopropyl-β-aminoethanol	96–80–0	Any Amount.
N,N-diisopropyl-β-aminoethyl chloride	96–79–7	Any Amount.
Nickel Carbonyl	13463–39–3	750.
Nitric acid	7697–37–2	2,000.
Nitric oxide	10102–43–9	Any Amount.
Nitro urea	556–89–8	2,000.
Nitrocellulose	9004–70–0	2,000.

APPENDIX A TO PART 27.—DHS CHEMICALS OF INTEREST—Continued

Chemical of interest	Chemical Abstract Service (CAS) number	Screening threshold quantity (STQ) (lbs)
Nitrogen trioxide	10544–73–7	Any Amount.
Nitroglycerine	55–63–0	2,000.
Nitroguanidine	556–88–7	2,000.
Nitromethane	75–52–5	2,000.
Nitrostarch	9056–38–6	2,000.
Nitrosyl chloride	2696–92–6	Any Amount.
Nitrotriazolone	932–64–9	2,000.
Nonyltrichlorosilane	5283–67–0	2,000.
o,o-diethyl S-[2-(diethylamino)ethyl] phosphorothiolate	78–53–5	Any Amount.
Octadecyltrichlorosilane	112–04–9	2,000.
Octolite	68610–51–5	2,000.
Octonal	124–13–0	2,000.
Octyltrichlorosilane	5283–66–9	2,000.
o-ethyl-N,N-dimethylphosphoramido-cyanidate	77–81–6	Any Amount.
o-ethyl-o-2-diisopropylaminoethyl methylphosphonite	57856–11–8	Any Amount.
o-ethyl-S-2-diisopropylaminoethyl methyl phosphonothiolate	50782–69–9	Any Amount.
o-isopropyl methylphosphonochloridate	1445–76–7	Any Amount.
o-isopropyl methylphosphonofluoridate	107–44–8	Any Amount.
Oleum (Fuming Sulfuric acid)	8014–95–7	7,500.
o-pinacolyl methylphosphonochloridate	7040–57–5	Any Amount.
o-pinacolyl methylphosphonofluoridate	96–64–0	Any Amount.
Oxygen difluoride	7783–41–7	Any Amount.
Pentaerythrite tetranitrate or PETN	78–11–5	2,000.
Pentane	109–66–0	7,500.
Pentolite	8066–33–9	2,000.
Peracetic acid	79–21–0	7,500.
Perchloromethylmercaptan	594–42–3	7,500.
Perchloryl fluoride	7616–94–6	Any Amount.
Phenyltrichlorosilane	98–13–5	2,000.
Phosgene	75–44–5	Any Amount.
Phosphine	7803–51–2	Any Amount.
Phosphorus	7723–14–0	Any Amount.
Phosphorus oxychloride	10025–87–3	Any Amount.
Phosphorus oxychloride	10025–87–3	2,000.
Phosphorus pentachloride	10026–13–8	Any Amount.
Phosphorus pentachloride	10026–13–8	2,000.
Phosphorus pentasulfide	1314–80–3	2,000.
Phosphorus trichloride	7719–12–2	Any Amount.
Phosphorus trichloride	7719–12–2	2,000.
Piperidine	110–89–4	11,250.
Potassium chlorate	3811–04–9	2,000.
Potassium cyanide	151–50–8	2,000.
Potassium nitrate	7757–79–1	2,000.
Potassium perchlorate	7778–74–7	2,000.
Potassium phosphide	20770–41–6	2,000.
Propadiene	463–49–0	7,500.
Propane	74–98–6	7,500.
Propionitrile	107–12–0	7,500.
Propyl chlorofromate	109–61–5	11,250.
Propylene	115–07–1	7,500.
Propylene oxide	75–56–9	7,500.
Propyleneimine	75–55–8	7,500.
Propyltrichlorosilane	141–57–1	2,000.
Propyne	74–99–7	7,500.
Quinuclidine-3-ol	1619–34–7	Any Amount.
RDX and HMX mixtures	121–82–4	2,000.
Selenium hexafluoride	7783–79–1	Any Amount.
Silane	7803–62–5	7,500.
Silicon tetrachloride	10026–04–7	2,000.
Silicon tetrafluoride	7783–61–1	Any Amount.
Sodium chlorate	7775–09–9	2,000.
Sodium cyanide	143–33–9	2,000.
Sodium dinitro-o-cresolate	25641–53–6	2,000.
Sodium dithionite	7775–14–6	2,000.
Sodium hydrosulfite	7775–14–6	2,000.
Sodium nitrate	7631–99–4	2,000.
Sodium phosphide	7558–80–7	2,000.
Sodium picramate	831–52–7	2,000.
Stibine	7803–52–3	Any Amount.
Strontium phosphide	13450–99–2	2,000.

APPENDIX A TO PART 27.—DHS CHEMICALS OF INTEREST—Continued

Chemical of interest	Chemical Abstract Service (CAS) number	Screening threshold quantity (STQ) (lbs)
Sulfur dichloride	10545–99–0	Any Amount.
Sulfur dioxide (anhydrous)	7446–09–5	Any Amount.
Sulfur monochloride	10025–67–9	Any Amount.
Sulfur tetraflouride	7783–60–0	Any Amount.
Sulfur trioxide	7446–11–9	7,500.
Sulfuryl chloride	7791–25–5	2,000.
Sulfuryl fluoride	2699–79–8	Any Amount.
Tellurium hexafluoride	7783–80–4	Any Amount.
Tetrafluoroethylene	116–14–3	7,500.
Tetramethyllead	75–74–1	7,500.
Tetramethylsilane	75–76–3	7,500.
Tetranitroaniline	53014–37–2	2,000.
Tetranitromethane	509–14–8	7,500.
Tetrazol-1-acetic acid	21732–17–2	2,000.
Thiodiglycol	111–48–8	Any Amount.
Thionyl chloride	7719–09–7	Any Amount.
Thionyl chloride	7719–09–7	2,000.
Titanium tetrachloride	7550–45–0	2,000.
Toluene 2,4-diisocyanate	584–84–9	7,500.
Toluene 2,6-diisocyanate	91–08–7	7,500.
Toluene diisocyanate (unspecified isomer)	26471–62–5	7,500.
Trichlorosilane	10025–78–2	2,000.
Triethanolamine	102–71–6	Any Amount.
Triethanolamine hydrochloride	637–39–8	Any Amount.
Triethyl phosphite	122–52–1	Any Amount.
Trifluoroacetyl chloride	354–32–5	Any Amount.
Trifluorochloroethylene	79–38–9	Any Amount.
Trimethyl phosphite	121–45–9	Any Amount.
Trimethylamine	75–50–3	Any Amount.
Trimethylchlorosilane	75–77–4	2,000.
Trinitroaniline	26952–42–1	2,000.
Trinitroanisole	606–35–9	2,000.
Trinitrobenzene	99–35–4	2,000.
Trinitrobenzenesulfonic acid	2508–19–2	2,000.
Trinitrobenzoic acid	129–66–8	2,000.
Trinitrochlorobenzene	88–88–0	2,000.
Trinitrofluorenone	129–79–3	2,000.
Trinitro-meta-cresol	602–99–3	2,000.
Trinitronaphthalene	558101–17–8	2,000.
Trinitrophenetole	4732–14–3	2,000.
Trinitrophenol	88–89–1	2,000.
Trinitroresorcinol	82–71–3	2,000.
Trinitrotoluene	118–96–7	2,000.
Tris(2-chloroethyl)amine	555–77–1	Any Amount.
Tris(2-chlorovinyl)arsine	40334–70–1	Any Amount.
Tritonal	54413–15–9	2,000.
Tungsten hexafluoride	7783–82–6	Any Amount.
Uranium hexafluoride	7783–81–5	2,000.
Urea	57–13–6	2,000.
Urea nitrate	124–47–0	2,000.
Vinyl acetate monomer	108–05–4	11,250.
Vinyl actylene	689–97–4	7,500.
Vinyl chloride	75–01–4	7,500.
Vinyl ethyl ether	109–92–2	7,500.
Vinyl fluoride	75–02–5	7,500.
Vinyl methyl ether	107–25–5	7,500.
Vinylidene chloride	75–35–4	7,500.
Vinylidene fluoride	75–38–7	7,500.
Vinyltrichlorosilane	75–94–5	2,000.
Zinc dithionite	7779–86–4	2,000.
Zinc hydrosulfite	7779–86–4	2,000.
Zirconium picramate	63868–82–6	2,000.

Dated: April 2, 2007.

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

[FR Doc. E7–6363 Filed 4–6–07; 8:45 am]

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Federal Register

Monday,
April 9, 2007

Part IV

Department of Education

34 CFR Parts 200 and 300

Title I—Improving the Academic Achievement of the Disadvantaged; Individuals With Disabilities Education Act (IDEA); Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 300

RIN 1810–AA98

Title I—Improving the Academic Achievement of the Disadvantaged; Individuals With Disabilities Education Act (IDEA)—Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Elementary and Secondary Education; Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing programs administered under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB) (referred to in these regulations as the Title I program) and the regulations governing programs under Part B of the Individuals with Disabilities Education Act (IDEA) (referred to in these regulations as the IDEA program). These regulations provide States with additional flexibility regarding State, local educational agency (LEA), and school accountability for the achievement of a small group of students with disabilities whose progress is such that, even after receiving appropriate instruction, including special education and related services designed to address the students' individual needs, the students' individualized education program (IEP) teams (IEP Teams) are reasonably certain that the students will not achieve grade-level proficiency within the year covered by the students' IEPs.

DATES: These regulations are effective May 9, 2007.

FOR FURTHER INFORMATION CONTACT: Regarding Part 200, Jacquelyn C. Jackson, Ed.D., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826. Regarding Part 300, Alexa Posny, Ph.D., Director, Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW., Washington, DC 20202–2641. Telephone: (202) 245–7459, Ext. 3.

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 to one of the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations amend regulations in 34 CFR part 200, implementing certain provisions of Title I, Part A of the ESEA, as amended by NCLB, which are designed to help disadvantaged children meet high academic standards. They also amend regulations in 34 CFR part 300, implementing programs for students with disabilities under Part B of the IDEA. On December 15, 2005, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (70 FR 74624).

These regulations build upon flexibility that currently is available under the Title I regulations in 34 CFR part 200 for measuring the achievement of students with the most significant cognitive disabilities. Those Title I regulations permit a State to develop alternate academic achievement standards for students with the most significant cognitive disabilities and to include those students' proficient and advanced scores on alternate assessments based on alternate academic achievement standards in measuring adequate yearly progress (AYP), subject to a cap of 1.0 percent of all students assessed at the State and district levels. Since those regulations were published, the experiences of many States, as well as recent research, indicate that in addition to students with the most significant cognitive disabilities, there is a small group of students whose disability has precluded them from achieving grade-level proficiency and whose progress is such that they will not reach grade-level achievement standards in the same time frame as other students. Currently, these students must take either a grade-level assessment or an alternate assessment based on alternate academic achievement standards. Neither of these options provides an accurate assessment of what these students know and can do. A grade-level assessment is too difficult and, therefore, does not provide data about a student's abilities or information that would be helpful to guide instruction. An alternate assessment based on alternate academic achievement standards is too easy and is not intended to assess a student's achievement across the full range of grade-level content. Such an assessment, therefore, would not provide teachers and parents with information to help these students progress toward grade-level achievement.

These regulations permit States to develop an assessment that is appropriately challenging for this group of students as part of their State accountability and assessment systems under Title I of the ESEA, as amended by NCLB. This assessment is based on modified academic achievement standards that cover grade-level content. The requirement that modified academic achievement standards be aligned with grade-level content standards is important—in order for these students to have an opportunity to achieve at grade level, they must have access to, and instruction in, grade-level content. The regulations include a number of safeguards to ensure that students assessed based on modified academic achievement standards have access to grade-level content so that they can work toward grade-level achievement, such as the requirement that their IEPs include goals that are based on grade-level content standards and provide for monitoring of the students' progress in achieving those goals. In addition to ensuring that students with disabilities are appropriately assessed, these regulations also will give teachers and schools credit for the work that they do with these students to help them progress toward grade-level achievement.

Major Concepts Regarding Modified Academic Achievement Standards in These Regulations

What are modified academic achievement standards? The NPRM described modified academic achievement standards as academic achievement standards aligned with grade-level content standards, but modified in such a manner that they reflect reduced breadth or depth of grade-level content. Based on the comments we received, it was clear that this language was confusing and did not sufficiently convey our intent that only the academic achievement standards for students are to be modified, not the content standards on which those modified academic achievement standards are based. The final regulations make clear that modified academic achievement standards are challenging for eligible students, but are a less rigorous expectation of mastery of grade-level academic content standards. Notably, modified academic achievement standards must be based on a State's grade-level academic content standards for the grade in which an eligible student with disabilities is

enrolled. In other words, a State's academic content standards are not what are modified. The expectations for whether a student has mastered those standards, however, may be less difficult than grade-level academic achievement standards.

The characteristics of modified academic achievement standards are the same as those described in § 200.1(c) of the Title I regulations for grade-level academic achievement standards. That is, they must be aligned with a State's academic content standards, describe at least three levels of achievement, include descriptions of the competencies associated with each achievement level, and include assessment scores (cut scores) that differentiate among the achievement levels. A State must provide a description of the rationale and procedures used to determine each achievement level as part of the Department's peer review of Statewide assessment systems under Title I of the ESEA.

Which students with disabilities are eligible to be assessed based on modified academic achievement standards? The final regulations reflect our intent that students assessed based on modified academic achievement standards are not limited to students with disabilities achieving close to grade level, may be in any of the disability categories listed in the IDEA, and may represent a wide spectrum of abilities. The comments we received indicated that the proposed requirement that a student receive direct instruction in grade-level content in order to be eligible for an alternate assessment based on modified academic achievement standards was mistakenly understood to mean that only students achieving close to grade level could be assessed based on modified academic achievement standards. That was not our intent. We included this requirement because we believe that all students with disabilities, including students assessed based on modified academic achievement standards, should have access to grade-level content. This is consistent with the provisions in the IDEA that focus on ensuring that all students with disabilities have access to the general curriculum (*See,* e.g., section 614(d)(1)(A)(i)(II)(aa) and (IV)(bb)).

However, in order to clarify the policy and limit further misunderstanding, we have removed the requirement that a student receive direct instruction in grade-level content in order to be eligible for an alternate assessment based on modified academic achievement standards from the final regulations and replaced it with a requirement that if the IEPs of these students include goals for a subject assessed under § 200.2, those goals must be based on grade-level content standards. We believe this will help ensure that students have access to grade-level content before they are assessed based on modified academic achievement standards and that they receive instruction in grade-level content after they are assessed based on modified academic achievement standards. Such an approach focuses the IEP Team and the student on grade-level content standards and on the student's current achievement relative to those standards. We believe that instruction in grade-level content is critical to ensure that students who participate in alternate assessments based on modified academic achievement standards are prepared to demonstrate their mastery of grade-level content and can move closer to grade-level achievement. The final regulations intentionally do not prescribe which students with disabilities are eligible to be assessed based on modified academic achievement standards; that is the determination of a student's IEP Team, which includes the student's parents, based on criteria developed by the State as part of the State's guidelines for IEP Teams. Those criteria must include, but are not limited to, the following:

(1) There must be objective evidence demonstrating that the student's disability has precluded the student from achieving grade-level proficiency in the content area assessed. Such evidence may include the student's performance on State assessments or other assessments that can validly document academic achievement;

(2) The student's progress to date in response to appropriate instruction, including special education and related services designed to address the student's individual needs, is such that, even if significant growth occurs, the IEP Team is reasonably certain that the student will not achieve grade-level proficiency within the year covered by the student's IEP. The IEP Team must use multiple valid measures of the student's progress over time in making this determination; and

(3) If the student's IEP includes goals for a subject assessed under § 200.2, those goals must be based on the academic content standards for the grade in which the student is enrolled.

In addition to requiring that the IEP of a student assessed based on modified academic achievement standards include goals that are based on academic content standards, the final regulations include safeguards to ensure that a student assessed based on modified academic achievement standards has the opportunity to learn grade-level content. Specifically, the final regulations in § 200.1(f)(2) require a State to (a) establish and monitor implementation of clear and appropriate guidelines for an IEP Team to apply in developing and implementing the IEP of a student assessed based on modified academic achievement standards; (b) ensure that a student who takes an alternate assessment based on modified academic achievement standards has access to the curriculum, including instruction, for the grade in which the student is enrolled; and (c) ensure that a student who takes an alternate assessment based on modified academic achievement standards is not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma.

To help IEP Teams make appropriate decisions and ensure that students are not inappropriately assessed based on modified academic achievement standards, § 200.1(f)(1)(iii) requires a State to provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards (including any effects of State and local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards). Under § 200.1(f)(1)(iv), a State also must ensure that the parents of a student selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

The assumption underlying these regulations is that many students eligible to be assessed based on modified academic achievement standards are in regular classrooms with children of the same chronological age and are receiving instruction in grade-level curriculum; however, because of these students' disabilities, their IEP Teams are reasonably certain they will not achieve grade-level proficiency within the year covered by their IEPs. In most schools, students assessed based on modified academic achievement standards will represent a small portion of students with disabilities. The final regulations in § 200.13(c)(2)(ii) provide that up to 2.0 percent (approximately 20 percent of students with disabilities) of the proficient and advanced scores from alternate assessments based on modified

academic achievement standards may be included in calculating AYP.

What assessments measure performance based on modified academic achievement standards? Because a student eligible to be assessed based on modified academic achievement standards must have access to a curriculum based on the State's academic content standards for the grade in which the student is enrolled, that student must be assessed with a measure that is also based on those same grade-level academic content standards, although the assessment may be less difficult than the State's regular assessment. An out-of-level assessment cannot be used as an alternate assessment based on modified academic achievement standards because, by definition, an out-of-level assessment does not cover the same content as an assessment based on grade-level academic content standards.

The final regulations in § 200.6(a)(3) make clear that a State may develop a new alternate assessment based on modified academic achievement standards or adapt its general assessment. Consistent with § 200.6(a)(3)(ii), an alternate assessment based on modified academic achievement standards must cover the same grade-level content as the regular assessment. Beyond this essential requirement, a State may employ a variety of strategies to design an alternate assessment based on modified academic achievement standards. For example, it might replace the most difficult items on a State's general assessment with simpler items while retaining coverage of the State's academic content standards or modify the same items that appear on the grade-level assessment by eliminating one of the incorrect answers in a multiple choice test. Alternatively, a State might choose to develop a unique assessment based on grade-level academic content standards that provides flexibility in the presentation of test items, for example, by using technology to allow students to access items via print, spoken, and pictorial form. Or States may permit students to respond to test items by dictating responses or using mathematics manipulatives to illustrate conceptual or procedural knowledge. Regardless of whether a State chooses to construct a unique assessment or to adapt its general assessment, any alternate assessment based on modified academic achievement standards must meet the requirements for high technical quality set forth in §§ 200.2(b) and 200.3(a)(1) (including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards) and be based on modified academic achievement standards that have been developed through a documented and validated standards-setting process that includes broad stakeholder input, consistent with new § 200.1(e)(1)(iv).

Other Provisions Addressed in These Regulations

These regulations also finalize several other provisions under Title I and the IDEA that were proposed in the NPRM, including the following:

Minimum group size. The final Title I regulations in § 200.7(a)(2)(ii) prohibit a State, beginning in the 2007–08 school year, from establishing a different minimum number (group size or ''n size'') of students across the required AYP subgroups for purposes of calculating AYP. This requirement applies to all States, not just those that choose to develop and administer an alternate assessment based on modified academic achievement standards.

Multiple test administrations. With the removal of current § 200.20(c)(3), States will now be permitted to administer their State assessments (including regular and alternate assessments) more than once and include the student's best score in determining AYP.

Guidelines for IEP Teams. Title I requires a State to administer assessments that are valid and reliable for the purposes for which they are used. Accordingly, students, including students with disabilities, who are assessed with assessments that are not valid and reliable are not ''participants'' for purposes of calculating participation rates in determining AYP. The final IDEA regulations that are included in these regulations provide that a State's (or in the case of district-wide assessments, an LEA's) guidelines require each child to be validly assessed and identify, for each assessment, any accommodations that would result in an invalid score. Consistent with Title I, a student with disabilities must receive a valid score in order to be counted as a participant under the IDEA.

The final Title I regulations in § 200.1(f) place responsibility on a State to develop guidelines for IEP Teams and in new § 200.20(c)(3) make clear that, to count a student who is assessed based on alternate or modified academic achievement standards as a participant for purposes of meeting the 95 percent assessment participation requirement, a State must have guidelines for IEP Teams to use to determine appropriately which students should participate in alternate assessments based on alternate or modified academic achievement standards that meet the requirements of these regulations.

Former students with disabilities. The final regulations in § 200.20(f)(2) provide additional flexibility in calculating AYP for the students with disabilities subgroup. Under the final regulations, a State may include, for a period of up to two years, the scores of students who were previously identified with a disability under the IDEA but who no longer receive special education services. A State, however, would not be able to include the scores of former students with disabilities as part of the students with disabilities subgroup in reporting any other information (*e.g.*, participation rates) under Title I.

Assessment of students with disabilities under the IDEA. To ensure a coordinated administration of the IDEA and Title I programs, the final IDEA regulations on assessment in § 300.160, which are included in this regulations package, incorporate provisions regarding modified academic achievement standards that are consistent with the changes to the regulations under Title I of the ESEA. In addition, the final IDEA regulations provide that a State's (or in the case of a district-wide assessment, an LEA's) guidelines must require each child to be validly assessed and must identify, for each assessment, accommodations that would result in an invalid score. Consistent with Title I, these final regulations also provide in § 300.160(f)(1) that a student taking an assessment with an accommodation that invalidates the score would not be reported as a participant under the IDEA. This coordination of the regulations for the IDEA and Title I programs should avoid confusion among parents, teachers, and administrators, and reinforce IDEA's and Title I's shared goal of high expectations and accountability for all students.

Major Changes in the Regulations

The following is a summary of the major substantive changes in these final regulations from the regulations proposed in the NRPM (the rationale for each of these changes is discussed in the *Analysis of Comments and Changes* section elsewhere in this preamble).

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

State Responsibilities for Developing Challenging Academic Standards (§ 200.1(a))

- Section 200.1(a)(1) and (a)(2) have been revised to clarify that the same

academic content standards apply to all public schools and all public school students and that the authority to develop alternate and modified academic achievement standards for eligible students with disabilities does not apply to academic content standards. Proposed paragraph (b)(1)(i) is redundant with these changes and has been removed.

Modified Academic Achievement Standards (§ 200.1(e))

• Section 200.1(e)(1), which defines modified academic achievement standards for a State that chooses to develop such standards, has been revised as follows:

(1) Paragraph (e)(1) of § 200.1, which permits a State to develop modified academic achievement standards for students with disabilities, has been changed by deleting the reference to a documented and validated standards-setting process. The requirement for a State to use a documented and validated standards-setting process has been clarified and expanded in new § 200.1(e)(1)(iv).

(2) Proposed paragraph (e)(1)(i) of § 200.1, which requires modified academic achievement standards to be aligned with a State's academic content standards for the grade in which the student is enrolled, would have permitted modified academic achievement standards to reflect reduced breadth or depth of grade level content. The requirement has been changed by deleting the reference to reduced breadth or depth.

(3) A new paragraph (e)(1)(ii) has been added to § 200.1 to specify that modified academic achievement standards must be challenging for eligible students, but may be less difficult than grade-level academic achievement standards.

(4) Proposed paragraph (e)(1)(ii) of § 200.1, which would have required modified academic achievement standards to provide access to grade-level curriculum, has been removed. This requirement has been incorporated into the requirements for State guidelines in new § 200.1(f)(2)(iii). In addition, we have clarified that grade-level curriculum includes instruction.

(5) A new paragraph (e)(1)(iii) has been added to §00.1 indicating that modified academic achievement standards, like grade-level academic achievement standards, must include at least three achievement levels.

(6) Proposed paragraph (e)(1)(iii) of § 200.1, which would have required that modified academic achievement standards not preclude a student from earning a high school diploma, has been removed. A similar provision has been included in the requirements for State guidelines in new § 200.1(f)(2)(iv).

(7) A new § 200.1(e)(1)(iv) has been added requiring modified academic achievement standards to be developed through a documented and validated standards-setting process that includes broad stakeholder input, including persons knowledgeable about a State's academic content standards and experienced in standards setting and special educators who are most knowledgeable about children with disabilities.

• Section 200.1(e)(2), regarding the criteria for IEP Teams to use in determining whether a student is eligible to be assessed based on modified academic achievement standards, has been revised to make the following changes:

(1) The introduction to § 200.1(e)(2) has been changed to clarify that a State may include criteria, in addition to those listed in paragraphs (e)(2)(i) through (e)(2)(iii), for IEP Teams to use in determining whether a student should be assessed based on modified academic achievement standards.

(2) Paragraph (e)(2)(ii) of § 200.1, regarding the guidelines that a State must establish for IEP Teams, has been changed by (A) removing the requirement that IEP Teams consider a student's progress in response to high-quality instruction and replacing it with a requirement that IEP Teams consider a student's progress to date in response to appropriate instruction; and (B) removing the requirement that IEP Teams determine that a student is not likely to achieve grade-level proficiency within the year covered by the student's IEP, and replacing it with a requirement that IEP Teams be reasonably certain that, even if significant growth occurs, the student will not achieve grade-level proficiency within the year covered by the student's IEP.

(3) A new paragraph (e)(2)(iii) has been added to § 200.1 requiring that if a student assessed based on modified academic achievement standards has an IEP that includes goals for a subject assessed under § 200.2, those goals must be based on the academic content standards for the grade in which the student is enrolled. Proposed § 200.1(e)(2)(iii), which would have required, as an eligibility condition, that a student be receiving instruction in the grade-level curriculum for the subjects in which the student is assessed, has been removed.

• Proposed § 200.1(e)(3), which would have permitted a student assessed based on modified academic achievement standards to be in any of the 13 disability categories listed in the IDEA, has been removed. This provision has been incorporated into the requirements for State guidelines in new § 200.1(f)(1)(ii).

• Proposed § 200.1(e)(4), which would have provided that a student could be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under Title I, has been removed. This provision has been revised and incorporated into the requirements for State guidelines in new § 200.1(f)(1)(i)(B) (proposed § 200.1(f)(1)(ii)).

• Proposed § 200.1(e)(5), which would have required the decision to assess a student based on modified academic achievement standards to be reviewed annually by a student's IEP Team, has been removed. This requirement has been revised and incorporated into the requirements for State guidelines in new § 200.1(f)(2)(v).

State Guidelines (§ 200.1(f))

• Proposed § 200.1(f), regarding the requirements for State guidelines, has been restructured into new paragraphs (f)(1) and (f)(2). New paragraph (f)(1) includes the requirements for State guidelines for students who are assessed based on either alternate or modified academic achievement standards. New paragraph (f)(2) includes additional requirements for State guidelines for students who are assessed based on modified academic achievement standards.

• Proposed § 200.1(f)(1), which would have required a State to establish and ensure implementation of clear and appropriate guidelines for IEP Teams to determine if students are to be assessed based on alternate or modified academic achievement standards, has been expanded to require a State to establish and monitor implementation of clear and appropriate guidelines for IEP Teams. Proposed §§ 200.1(f)(1) and 200.1(f)(1)(i) have been redesignated as new §§ 200.1(f)(1)(i) and 200.1(f)(1)(i)(A), respectively.

• Proposed § 200.1(f)(1)(ii), which requires a State to establish guidelines for IEP Teams to use in determining if students are to be assessed based on modified academic achievement standards, has been revised to clarify that students may be assessed based on modified academic achievement standards in one or more of the subjects tested under Title I. Proposed § 200.1(f)(1)(ii) has been redesignated as new § 200.1(f)(1)(i)(B).

• A new § 200.1(f)(1)(ii) has been added to require a State to inform IEP Teams that students eligible to be

assessed based on alternate or modified academic achievement standards may be from any of the disability categories listed in the IDEA.

• A new § 200.1(f)(1)(iii) has been added to require a State to provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

• Proposed § 200.1(f)(2), which would have required that parents of a student selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards, has been redesignated as § 200.1(f)(1)(iv).

• A new § 200.1(f)(2), regarding requirements for State guidelines for a student who is assessed based on modified academic achievement standards, has been added and includes the following:

(1) New paragraph (f)(2)(i) in § 200.1 requires a State to inform IEP Teams that a student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under Title I.

(2) New paragraph (f)(2)(ii) in § 200.1 requires a State to establish and monitor the implementation of clear and appropriate guidelines for an IEP Team to apply in developing and implementing an IEP for a student who is assessed based on modified academic achievement standards. New paragraph (f)(2)(ii)(A) and (B) requires that the IEP of a student assessed based on modified academic achievement standards include IEP goals that are based on the academic content standards for the grade in which the student is enrolled, and be designed to monitor the student's progress in achieving the student's standards-based goals.

(3) New paragraph (f)(2)(iii) in § 200.1 requires a State to ensure that a student who is assessed based on modified academic achievement standards has access to the curriculum, including instruction, for the grade in which the student is enrolled.

(4) New paragraph (f)(2)(iv) in § 200.1 requires a State to ensure that a student who takes an alternate assessment based on modified academic achievement standards is not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma.

(5) New paragraph (f)(2)(v) in § 200.1 ensures that each IEP Team reviews annually for each subject its decision to assess a student based on modified academic achievement standards.

Inclusion of All Students (§ 200.6)

• Section 200.6(a)(1)(ii)(A) has been revised to clarify that a State must develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students who are tested against academic achievement standards for the grade in which a student is enrolled.

• Section 200.6(a)(2)(iii), which requires a State to document that a student with the most significant cognitive disabilities is, to the maximum extent possible, included in the general curriculum, has been changed by deleting the word ''maximum.''

• Section 200.6(a)(3), regarding alternate assessments based on modified academic achievement standards, has been revised as follows:

(1) The heading in § 200.6(a)(3) has been changed to clarify that an assessment based on modified academic achievement standards is an ''alternate'' assessment.

(2) Section 200.6(a)(3) has been revised by removing the regulatory references to grade-level assessments and alternate assessments.

(3) A new § 200.6(a)(3)(i) has been added to clarify that a State may develop a new alternate assessment or adapt a grade-level assessment to assess a student based on modified academic achievement standards.

(4) A new § 200.6(a)(3)(ii) has been added to include the requirements for alternate assessments based on modified academic achievement standards. Proposed § 200.6(a)(3)(i) through (a)(3)(iv), which included the requirements for alternate assessments based on modified academic achievement standards, has been redesignated as new § 200.6(a)(3)(ii)(A) through (a)(3)(ii)(D).

• Section 200.6(a)(4), regarding the reporting requirements under section 1111(h)(4) of Title I, has been changed by redesignating (A) proposed paragraph (a)(4)(iv), regarding alternate assessments based on grade-level academic achievement standards, as new paragraph (a)(4)(iii); and (B) proposed paragraph (a)(4)(iii), regarding alternate assessments based on modified academic achievement standards, as new paragraph (a)(4)(iv). In addition, ''to the Secretary'' has been added to the introductory sentence in § 200.6(a)(4) to clarify to whom States must report the data collected under section 1111(h)(4) of the Act.

Disaggregation of Data (§ 200.7)

• Section 200.7(a)(ii), providing that a State may not establish a different minimum number of students for separate subgroups, has been revised by clarifying that this provision also applies to the school as a whole. In addition, the final regulations make clear that this provision takes effect for AYP determinations based on 2007–08 assessment data.

Making Adequate Yearly Progress (§ 200.20(f))

• Proposed § 200.20(f)(1), which permits a State to include, for a period of up to two years, the scores of students who were previously identified with a disability in AYP calculations, has been incorporated into current § 200.20(f)(2), which codifies the final regulations on accountability for former limited English proficient (LEP) students published in the **Federal Register** on September 13, 2006 (71 FR 54187).

• Proposed § 200.20(f)(2) has been changed to clarify that if a State includes the scores of former students with disabilities in calculating AYP, it must include the scores of all such students. Proposed § 200.20(f)(2) has been incorporated into new § 200.20(f)(2)(ii).

Transition Provision Regarding Modified Academic Achievement Standards (§ 200.20(g))

• A new § 200.20(g) has been added to make explicit that the Secretary may provide States flexibility in accounting for the achievement of some students with disabilities in AYP determinations that are based on assessments administered in 2007–08 and 2008–09. States must demonstrate, for each year for which flexibility is available, that they are expeditiously moving to adopt and administer assessments based on modified academic achievement standards consistent with these regulations and meet other criteria, as the Secretary determines appropriate, in order to be considered for this flexibility.

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILTIES

Participation in Assessments (§ 300.160)

• Section 300.160(b)(2), regarding accommodation guidelines that a State must develop, has been revised to clarify that the State guidelines must (A) identify the accommodations for each assessment that do not invalidate the score; and (B) instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

• Proposed § 300.160(c), which would have required a State that has adopted modified academic achievement standards to have guidelines for the participation of students with disabilities in assessments based on those standards, has been removed. With the clarification in § 200.6(a)(3) that assessments based on modified academic achievement standards are alternate assessments, proposed § 300.160(c) is redundant with new § 300.160(c) (proposed § 300.160(d)).

• Proposed § 300.160(d)(1), which requires a State (or in the case of a district-wide assessment, an LEA) to develop and implement alternate assessments and guidelines for children who cannot participate in regular assessments, even with accommodations, has been redesignated as new § 300.160(c)(1).

• Proposed § 300.160(d)(2)(ii), which would have required a State to measure the achievement of children based on alternate academic achievement standards if a State has adopted those standards, has been changed by replacing ''alternate academic achievement standards'' with ''modified academic achievement standards,'' and clarifying that modified academic achievement standards are permitted for children who meet the State's criteria under § 200.1(e)(2). Proposed § 300.160(d)(2)(ii) has been redesignated as § 300.160(c)(2)(ii).

• A new § 300.160(c)(2)(iii) has been added, providing that, if a State has adopted alternate academic achievement standards, the State must measure the achievement of children with the most significant cognitive disabilities against those standards.

• A new paragraph (d) has been added, requiring a State to provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

• A new paragraph (e) has been added, requiring a State to ensure that parents of a student selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

• Proposed § 300.160(e), regarding reports on the assessment of students with disabilities, has been redesignated as § 300.160(f) and changed as follows:

(1) Proposed paragraph (e)(1) in § 300.160, which requires a State to report on the number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations that did not result in an invalid score, has been redesignated as § 300.160(f)(1).

(2) Proposed paragraph (e)(2) in § 300.160 has been redesignated as § 300.160(f)(2) and revised to require a State to report on the number of children participating in alternate assessments based on grade-level academic achievement standards.

(3) Proposed paragraph (e)(3) in § 300.160, which requires a State to report on the number of children with disabilities who are assessed based on alternate academic achievement standards, has been changed to require a State to report on the number of children with disabilities, if any, who are assessed based on modified academic achievement standards. The regulatory reference to alternate assessments based on alternate academic achievement standards has been deleted and proposed § 300.160(e)(3) has been redesignated as § 300.160(f)(3).

(4) Proposed paragraph (e)(4) in § 300.160, which requires a State to report on the number of children with disabilities who are assessed based on modified academic achievement standards, has been changed to require a State to report on the number of children with disabilities, if any, who are assessed based on alternate academic achievement standards. The regulatory reference to modified academic achievement standards has been deleted and proposed § 300.160(e)(4) has been redesignated as § 300.160(f)(4).

(5) Proposed paragraph (e)(5) in § 300.160, which required a State to report on the performance results of children with disabilities on regular assessments and on alternate assessments, has been clarified by specifically identifying alternate assessments based on grade-level academic achievement standards; alternate assessments based on modified academic achievement standards; and alternate assessments based on alternate academic achievement standards. It also has been revised to require that performance results for children with disabilities be compared to the achievement of all students, including children with disabilities. Proposed § 300.160(e)(5) has been redesignated as § 300.160(f)(5).

• Proposed § 300.160(f), regarding universal design, has been redesignated as § 300.160(g).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, more than 300 parties submitted comments on the proposed regulations, many of which were substantially similar. An analysis of the comments and changes in the regulations since publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical or minor changes, and suggested changes that we are not authorized to make under the law. We also do not address comments on Title I or IDEA regulations that were not part of the NPRM published on December 15, 2005 (70 FR 74624), such as comments concerning the regulations regarding alternate academic achievement standards.

Interim Flexibility

Comment: Several commenters made recommendations regarding the Department's interim flexibility, which gave eligible States the flexibility to provide credit to schools or districts that missed AYP solely because of the achievement of the students with disabilities subgroup. Some commenters opposed this flexibility; most others suggested extending the flexibility until the final regulations on modified academic achievement standards are in effect or until States have had time to develop modified academic achievement standards and aligned alternate assessments. One commenter recommended that the interim flexibility be made permanent instead of the Department regulating to permit States to establish modified academic achievement standards. Finally, one commenter stated that offering interim flexibility prior to rulemaking violated

Title I negotiated rulemaking requirements.

Discussion: The Department permitted States that expressed interest in developing modified academic achievement standards and assessments based on those standards to take advantage of interim flexibility while the Department drafted the proposed regulations. This flexibility was granted for the 2004–05 school year and then extended for a second year (2005–06) to cover the period of time when members of the public were commenting on the proposed regulations and while the Department developed the final regulations. The interim flexibility will be extended for the 2006–07 school year for States that can show evidence of a commitment to develop modified academic achievement standards.

We believe that the flexibility to develop modified academic achievement standards provides a means to assess appropriately some students with disabilities and include them in State accountability systems. Therefore, we do not believe the interim flexibility should be used in lieu of setting modified academic achievement standards, as recommended by one commenter.

We do not believe that offering interim flexibility prior to rulemaking violated negotiated rulemaking requirements. We understand the statutory requirements for negotiated rulemaking in section 1901 of the ESEA to apply to Title I standards and assessment regulations required to be implemented within one year of enactment of NCLB, not to subsequent regulatory amendments such as those included in these regulations.

The Department recognizes that some States may need time beyond the 2006–07 school year to develop and implement alternate assessments based on modified academic achievement standards. Therefore, we are adding a new § 200.20(g) providing that the Secretary may give flexibility for two additional years (through the 2008–09 school year) to States that are developing alternate assessments based on modified academic achievement standards consistent with these regulations.

Changes: We have added a new § 200.20(g) specifying that the Secretary may provide a State that is moving expeditiously to adopt and administer alternate assessments based on modified academic achievement standards flexibility in accounting for the achievement of students with disabilities in AYP determinations that are based on assessments administered in school years 2007–08 and 2008–09. To be eligible for this flexibility, a State must meet criteria, as the Secretary determines appropriate, for each year for which the flexibility is available.

State Responsibilities for Developing Challenging Academic Standards (§ 200.1)

Comment: A few commenters recommended revising § 200.1(a)(1) to clarify when the regulation applies to academic content standards versus academic achievement standards. The commenters noted that the authority to develop modified and alternate academic achievement standards appears erroneously also to apply to academic content standards.

Discussion: We agree that the regulation in § 200.1(a)(1) should be more specific when referring to academic standards. Therefore, we have clarified that the same academic content standards apply to all public schools and all public school students in a State and that the authority to develop alternate academic achievement standards in paragraph (d) and modified academic achievement standards in paragraph (e) for eligible students with disabilities does not apply to academic content standards. We also have modified paragraph (a)(2) to be consistent with these changes. Section 200.1(b)(1)(i) is redundant with these changes and has been removed.

Changes: We have made the following changes in § 200.1(a)(1): (1) Added ''content and academic achievement'' before ''standards'; and (2) added ''which apply only to the State's academic achievement standards'' at the end of the sentence in paragraph (a)(1). Consistent with these changes, we have revised paragraph (a)(2) to read, ''Include the same knowledge and skills expected of all students and the same levels of achievement of all students, except as provided in paragraphs (d) and (e) of this section.'' We have removed § 200.1(b)(1)(i).

Modified Academic Achievement Standards (§ 200.1(e))

Comment: Several commenters recommended that the regulations provide more detail on the essential components of the documented and validated standards-setting process required in § 200.1(e)(1). These commenters stated that the process should include broad stakeholder input. One commenter requested that the regulations require a State to explain to the public how it proposes to change its content standards to coincide with modified academic achievement standards. A few commenters requested that the regulations specify the persons who should define the standards and participate in the standards-setting process, and include information about how parents and specialists should be involved.

Discussion: We do not believe that it is necessary to include the details of a validated standards-setting process in these regulations because the field generally agrees that the process should be consistent with the standards for educational and psychological testing (1999).[1] This process relies on both empirical data and the informed judgments of persons familiar with academic content as well as with the students with disabilities to be assessed. We agree with the commenters that the development of achievement standards typically benefits from broad stakeholder involvement to ensure consensus regarding the knowledge and skills essential for all students and have clarified this in the regulations. In response to the request to define who should be involved in the standards-setting process for modified academic achievement standards, we believe that the process should include persons who are knowledgeable about the State's academic content standards and experienced in standards setting, as well as special educators who are most knowledgeable about the academic abilities and achievement of students with disabilities, and we have added clarifying language in the regulations. We decline to comment on how parents and specialists should be involved in the process. These determinations are best left to State and local officials.

With regard to the commenter who requested that the regulations require a State to explain to the public how it proposes to change its content standards to coincide with modified academic achievement standards, we note that a State that intends to develop modified academic achievement standards consistent with these regulations would not propose to change its academic content standards. As required in § 200.1(e)(1), modified academic achievement standards must be aligned with the State's academic content standards.

Changes: We have removed the phrase ''through a documented and validated standards-setting process'' in proposed § 200.1(e)(1) and have added a new § 200.1(e)(1)(iv) to require that modified academic achievement standards be developed through a

[1] AERA, APA, & NCME. (1999). (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education) Joint Committee on Standards for Educational and Psychological Testing. Standards for educational and psychological testing. Washington, DC: AERA.

documented and validated standards-setting process that includes broad stakeholder input, including persons knowledgeable about the State's academic content standards and experienced in standards setting and special educators who are most knowledgeable about children with disabilities.

Comment: A number of commenters disagreed with the requirement in § 200.1(e)(1)(i) that modified academic achievement standards be aligned with the State's academic content standards for the grade in which the student is enrolled. Several commenters stated that this requirement excludes students who need to be assessed against a truly modified set of learning standards. These commenters argued that modified academic achievement standards should be for students with learning goals that are substantively different from the general education standards, but not as different as the learning goals for students with the most significant cognitive disabilities who are assessed based on alternate academic achievement standards.

Several commenters stated that modified academic achievement standards should focus on the individual needs of a student with disabilities and be aligned with standards that are appropriate for the student's instructional level, not grade level. A few commenters stated that the criteria for modified academic achievement standards are too prescriptive and that States should have the flexibility to develop modified academic achievement standards in ways that meet their needs.

Discussion: We disagree with the commenters. Modified academic achievement standards are intended for a small group of students who, by virtue of their disability, are not likely to meet grade-level academic achievement standards in the year covered by their IEPs even with appropriate instruction. These students need the benefit of access to instruction in grade-level content so that they can move closer to grade-level achievement. We believe that allowing modified academic achievement standards to focus on something other than grade-level content standards (e.g., allowing them to be based on a student's instructional level) would lower expectations and limit opportunities for these students to access grade-level content and meet grade-level achievement standards. We also believe that allowing States to develop modified academic achievement standards without placing any parameters or restrictions on their use would likely result in lowered expectations.

Changes: None.

Comment: Many commenters requested specific guidance on how a State could appropriately reduce the breadth or depth of grade-level standards, as proposed in § 200.1(e)(1)(i). One commenter requested that the regulations clarify that reducing breadth or depth would permit the assessment of prerequisite skills that are needed to master grade-level content standards.

Discussion: Modified academic achievement standards are intended to be challenging for a small group of students whose disability has thus far prevented them from attaining grade-level proficiency. However, while the modified academic achievement standards may be less demanding than grade-level academic achievement standards, these students must have access to a curriculum based on grade-level content standards so that they can move closer to grade-level achievement. This means that an alternate assessment based on modified academic achievement standards must cover the same grade-level content, but may include less difficult questions overall.

We agree that the phrase ''breadth or depth'' in the context of developing modified academic achievement standards is not clear and does not sufficiently convey that only the academic achievement standards for students, not the content on which they are assessed, are to be modified. In addition, the terms ''breadth'' and ''depth'' are descriptive, rather than technical, and do not have consistent meanings for the different stakeholders involved in developing and using student assessments. Therefore, we have removed the reference to reduced breadth or depth from § 200.1(e)(1)(i). Section 200.1(e)(1)(i) continues to require modified academic achievement standards to be aligned with the State's academic content standards for the grade in which the student is enrolled. We have added a new paragraph (e)(1)(ii) clarifying that modified academic achievement standards must be challenging for eligible students, but may be less difficult than grade-level academic achievement standards. Consistent with section 1111(b)(1)(D)(i) of the ESEA, we also have clarified that modified academic achievement standards must include at least three achievement levels.

Changes: The phrase ''reflect reduced breadth or depth of grade level content'' has been removed from § 200.1(e)(1)(i). A new § 200.1(e)(1)(ii) has been added specifying that modified academic achievement standards must be challenging for eligible students, but may be less difficult than grade-level academic achievement standards. We also have added a new § 200.1(e)(1)(iii) to require modified academic achievement standards to include at least three achievement levels.

Comment: One commenter stated that modified academic achievement standards should be designed to allow a student, over time, to reach grade-level academic achievement standards. Many commenters stated that the regulations should include protections so that the regulations do not result in lowered expectations for students with disabilities.

Discussion: We added a number of safeguards to the safeguards that were already included in the proposed regulations to ensure that a student with disabilities who is assessed based on modified academic achievement standards has access to grade-level content so that the student has the opportunity, over time, to reach grade-level academic achievement standards. The safeguards for students that are included in these final regulations include the following: § 200.1(e)(1)(i) requires that modified academic achievement standards be aligned with a State's academic content standards for the grade in which a student is enrolled; new § 200.1(e)(2)(iii) requires that a student's IEP include goals that are based on the academic content standards for the grade in which the student is enrolled and be designed to monitor a student's progress in achieving the student's standards-based goals; new § 200.1(f)(2)(ii) requires a State to establish and monitor implementation of clear and appropriate guidelines for an IEP Team to apply in developing and implementing the IEP of a student assessed based on modified academic achievement standards; new § 200.1(f)(2)(iii) requires that a State's guidelines for IEP Teams ensure that a student who is assessed based on modified academic achievement standards has access to the curriculum, including instruction, for the grade in which the student is enrolled; and new § 200.1(f)(2)(iv) requires a State to ensure that a student who takes an alternate assessment based on modified academic achievement standards is not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma.

Changes: None.

Comment: We received several comments regarding proposed § 200.1(e)(1)(iii), which requires that modified academic achievement standards not preclude a student from

earning a regular high school diploma. Several commenters stated that it would be an intrusion into State graduation standards if a State was required to diminish its standards for a regular diploma to include students who are assessed on modified academic achievement standards.

Discussion: The intent of proposed § 200.1(e)(1)(iii) was not to require States to alter their graduation requirements or to provide a regular high school diploma to a student who scores proficient on an alternate assessment based on modified academic achievement standards. Rather, we wanted to ensure that a student is not automatically precluded from attempting to earn a regular high school diploma simply because the student was assessed based on modified academic achievement standards. For example, if a State requires students to pass a State graduation test in order to obtain a regular high school diploma, we did not want the fact that a student was assessed based on modified academic achievement standards to automatically prevent the student from attempting to pass the State's graduation test.

An important requirement for modified academic achievement standards is that they be aligned with the State's grade-level academic content standards and provide access to grade-level curriculum. Therefore, we believe it is reasonable that students assessed based on modified academic achievement standards have the opportunity to attempt to earn a regular high school diploma. We recognize that proposed § 200.1(e)(1)(iii) could be misconstrued and, therefore, have changed the language to make clear that States may not prevent a student from attempting to complete the requirements, as defined by the State, for a regular high school diploma simply because the student participates in an alternate assessment based on modified academic achievement standards.

Changes: Proposed § 200.1(e)(1)(iii) has been removed. A new § 200.1(f)(2)(iv) has been added to require a State to ensure that students who take alternate assessments based on modified academic achievement standards are not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma.

Comment: Many commenters requested additional guidance on the development of modified academic achievement standards. A few commenters requested guidance on addressing the technical issues regarding the development of modified academic achievement standards.

Discussion: The Department recognizes the need to provide States with additional guidance on the development and implementation of modified academic achievement standards and will provide nonregulatory guidance, along with technical assistance and support to States on modified academic achievement standards following the release of these final regulations.

Changes: None.

Criteria for Defining Eligible Students (§ 200.1(e)(2))

Comment: Several commenters recommended that the regulations clearly state that a student's IEP Team is responsible for determining whether the student should be assessed based on modified academic achievement standards. One commenter added that LEAs should not be able to unilaterally change an IEP Team's decision. Many commenters recommended requiring that parents be included in this decision and informed in writing of any potential consequences of such decisions. Several commenters stated that the information should be provided to parents in the parent's native language and in language that is easily understandable.

Discussion: We agree that it would be helpful to clarify that the State guidelines are for IEP Teams to use in determining which students with disabilities are eligible to be assessed based on modified academic achievement standards and have made this change in § 200.1(e)(2) and (e)(2)(ii)(A). Consistent with § 200.1(f)(1)(i), States have an important role in providing clear and appropriate guidelines for IEP Teams to use in determining who will be assessed based on modified academic achievement standards and in monitoring the implementation of these guidelines by IEP Teams. We also agree that an LEA cannot unilaterally change an IEP Team's decision regarding whether a child will be assessed based on modified academic achievement standards. Section 300.320(a)(6), consistent with section 614(d)(1)(A)(i)(VI) of the IDEA, already provides that it is the child's IEP Team, not the LEA, that is responsible for determining how the child will participate in State and district-wide assessments.

We do not believe it is necessary to add language to the Title I regulations ensuring that parents are included in decisions regarding whether their child will be assessed based on modified academic achievement standards. The IDEA regulations already require public agencies to include parents of children with disabilities in decisions regarding their child's special education, including how the child will participate in State and district-wide assessments. Section 300.321(a) of the IDEA regulations requires public agencies to include parents of children with disabilities as members of the IEP Team. If a child's parent and the other members of the child's IEP Team determine that the child will take an alternate assessment based on alternate or modified academic achievement standards, § 300.320(a)(6)(i), consistent with section 614(d)(1)(A)(i)(VI) of the IDEA, requires that the child's IEP include a statement of why the particular assessment is appropriate for the child.

We agree with the commenters that it is important for parents to be informed of any effects on their child's education that may result from the child participating in an alternate assessment based on modified or alternate academic achievement standards. In addition to parents, we believe it is important for all IEP Team members to have knowledge about modified or alternate academic achievement standards and any effects that may result from a child participating in such assessments. Therefore, we have added language to require States to provide IEP Teams, which include the parent, with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards, such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma.

We do not believe, however, that it is necessary to require States to inform a parent in writing, in addition to the IEP process, that his or her child will not be assessed based on the same academic achievement standards as other children. Parents are integral members of the IEP Team and participate in the decision regarding the type of assessment in which their child will participate. We expect that, in the course of determining the appropriate assessment in which a student will participate, there will be a discussion of how alternate or modified academic achievement standards differ from grade-level academic achievement standards and any possible

consequences of participating in alternate assessments based on those standards.

Finally, we do not believe it is necessary to add language to the Title I regulations requiring public agencies to provide explanations to parents in the parent's native language and in language that is easily understandable, as suggested by the commenters. Section 300.322(e) of the IDEA regulations already requires public agencies to take whatever action is necessary to ensure that parents understand the proceedings of IEP Team meetings, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Changes: We have changed § 200.1(e)(2) to require that the guidelines that a State establishes under § 200.1(f)(1) include criteria for IEP Teams to use in determining which students with disabilities are eligible to be assessed based on modified academic achievement standards. We also have rewritten paragraph (e)(2)(ii)(A) to state that the IEP Team must be ''reasonably certain'' that the student will not achieve grade-level proficiency within the year covered by the student's IEP, ''even if significant growth occurs.''

We have added a new paragraph (f)(1)(iii) to require the State guidelines for IEP Teams to provide a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effect of State and local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

We also have reorganized paragraph (f) regarding State guidelines into two paragraphs: paragraph (f)(1) lists the requirements for students who are assessed based on either alternate or modified academic achievement standards; and paragraph (f)(2) lists additional requirements for students who are assessed based on modified academic achievement standards. With this reorganization, proposed § 200.1(e)(3), has been redesignated as new § 200.1(f)(1)(ii); proposed § 200.1(e)(5) has been rewritten and redesignated as § 200.1(f)(2)(v); and proposed § 200.1(e)(1)(ii) has been rewritten and redesignated as § 200.1(f)(2)(iii).

Comment: Several commenters stated that determining whether a student's disability has precluded the student from achieving grade-level proficiency should not be based solely on a student's performance on State assessments because State assessments may not allow the accommodations a student needs to demonstrate what the student knows and can do. The commenters recommended changing the ''or'' between paragraphs (e)(2)(i)(A) and (e)(2)(i)(B) in § 200.1 to ''and.''

Discussion: We do not believe that the determination of a student's progress always must include consideration of a student's performance on State assessments and, therefore, decline to make the change requested by the commenters. Other objective assessments may be necessary, for example, for students who are new to the State or for younger students who have not yet taken a State assessment. What is important is that the IEP Team consider multiple measurements over a period of time that are valid for the subjects being assessed, as specified in § 200.1(e)(2)(ii)(B). These measures may include evidence from a State assessment or other assessments that can validly document the student's achievement.

Changes: None.

Comment: Several commenters requested a definition of ''high-quality instruction,'' as used in proposed § 200.1(e)(2)(ii)(A), stating that, without a definition, the requirement that IEP Teams consider the student's response to high-quality instruction in determining whether the student should be assessed based on modified academic achievement standards is not meaningful. One commenter stated that the proposed regulation assumes that students with disabilities receive high-quality instruction, but stated that this is not always the case.

Discussion: The purpose of § 200.1(e)(2)(ii)(A) is to ensure that students are not identified for an alternate assessment based on modified academic achievement standards if they have not been receiving high-quality instruction and services. We agree that it is difficult to establish objective standards that could be used to determine whether this criterion has been met and will, therefore, remove this requirement. However, we continue to believe that safeguards are needed to ensure that IEP Teams consider whether a student has had an opportunity to learn grade-level content before determining that the student should be assessed based on modified academic achievement standards.

Under § 300.306(b) of the IDEA regulations, a student may not be determined to be eligible for special education and related services if the determinant factor is lack of appropriate instruction in reading or mathematics. Schools use current, data-based evidence to examine whether a student responds to appropriate instruction before determining that the student needs special education and related services. State and local officials are responsible for determining what constitutes appropriate instruction. (*See* 71 FR 46646 (Aug. 14, 2006).) State and local officials, therefore, have experience and knowledge in making judgments about the instruction that a student has received and whether it has been appropriate. Accordingly, we have changed the language in § 200.1(e)(2)(ii)(A) to ensure that students are not identified for an alternate assessment based on modified academic achievement standards if they have not been receiving appropriate instruction.

Changes: We have replaced ''high-quality instruction'' with ''appropriate instruction'' in § 200.1(e)(2)(ii)(A). We also have added ''to date'' following ''progress'' for clarity.

Comment: Several commenters recommended requiring instruction by highly qualified teachers, as defined in the ESEA and the IDEA, before determining that a student should be assessed based on modified academic achievement standards.

Discussion: Both the ESEA and the IDEA already require teachers to meet the highly qualified teacher standards and we do not believe it is necessary to reiterate this requirement in these regulations. Furthermore, while we expect that the vast majority of students will receive instruction from highly qualified teachers, we do not want a student who may not have received instruction from a highly qualified teacher in the past to be precluded from being assessed based on modified academic achievement standards if that alternate assessment is most appropriate for that student.

Changes: None.

Comment: One commenter asked if the number of years a student with disabilities' performance was below grade level could be used to identify the student as eligible to be assessed based on modified academic achievement standards.

Discussion: Section 200.1(e)(2)(ii) requires a student's IEP Team to consider the student's progress to date in response to appropriate instruction and to be reasonably certain that, even if significant growth occurs, the student will not achieve grade-level proficiency within the year covered by the student's IEP. Data documenting that a student

has been performing below grade level for a number of years could be one factor in determining if a student should be assessed based on modified academic achievement standards.

Changes: None.

Comment: One commenter requested examples of multiple measures over time that may be used to determine a student's progress under § 200.1(e)(2)(ii)(B). Another commenter asked whether States are required to use response to intervention procedures to demonstrate student progress over a period of time.

Discussion: In order to determine whether a student may be eligible for an alternate assessment based on modified academic achievement standards, an IEP Team may examine results from a variety of measures that indicate a student's progress over time. These may be either criterion-referenced tests (i.e., tests that assess skill mastery and compare a student's performance to curricular standards, such as State and district-wide tests) or norm-referenced tests (i.e., tests that compare a student's performance to that of students of the same age or grade). The format of the multiple measures may include performance assessments (i.e., an assessment that focuses on specific objectives and enables the student to actively demonstrate knowledge and understanding, such as direct writing and math assessments); portfolio assessments (i.e., a collection of student work samples); curriculum-based measures (i.e., repeated measures from the student's curriculum that assess the specific skills being taught in the classroom and the effectiveness of instruction and instructional changes); and teacher-developed assessments (i.e., assessments developed by individual teachers for use in their own classrooms).

Section 200.1(e)(2)(ii)(B) does not require States to use response to intervention procedures; nor does it specify the procedures or measures that must be used to determine a student's progress over time. We believe that IEP Teams should have as much flexibility as possible to use objective data to determine whether a student is eligible for an alternate assessment based on modified academic achievement standards. The purpose of § 200.1(e)(2)(ii)(B) is to clarify that IEP Teams must not rely on a single measure to determine whether it is appropriate to assess a student based on modified academic achievement standards. So long as the measures are objective and valid for the subjects being assessed, they may be used to determine whether a student is making progress.

Changes: None.

Comment: Several commenters supported the proposed requirement that a student be receiving instruction in grade-level content in order to be assessed based on modified academic achievement standards and asked what documentation would be required to ensure that students with disabilities have the opportunity to learn grade-level content. Other commenters stated that the proposed regulations did not address the broad continuum of cognitive functioning and, instead, focused on the wrong group of students. Many commenters stated that modified academic achievement standards should be for students who are closer in achievement to students with the most significant cognitive disabilities rather than students who are close to grade-level achievement.

Discussion: The requirement that a student be receiving grade-level instruction was intended to ensure that students identified to be assessed based on modified academic achievement standards have access to grade-level content. We did not want students to be assessed based on modified academic achievement standards merely because they did not have access to grade-level content or solely because their achievement was one or two grades below their enrolled grade. However, based on the comments we received, we believe this requirement was misinterpreted to mean that only students achieving close to grade level could potentially be assessed based on modified academic achievement standards. That was not our intent. Rather, we anticipated that students assessed based on modified academic achievement standards could include students from any of the disability categories under the IDEA and represent a fairly wide spectrum of abilities. Therefore, we have removed the requirement in § 200.1(e)(2)(iii) that students identified to be assessed based on modified academic achievement standards be receiving grade-level instruction.

However, we continue to believe that it is critical to ensure that students who participate in an alternate assessment based on modified academic achievement standards receive instruction in grade-level content so that they are prepared to demonstrate their mastery of grade-level content on an alternate assessment based on modified academic achievement standards and can move closer to grade-level achievement. One way to help ensure that students have access to grade-level content before they are assessed based on modified academic achievement standards, and receive instruction in grade-level content after they are assessed based on modified academic achievement standards, is to require IEP Teams to include goals that are based on grade-level content standards in the IEPs of these students. Such an approach focuses the IEP Team and the student on grade-level content and the student's achievement level relative to those content standards. Therefore, we have added a requirement that the IEP of a student to be assessed based on modified academic achievement standards include goals that are based on the academic content standards for the grade in which the student is enrolled and that the IEP be designed to monitor a student's progress in achieving the student's standards-based goals. To further emphasize the importance of ensuring that students who participate in an alternate assessment based on modified academic achievement standards receive instruction in grade-level content, we also make clear in new § 200.1(f)(2)(iii) that States must ensure that these students have access to the curriculum, including instruction, for the grade in which the student is enrolled.

Incorporating State content standards in IEP goals is not a new idea. Because the reauthorization of IDEA in 1997 required States to provide students with disabilities access to the general curriculum, the field has been working toward incorporating State standards in IEP goals. Some States already require IEP Teams to select the grade-level content standards that the student has not yet mastered and to develop goals on the basis of the skills and knowledge that the student needs to acquire in order to meet those standards. In addition, some States have developed extensive training materials and professional development opportunities for staff to learn how to write IEP goals that are tied to State standards.[2]

We appreciate that States that have not moved in this direction may need technical assistance and support to institute this change for students who are assessed based on modified academic achievement standards. The Department's Office of Special Education Programs (OSEP) is preparing such technical assistance, which will be disseminated and available upon publication of these final regulations.

[2] Ahearn, E. (2006). *Standards-based IEPs: Implementation in Selected States.* National Association of State Directors of Special Education, 1800 Diagonal Road, Suite 320, Alexandria, VA 22314.

We believe that requiring IEP Teams to incorporate grade-level content standards in the IEP of a student who is assessed based on modified academic achievement standards and to monitor the student's progress in achieving the standards-based goals will focus IEP Teams on identifying the educational supports and services that the student needs to reach those standards. This will align the student's instruction with the general education curriculum and the assessment that the IEP Team determines is most appropriate for the student.

Changes: We have removed the requirement in § 200.1(e)(2)(iii) that a student be receiving grade-level instruction in order to be assessed based on modified academic achievement standards, and replaced it with a requirement that, if a student identified for an alternate assessment based on modified academic achievement standards has an IEP that includes goals for a subject assessed under § 200.2, those goals must be based on the content standards for the grade in which the student is enrolled. We have added ''the'' before ''curriculum'' and ''including instruction,'' before ''for the grade in which the students are enrolled'' in § 200.1(f)(2)(iii). For consistency with these changes, we have added this requirement as new § 200.1(f)(2)(ii)(A) to the list of requirements for States to include in their guidelines for IEP Teams. We also have added § 200.1(f)(2)(ii)(B) to require that a student's IEP be designed to monitor the student's progress in achieving the standards-based goals.

Comment: Some commenters stated that requiring a student to be receiving instruction in grade-level content in order to be assessed based on modified academic achievement standards would encourage social promotion or retention.

Discussion: As noted above, we removed the requirement that a student be receiving instruction in grade-level content in order to be assessed based on modified academic achievement standards because it was misinterpreted to mean that only students achieving close to grade-level could potentially be assessed based on modified academic achievement standards. However, we continue to believe that it is critical to ensure that students who participate in an alternate assessment based on modified academic achievement standards receive instruction in grade-level content. We believe that students who are not exposed to grade-level content will not learn the content, which will delay their learning and increase the likelihood of being retained or socially promoted.

Changes: None.

Comment: One commenter stated that another alternate assessment is needed for students with mild cognitive impairments. Several commenters stated that, because a student's performance would not be based on grade-level academic achievement standards, the requirements for participation in an alternate assessment based on modified academic achievement standards should be stricter to ensure that students are not inappropriately assessed.

Discussion: We do not believe that another alternate assessment is needed for students with mild cognitive disabilities. These final regulations give States the flexibility to develop and implement modified academic achievement standards in ways that fit within their existing assessment systems, while ensuring that students with disabilities are not inappropriately assessed based on modified academic achievement standards. We believe that the criteria for modified academic achievement standards in § 200.1(e), along with the safeguards provided by the requirements for State guidelines in § 200.1(f), are adequate to ensure that students are not inappropriately assessed based on modified academic achievement standards. Depending on the nature of a State's grade-level and alternate academic achievement standards, a State may wish to tailor its alternate assessment based on modified academic achievement standards to a more narrowly defined group of students. We, therefore, have made clear that the criteria for students to be assessed based on modified academic achievement standards in § 200.1(e)(2) are only a minimum threshold and that States may add additional criteria if they choose to do so.

Changes: We have added ''Those criteria must include, but are not limited to, each of the following:'' to the end of § 200.1(e)(2).

Comment: Several commenters requested that the regulations clarify that an IEP Team must make a determination of eligibility for each subject assessed. Other commenters added that a student who has difficulty in only one subject area should be allowed to take an alternate assessment in that one area and take a regular assessment in the other subject(s).

Discussion: If a State chooses to develop modified academic achievement standards, proposed § 200.1(e)(4) would have required that a student be allowed to take an alternate assessment based on modified academic achievement standards in one or more subjects. Thus, a student could take an alternate assessment based on modified academic achievement standards in reading, for example, and a regular assessment in mathematics. However, we agree that the regulations should state more clearly that a student's IEP Team is responsible for making a determination for each subject assessed whether the student participates in an alternate assessment based on modified academic achievement standards. Therefore, we have added a new § 200.1(f)(2)(i) clarifying that States must inform IEP Teams that a student may be assessed based on modified academic achievement standards in one or more subjects. We also have added language to new § 200.1(f)(1)(i)(B) (proposed § 200.1(f)(1)(ii)) and § 200.1(f)(2)(v) (proposed § 200.1(c)(5)) to make this clear.

Changes: We have added a new § 200.1(f)(2)(i) requiring States to inform IEP Teams that a student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under § 200.2. We also have added ''These students may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under § 200.2'' at the end of new § 200.1(f)(1)(i)(B) (proposed § 200.1(f)(1)(ii)). With this addition, proposed § 200.1(e)(4) is no longer necessary and has been removed. Finally, we have added ''for each subject'' following ''Ensure that each IEP Team reviews annually'' in new § 200.1(f)(2)(v) (proposed § 200.1(c)(5)).

Comment: Several commenters requested that the decision to assess a student based on modified academic achievement standards be reviewed annually.

Discussion: New § 200.1(f)(2)(v) (proposed § 200.1(e)(5)) already requires that the decision to assess a student based on modified academic achievement standards be reviewed annually for each subject by the student's IEP Team to ensure that those standards remain appropriate.

Changes: None.

Comment: One commenter stated that a student should not be eligible for an alternate assessment based on modified academic achievement standards unless the student had been provided with all the appropriate accommodations for the grade-level assessment.

Discussion: We believe that a student's IEP Team is in the best position to determine whether the student should be assessed on the regular assessment with accommodations before participating in an alternate assessment based on modified academic achievement

standards and, therefore, decline to make the requested change.

Changes: None.

State Guidelines (§ 200.1(f))

Comment: Several commenters recommended that the regulations require a State to provide training to IEP Teams so that the guidelines are implemented in a manner that ensures that students can progress to grade-level achievement standards. The commenters also recommended requiring a State to collect and review data from LEAs on how the guidelines are being implemented and investigate LEAs when proficiency rates are higher on alternate assessments than on the regular assessment.

Discussion: Proposed § 200.1(f)(1) already requires a State that defines alternate or modified academic achievement standards to establish and ensure implementation of clear and appropriate guidelines for IEP Teams to apply in determining whether a student will be assessed based on modified or alternate academic achievement standards. Furthermore, the general supervision requirements in section 612(a)(11) of the IDEA require a State to monitor the implementation of State guidelines for the participation of students with disabilities in State and district-wide assessments. The specific ways in which a State conducts its monitoring are best left to the State to determine based on State and local needs. Therefore, we decline to require a State to investigate when proficiency rates are higher on alternate assessments as compared with regular assessments. We also do not believe it is necessary to duplicate monitoring requirements under Title I that would generate additional and unnecessary paperwork. However, we do believe that it is important to emphasize that a State is responsible for monitoring, as well as establishing and implementing State guidelines, and have made this change in the regulations.

Changes: We have changed ''establish and ensure implementation of clear and appropriate guidelines'' to ''establish and monitor implementation of clear and appropriate guidelines'' in new § 200.1(f)(1)(i) (proposed § 200.1(f)(1)). We also have added a new § 200.1(f)(2)(ii), which reiterates the responsibility of a State to establish and monitor implementation of clear and appropriate guidelines for IEP Teams to apply for students who are assessed based on modified academic achievement standards.

Comment: One commenter argued that a State's guidelines for IEP Teams would not have the force of law and recommended that the regulations require the State to implement requirements that are enforceable by law.

Discussion: It is unnecessary to add a regulation requiring States to implement requirements that are enforceable by law because, regardless of the legal mechanism a State uses to implement guidelines for IEP Teams, those guidelines must meet the requirements of these regulations in order for the State to be in compliance with part A of Title I and to continue to receive funds under this part.

Changes: None.

Comment: Several commenters stated that the regulations should include additional guidelines to ensure that States use similar criteria to identify students to be assessed based on modified academic achievement standards. One commenter stated that the guidelines should draw a ''bright line'' between students with the most significant cognitive disabilities and students assessed based on modified academic achievement standards. Specifically, the commenter recommended clarifying that students with the most significant cognitive disabilities are those who will never be able to demonstrate progress on grade-level academic achievement standards even if provided with the very best possible education and accommodations.

Discussion: Section 200.1(d), regarding alternate academic achievement standards, and § 200.1(e), regarding modified academic achievement standards, leave to each State the responsibility to define the students with disabilities who may be assessed based on alternate or modified academic achievement standards. These final regulations set certain parameters that a State must meet, but we do not believe it is the proper role of the Federal government to specifically set forth a ''bright line'' between the students who should participate in an alternate assessment based on alternate academic achievement standards versus an alternate assessment based on modified academic achievement standards. Moreover, such a distinction may vary from one State to the next depending on how States have organized their State content standards and established their academic achievement standards.

Changes: None.

Inclusion of All Students (§ 200.6)

Students Eligible Under IDEA and Section 504 (§ 200.6(a))

Comment: One commenter recommended that the regulations permit students with disabilities to use modifications, as well as accommodations, in State assessments. The commenter stated that an accommodation in one State (e.g., a calculator) may be considered a modification in another State and that this variation is unfair to students and schools.

Discussion: A ''modification'' used in an assessment is generally regarded as a change in test administration that alters what is being measured and, therefore, results in an invalid test score. Whether a particular support, such as use of a calculator, is considered a modification or an accommodation can only be determined by considering the intended purpose and content of an assessment. States vary in terms of the purposes and content of their assessments and, therefore, may vary in terms of whether a particular support provided to a student during an assessment is considered a modification or an accommodation. States determine whether a particular testing procedure or support, such as use of a calculator, invalidates the results. States must provide evidence for the Department's peer review of Statewide assessment systems under Title I of the ESEA that their State assessments are valid and reliable for the purposes for which the assessments are used, and are consistent with relevant, nationally recognized professional and technical standards. Therefore, we decline to make the change requested by the commenter.

Changes: None.

Comment: Several commenters recommended that States develop and disseminate information on, and promote the use of, appropriate accommodations for alternate assessments based on modified and alternate academic achievement standards, in addition to assessments based on grade-level standards.

Discussion: Section 1111(b)(3)(C)(ix)(II) of the ESEA and section 612(a)(16) of the IDEA already require a State to provide appropriate accommodations for students to participate in a State's assessment system. This includes accommodations for alternate assessments. Therefore, the change recommended by the commenters is unnecessary.

Changes: None.

Comment: None.

Discussion: In reviewing the proposed regulations, we noted that

§ 200.6(a)(1)(ii)(A) referred to ''grade-level academic achievement standards.'' We wanted to be clear that § 200.6(a)(1)(ii)(A) refers to the academic achievement standards for the grade in which the student is enrolled. Therefore, we have made this change in § 200.6(a)(1)(ii)(A).

Changes: Section 200.6(a)(1)(ii)(A) has been changed by adding ''for the grade in which a student is enrolled'' following ''academic achievement standards'' and removing ''grade-level'' before ''academic achievement standards.''

Comment: One commenter recommended requiring a State to (A) develop assessments that are universally designed and valid for the widest possible range of students; (B) study the effect of accommodations on the validity of the State's assessment in order to identify which accommodations are valid for each assessment; and (C) document the extent to which universal design principles are not used.

Discussion: We decline to make the changes requested by the commenter. The IDEA regulations already require a State (or in the case of a district-wide assessment, an LEA), to the extent feasible, to use universal design principles in developing and administering assessments. (*See* new § 300.160(g) (proposed § 300.160(f)) and section 612(a)(16)(E) of the IDEA.)

The Department's peer review of Statewide assessment systems under Title I of the ESEA requires a State to provide evidence that its State assessments are valid and reliable for the purposes for which they are used and are consistent with relevant, nationally recognized professional and technical standards. In order to ensure that assessments are valid and reliable and meet the technical quality requirements of the peer review, a State must study the effect of accommodations on the validity of the State's assessment.

We believe that implementing the commenter's recommendation to require States to document the extent to which universal design principles are not used (e.g., defining ''universal design principles'') would require significant resources and time and be a burden for a State to report. Therefore, we decline to make the changes requested by the commenters.

Changes: None.

Comment: One commenter recommended changing § 200.6(a)(1)(ii)(B) to require a State to ensure that related services providers, in addition to regular and special education teachers, know how to administer assessments and use appropriate accommodations.

Discussion: Section 200.6(a)(1)(ii)(B) already requires States to ensure that ''other appropriate staff,'' in addition to regular and special education teachers, know how to administer assessments and make appropriate use of accommodations. We believe State and local authorities are in the best position to determine the other appropriate staff, which could include related services providers, who must know how to administer assessments and make use of appropriate accommodations. Therefore, we decline to make the change requested by the commenter.

Changes: None.

Comment: A few commenters recommended requiring a State to develop personnel standards and provide professional development in order to ensure that all educators are skilled in administering assessments and providing appropriate accommodations.

Discussion: Section 200.6(a)(1)(ii)(B) requires States to ensure that regular and special educators, as well as other appropriate staff, know how to administer assessments and make use of appropriate accommodations. Whether a State ensures that this occurs through developing personnel standards or professional development is best left for each State to determine.

Changes: None.

Comment: One commenter recommended changing § 200.6(a)(2)(iii) to require that students with the most significant cognitive disabilities be involved in and make progress in the general curriculum, consistent with the IDEA. The commenter also recommended that the regulations be changed to require students with the most significant cognitive disabilities to be included in assessments that are aligned to the content standards for the grade in which the student is enrolled.

Discussion: Section 200.6(a)(2)(iii) already requires a State to document that students with the most significant cognitive disabilities are included in the general curriculum. Further, as the commenter notes, the IDEA requires students with disabilities to be involved in the general curriculum. Specifically, section 614(d)(1)(A)(i)(IV)(bb) of the IDEA requires each student's IEP to include a statement of the special education and related services and supplementary aids and services to be provided to the child to be involved in and make progress in the general education curriculum. This requirement applies to all students with disabilities, including students with the most significant cognitive disabilities. Therefore, we do not believe it is necessary to repeat this requirement in § 200.6(a)(2)(iii). However, in preparing these final regulations, we noted an error in current § 200.6(a)(2)(iii) [3] in the NPRM. Current § 200.6(a)(2)(iii) requires that, if a State permits the use of alternate assessments based on alternate academic achievement standards, the State must document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum. In the NPRM for these final regulations on modified academic achievement standards, ''maximum'' was inadvertently added before ''extent possible.'' We have corrected this error in the final regulations. It is important to correct this error because the provision could be interpreted as extending authority beyond the IDEA, which requires each student's IEP to include a statement of the special education and related services and supplementary aids and services to be provided to the child to be involved in and make progress in the general education curriculum.[4]

With regard to the comment that the regulations be changed to require students with the most significant cognitive disabilities to be included in assessments that are aligned to the curriculum for the grade in which the student is enrolled, the Department's non-regulatory guidance on alternate academic achievement standards for students with the most significant cognitive disabilities states that, if a State chooses to establish alternate academic achievement standards, such standards must be aligned with the State's academic content standards for the grade in which the student is enrolled (or in the case of students in un-graded classrooms, the grade level commensurate to the student's age). (*See* C–3 of the guidance.) [5]

Substantive changes to existing regulations cannot be made without publishing an NPRM and providing an opportunity for the public to comment on proposed regulations. The NPRM published on December 15, 2005 regarding modified academic achievement standards did not include the recommended change to the regulations governing alternate assessments based on alternate

[3] Current § 200.6(a)(2)(iii) was finalized in the December 9, 2003 regulations for students with the most significant cognitive disabilities (68 FR 68698).

[4] *See* section 614(d)(1)(A)(i)(IV)(bb) of the IDEA.

[5] Alternate Achievement Standards for Students with the Most Significant Cognitive Disabilities (August, 2005) is available at *http://www.ed.gov/policy/elsec/guid/altguidance.doc.*

academic achievement standards. Therefore, we cannot make the requested change in these final regulations.

Changes: We have deleted ''maximum'' before ''extent possible'' in § 200.6(a)(2)(iii).

Alternate Assessments that Measure Performance Based on Modified Academic Achievement Standards (§ 200.6)(a)(3))

Comment: Many commenters recommended requiring that an assessment based on modified academic achievement standards be referred to as an alternate assessment.

Discussion: We did not describe assessments based on modified academic achievement standards as alternate assessments in the NPRM because we wanted to distinguish such assessments from alternate assessments based on alternate academic achievement standards. However, we agree with the commenter that it would be clearer to refer to such assessments as alternate assessments and have made this change in the regulations.

Changes: Where appropriate, we have inserted ''alternate'' before ''assessment'' throughout the regulations to make clear that an assessment based on modified academic achievement standards is an alternate assessment.

Comment: Many commenters suggested that terminology be clarified to differentiate among various alternate assessments using ''modified assessment'' to refer to an assessment based on modified academic achievement standards and ''adapted assessment'' to refer to an alternate assessment based on alternate academic achievement standards.

Discussion: Precise use of terminology to avoid confusion in the development and use of alternate assessments for students with disabilities is desirable. However, the particular terms suggested by the commenters would not likely accomplish this goal. In the measurement community ''modified assessment'' has a restricted meaning that is not consistent with the intent of the assessment permitted under these regulations, and we believe ''adapted assessment'' does not accurately convey that an alternate assessment is based on alternate academic achievement standards. Therefore, we decline to make the changes recommended by the commenters.

Changes: None.

Comment: Several commenters requested that the regulations define ''aligned,'' as used in new § 200.6(a)(3)(ii)(A) (proposed § 200.6(a)(3)(i)). One commenter requested that the regulations include the criteria that will be used to determine whether there is sufficient coverage of grade-level content standards. One commenter recommended requiring alternate assessments based on modified academic achievement standards to assess the core objectives of a State's grade-level academic content standards.

Discussion: We decline to include a definition of ''alignment'' in these regulations because it is a term of art in the assessment field. However, the Department's standards and assessment peer review guidance for Title I includes several characteristics of alignment that are considered by peer reviewers in determining whether assessments are aligned with content standards. First, reviewers consider the range of content, meaning that all of the standards are represented in the assessment and that the assessment is as cognitively challenging as the standards (depth/difficulty). This is the single aspect of alignment that may differ between the regular grade-level assessment and an alternate assessment based on modified academic achievement standards. Second, reviewers look for evidence that the assessment represents both the content knowledge and the process skills evident in the content standards. Third, reviewers consider whether the assessment reflects the same degree and pattern of emphasis as the content standards (balance). Generally, an alternate assessment based on modified academic achievement standards should be aligned with grade-level content standards in the same manner as the regular assessment. That is, it should represent the full array of content standards, including factual knowledge and application skills, with the same pattern of emphasis that is evident in the content standards. The Department's peer review guidance further states ''[i]f a State's assessments do not adequately measure the knowledge and skills specified in the State's academic content standards, or if they measure something other than what these standards specify, it will be difficult to determine whether students have achieved the intended knowledge and skills. As a result, it will be difficult to make appropriate policy, program, and instructional decisions meant to improve students' achievement.'' (page 41)[6]

An alternate assessment based on modified academic achievement standards should be aligned with grade-level content standards in the same manner as the general test, with the possible exception of a reduced level of cognitive demand, sometimes referred to as depth of knowledge. This is a critical difference between an alternate assessment based on modified academic achievement standards and an alternate assessment based on alternate academic achievement standards, which is viewed as aligned with grade-level content standards even though the content has been simplified or represented as pre-requisite skills that are an essential part of the grade-level content.

The assumption underlying the requirement for alignment is that many students eligible for an alternate assessment based on modified academic achievement standards are in a regular classroom with children of the same chronological age; they are receiving instruction in the grade-level curriculum but because of their disability are not likely to meet grade-level academic achievement standards in the year covered by their IEPs. These students may need a less difficult test in order to effectively demonstrate their knowledge of the grade-level content standards.

We do not agree with the recommendation that an alternate assessment based on modified academic achievement standards be required to assess only the ''core objectives'' of a State's grade-level academic content standards. Modified academic achievement standards must represent the full array of content standards, including factual knowledge and application of skills, with the same pattern of emphasis that is evident in the content standards. This is so, regardless of how a State structures its academic content standards. The approach taken by a State to ensure the alignment of modified academic achievement standards to grade-level content standards will depend on how the State has structured its academic content standards. Content standards may be grade specific or may cover more than one grade if grade-level content expectations are provided for each grade. Ultimately, a State that chooses to develop and implement modified academic achievement standards must demonstrate during the Department's peer review of State assessments that its alternate assessment based on modified academic achievement standards is aligned with challenging grade-level academic content standards in the same manner as is required for the approval of the

[6] *Standards and assessment peer review guidance: Information and examples for meeting requirements of the No Child Left Behind Act of 2001,* (April 28, 2004). Available at *http://www.ed.gov/policy/elsec/guid/saaprguidance.doc.*

State's regular assessment. The Department acknowledges that measuring the academic achievement of students with disabilities, particularly those who will be eligible to be assessed based on modified academic achievement standards, is an area in which there is much to learn and improve. We welcome information from States and others on ways to improve the assessment of students with disabilities. As data and research on assessments for students with disabilities improve, the Department may decide to issue additional regulations or guidance.

Changes: None.

Comment: Several commenters argued that the regulations should permit the use of out-of-level assessments. Another commenter questioned whether out-of-level assessments would be as valid as alternate assessments based on modified academic achievement standards.

Discussion: Alternate assessments based on modified academic achievement standards are intended for a small group of students who, by virtue of their disability, are not likely to meet grade-level achievement standards in the year covered by their IEPs, despite appropriate instruction. These students need the benefit of access to grade-level content so that they can move closer to grade-level achievement. Therefore, alternate assessments based on modified academic achievement standards must be aligned with grade-level content standards.

Out-of-level testing means assessing students enrolled in a specific grade with tests designed for students at lower grades. By definition, an out-of-level assessment does not cover the same content as an assessment based on grade-level content standards. Out-of-level testing is often associated with lower expectations for students with disabilities, tracking such students into lower-level curricula with limited opportunities. Therefore, an out-of-level assessment cannot be used as an alternate assessment based on modified academic achievement standards.

Changes: None.

Comment: One commenter recommended requiring an alternate assessment based on modified academic achievement standards to be distinguished from the regular assessment by more than a lower cut score or a change in administration or format.

Discussion: New § 200.1(e)(1)(iv) makes clear that modified academic achievement standards must be developed through a documented and validated standards setting process that includes broad stakeholder input, and §§ 200.2(b) and 200.3(a)(1) make clear that an alternate assessment based on modified academic achievement standards must meet the requirements for high technical quality, including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards. Merely changing the cut-score on a regular assessment would not be sufficient to meet these requirements.

Changes: None.

Comment: Many commenters requested additional guidance on developing an alternate assessment based on modified academic achievement standards.

Discussion: Grade-level content standards serve as the foundation of an alternate assessment based on modified academic achievement standards. Beyond this essential requirement, a State may construct a unique assessment or adapt its regular assessment. We have added this language to the regulations to make this clear. In addition, the Department will be issuing nonregulatory guidance and providing technical assistance to assist States in developing alternate assessments based on modified academic achievement standards.

Changes: We have simplified proposed § 200.6(a)(3) by deleting references to paragraphs (a)(1) and (a)(2) and including a new paragraph (a)(3)(i) to permit a State that chooses to assess students with disabilities based on modified academic achievement standards to develop a new alternate assessment or adapt an assessment based on grade-level academic achievement standards. We also have added a new paragraph (a)(3)(ii) that lists the requirements for an alternate assessment based on modified academic achievement standards. Proposed paragraphs (a)(3)(i) through (a)(3)(iv) have been redesignated as new paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(D), respectively.

Reporting (§ 200.6(a)(4))

Comment: Several commenters recommended requiring a State to report the number and percentage of students using accommodations who take alternate assessments based on modified academic achievement standards, alternate assessments based on grade-level academic achievement standards, and alternate assessments based on alternate academic achievement standards. The commenters stated that these data are necessary to measure whether students are receiving appropriate accommodations and whether these accommodations are helping students achieve.

Discussion: Section 200.6(a)(4) already requires a State to report on the number and percentage of students with disabilities taking regular assessments; regular assessments with accommodations; alternate assessments based on grade-level academic achievement standards; alternate assessments based on modified academic achievement standards; and alternate assessments based on alternate academic achievement standards. We believe that requiring a State to report the additional data requested by the commenters would place a significant burden on the State. In addition, such data would not, by itself, provide information regarding whether students are receiving appropriate accommodations and whether those accommodations are helping students achieve. Therefore, we decline to make the change requested by the commenters.

We have, however, changed the order of the list of assessments in § 200.6(a)(4) so that ''alternate assessments based on the grade-level academic achievement standards'' follows ''regular assessments with accommodations.'' This will appropriately keep the three types of assessments based on grade-level academic achievement standards together in the list, to be followed by ''alternate assessments based on the modified academic achievement standards,'' and ''alternate assessments based on the alternate academic achievement standards.''

Changes: We have redesignated proposed paragraph (a)(4)(iv), regarding alternate assessments based on grade-level academic achievement standards, as new paragraph (a)(4)(iii), and proposed (a)(4)(iii), regarding alternate assessments based on modified academic achievement standards, as new paragraph (a)(4)(iv).

Comment: One commenter recommended requiring the Department to provide an annual report to Congress on the implementation of the regulations regarding modified academic achievement standards. One commenter asked who receives the data required under § 200.6(a)(4). Another commenter expressed concern that reporting the data in § 200.6(a)(4) could violate a student's right to privacy under the Family Educational Rights and Privacy Act (FERPA) if there were small numbers of students taking any of the assessments.

Discussion: Section 200.6(a)(4) pertains to the requirements in part A of Title I for reporting data to the Secretary and ensures that the data reported in

accordance with section 1111(h) of the ESEA include data on assessments based on alternate academic achievement standards and modified academic achievement standards. We have added language to § 200.6(a)(4) to make this clear. These data are also reported to Congress and, therefore, we do not believe that an additional report to Congress is necessary, as suggested by one commenter. With regard to the commenter who expressed concern with the data reporting requirements and a student's right to privacy, a State is not required to report data that would violate FERPA (20 U.S.C. 1232g).

Changes: We have added ''to the Secretary'' following ''A State must report separately'' to make clear that the assessment data referred to in § 200.6(a)(4) are reported separately to the Secretary.

Comment: One commenter recommended requiring LEAs and SEAs to collect data on the disability and race of students who are assessed based on modified academic achievement standards.

Discussion: We believe that requiring LEAs and SEAs to collect data on the disability and race of students who are assessed based on modified academic achievement standards would place an unnecessary burden on SEAs and LEAs and, therefore, decline to implement the commenter's recommendation.

Changes: None.

Disaggregation of Data (§ 200.7)

Comment: Several commenters supported proposed § 200.7(a)(2) that would prohibit a State from establishing a different minimum number (group size or ''n size'') of students for some subgroups, regardless of whether a State chooses to implement modified academic achievement standards. The commenters stated that having the same group size for all subgroups would ensure transparency and greater accountability.

However, one commenter stated that the same group size across all subgroups should be required only for States that develop modified academic achievement standards. The commenter also expressed concern that requiring the same group size across all subgroups could reduce the desire by some schools and districts to accept out-of-area students due to concerns that adding more students in a subgroup would affect their accountability status.

Discussion: Prior to the implementation of the final regulations on alternate academic achievement standards for students with the most significant cognitive disabilities and the announcement of the proposed regulations on modified academic achievement standards, a State had limited flexibility in measuring the achievement of students with disabilities for AYP purposes. Because of ongoing concerns about how accurately State assessments measure the achievement of a very heterogeneous subgroup of students (many of whom were assessed with a range of accommodations to the regular assessment), some States requested permission to use a larger group size for their students with disabilities and limited English proficient subgroups. In support of their requests, States argued that a larger group size for these subgroups of students would take into consideration the challenges of measuring their achievement.

With the implementation of these final regulations on modified academic achievement standards and the Title I regulations on assessment and accountability for recently arrived and former limited English proficient (LEP) students (71 FR 54187 (Sept. 13, 2006)), we believe that States now have sufficient flexibility to measure the achievement of students with disabilities and LEP students appropriately and, therefore, no longer need a different group size for these subgroups. In addition, all States now test in grades 3 through 8 and once in high school, as opposed to just once per grade span, thereby decreasing the sampling error associated with smaller group sizes. With these additional test scores to include in AYP determinations, the argument for a larger group size for these two subgroups is no longer statistically justified. Setting a different subgroup size also may lead to unintended consequences, such as manipulating the number of students with disabilities in a particular school to ensure that the school will not be held accountable for those students. We believe that, in order to ensure that schools are held accountable for the achievement of students with disabilities (as well as for students with limited English proficiency), the use of differentiated subgroup sizes for purposes of measuring AYP must end.

Given the timing of these regulations, we do not expect States with differentiated subgroup sizes to make this change for the 2006–07 school year. Therefore, we have added language to make clear that this provision takes effect for AYP determinations based on assessments administered in the 2007–08 school year.

Changes: We have added ''Beginning with AYP decisions that are based on the assessments administered in the 2007–08 school year,'' at the beginning of the sentence in § 200.7(a)(2)(ii).

Comment: Some commenters recommended changing § 200.7(a)(2)(ii) to require a State to set group sizes consistent with the smallest of its existing subgroups.

Discussion: States that need to adjust their group sizes in order to comply with § 200.7(a)(2)(ii) must do so by amending their accountability plans with the approval of the Department. The Department will consider each State's rationale for its proposed group size (consistent across all groups). We do not believe it is appropriate to mandate a particular group size or to require a specific process by which a State establishes its group size and, therefore, decline to make the recommended change.

Changes: None.

Comment: One commenter agreed with the decision to prohibit different group sizes for subgroups, but did not agree that the group size for the school as a whole should be the same as that of each subgroup.

Discussion: Section 200.7(a)(2)(ii) was intended to require the minimum group size for a school as a whole (the ''all students'' group) to be the same as that of each subgroup. Therefore, we have changed § 200.7(a)(2)(ii) to make this clear.

There may be instances where the number of students in a school is less then a State's minimum group size. A State must have a policy in place to determine AYP for every school, even in these cases. Given that requirement, a State may choose to have a minimum group size of zero for the ''all students'' group. However, a State may not choose a minimum group size for the ''all students'' group, other than zero, that is different than that of its subgroups.

Changes: Section 200.7(a)(2)(ii) has been revised by adding ''or for the school as a whole'' at the end of the sentence.

Adequate Yearly Progress in General (§ 200.13)

Comment: Many commenters stated that there is no extant research to support establishing a 2.0 percent cap on the number of proficient and advanced scores based on modified academic achievement standards that may be included in AYP determinations. Many commenters stated that the research cited in the NPRM excludes IDEA-eligible students, is based only on reading interventions for early elementary-age students, and does not include research on math or on older students.

Some commenters stated that the 2.0 percent cap is too low. However, many commenters expressed concern that the cap is too high, stating that the 2.0 percent cap on modified academic achievement standards and the 1.0 percent cap on alternate academic achievement standards translates to 3.0 percent of all students or 30 percent of students with disabilities counted as proficient for AYP purposes on alternate assessments that are not based on grade-level academic achievement standards. A few commenters stated this is considerably higher than data reported by the National Center on Educational Outcomes (NCEO) in its report on the participation of students with disabilities in 2002–03 and the 2003 data from the State of Kansas.

Discussion: To ensure that modified academic achievement standards are used appropriately, these regulations set a cap of 2.0 percent on the proficient and advanced scores of students who are assessed based on modified academic achievement standards that may be included in AYP determinations. Together with the State guidelines required in § 200.1(f), we believe that a numeric cap of 2.0 percent will discourage schools from inappropriately holding students with disabilities to lower standards.

We acknowledge that it is difficult to determine a numerical limit on the number of proficient and advanced scores based on modified academic achievement standards to be included in AYP determinations. Unlike the 1.0 percent cap on proficient and advanced scores based on alternate academic achievement standards for students with the most significant cognitive disabilities, we cannot rely on disability incidence rates because students who would be appropriately assessed based on modified academic achievement standards are less likely to be predominately from a few disability categories, as is the case with students with the most significant cognitive disabilities. In fact, we anticipate that students who are assessed based on modified academic achievement standards will be from most, if not all, the different disability categories listed in the IDEA.

We also considered data from States, including the data from NCEO [7] and the State of Kansas [8] referred to by the commenters, recognizing that there may be variability among States in the number of students who meet the requirements to be assessed based on modified academic achievement standards. We do not expect that every State will use the full 2.0 percent cap. Therefore, rather than relying on incidence data or data from a single State or study to establish the cap for modified academic achievement standards, we relied on multiple sources of data from research and State experiences. We believe that these multiple sources of data, when considered together, provide a sound and legitimate basis for establishing the 2.0 percent cap, while at the same time protecting students from being inappropriately assigned to take an alternate assessment based on modified academic achievement standards. Because our major concern is holding students with disabilities to high standards, we have taken a conservative approach to estimating the cap. As a matter of policy, we believe this to be the right approach.

The Department reviewed several studies that indicate 2.0 percent is an appropriate cap when States, districts, and schools work to ensure that students receive appropriate educational services and interventions. The studies cited in the preamble to the NPRM included students with disabilities, but excluded students with the most severe cognitive impairments.[9] For example, McMaster et al. (2005) defined a group of low-performing students who were persistent non-responders to reading interventions. The group included both students identified as students with disabilities and students not identified to receive special education services, but did not include students with the most severe cognitive disabilities. McMaster et al. reported that 22 percent of the group remained two standard deviations below average on an outcome reading assessment following reading intervention. Torgensen et al. (2001) indicated that 15 to 20 percent of students with severe reading disabilities remained below average in reading comprehension following intervention. Finally, literature reviewed and reported by Lyon et al. (in press) indicates that a 2.0 percent cap is appropriate, based on the percent of students who may not reach grade-level achievement standards within the same time frame as other students, even after receiving the best-designed instructional interventions from highly trained teachers.

Ideally, we would have preferred to base the 2.0 percent cap on a greater number of studies across a greater age range and encompassing more math, as well as reading, scores. However, we believe that, given the available evidence, and our desire to protect students with disabilities from being inappropriately assessed based on modified academic achievement standards, the 2.0 percent cap is appropriate, particularly considering that the cap is not a limit on the number of students who may participate in an alternate assessment based on modified academic achievement standards, and the numerous safeguards that we included in the regulations. However, the Department also desires to maintain high standards and accountability for the achievement of all students with disabilities and, therefore, welcomes comments and data from States and others about how the regulations are working and may consider revising the regulations in the future should the comments indicate a need to do so. In addition, the Department intends to issue a report on the implementation of these regulations after two years of implementation. As data and research on assessing students with disabilities improve, the Department may decide to issue regulations or guidance on other related issues in the future.

Changes: None.

Comment: A few commenters stated that the 2.0 percent cap violates the IDEA requirement that students with disabilities receive a free appropriate public education (FAPE). The commenters acknowledged that the cap imposes a limit on the number of proficient and advanced scores that may be counted as proficient for purposes of calculating AYP and is not a limit on the number of students who may be assessed based on modified academic achievement standards. However, the commenters stated that LEAs will put pressure on IEP Teams to

[7] Clapper, A.T., Morse, A.B., Lazarus, S.S., Thompson, S.J., & Thurlow, M.L. (2005). *2003 State policies on assessment participation and accommodations for students with disabilities (Synthesis Report 56).* Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

[8] Posny, A. (2004). *Clash of the titans: No child left behind and students with disabilities.* Paper presented at the Center on Education Policy's forum on ideas to improve the NCLB accountability provisions for students with disabilities and English language learners, September 14, 2004, Washington, DC. Available at: *http://www.cep-c.org/pubs/Forum14September2004/PochowskiPaper.pdf.*

[9] McMaster, K.L., Fuchs, D., Fuchs, L.S., & Compton, D.L. (2005). Responding to non-responders: An experimental field trial of identification and intervention methods. *Exceptional Children*, *71*, 445–463; Torgensen, J.K., Alexander, A.W., Wagner, R.K., Rashotee, C.A., Voeller, K.K.S., & Conway, T. (2001). Intensive remedial instruction for children with severe reading disabilities: Immediate and long-term outcomes from two instructional approaches. *Journal of Learning Disabilities*, 34, 33–58; Lyon, G.R., Fletcher, J.M., Fuchs, L.S., & Chhabra, V. (in press). Learning Disabilities. In E. Mash & R. Barkley (Eds.), *Treatment of Childhood Disorders* (2nd ed.) New York: Guilford Press.

inappropriately include students in the regular assessment when an LEA is close to reaching the 2.0 percent cap, which would be a violation of FAPE.

Discussion: Section 200.1(f) of these final regulations requires States to establish and monitor guidelines for IEP Teams to apply in determining which students with disabilities will be assessed based on alternate and modified academic achievement standards. In addition, § 300.160(c), consistent with section 612(a)(16) of the IDEA, requires a State (or in the case of a district-wide assessment, an LEA) to develop and implement alternate assessments and guidelines for the participation of students who cannot participate in the regular assessment even with accommodations. These guidelines are intended to increase the options for IEP Teams regarding appropriate assessments. The guidelines, however, cannot guarantee that all IEP Team decisions are the most appropriate.

Under the general supervision requirements in § 300.149, consistent with section 612(a)(11) of the IDEA, we anticipate that a State will exercise its authority to ensure that LEAs and IEP Teams follow the State guidelines and give thoughtful, careful consideration to the assessment that is most appropriate for an individual student so that the situation described by the commenters does not occur.

Changes: None.

Comment: One commenter recommended that the regulations allow a State to determine the number of students in an LEA who may take an alternate assessment based on alternate or modified academic achievement standards. The commenter also recommended giving a State the authority to take corrective action to prevent an LEA from exceeding the 1.0 and 2.0 percent caps.

Discussion: Permitting a State to impose numeric limits on the number of students to whom an LEA may administer alternate assessments, thereby excluding a student whose IEP Team determines that an alternate assessment is the most appropriate assessment for the student, would be inconsistent with the IDEA. Section 614(d)(1)(A)(i)(VI) of the IDEA gives a student's IEP Team the authority to determine how a student with a disability will participate in State and district-wide assessments. IEP Team decisions should be consistent with State guidelines, including guidelines for alternate assessments based on alternate or modified academic achievement standards. Therefore, we cannot make the change requested by the commenter.

With regard to the commenter's second recommendation to give a State the authority to take corrective action to prevent an LEA from exceeding the 1.0 percent and 2.0 percent caps, under § 200.13(c)(3), an LEA may exceed the 2.0 percent cap only if the number of proficient and advanced scores on the alternate assessment based on alternate academic achievement standards is less than 1.0 percent, and the number of proficient and advanced scores based on modified and alternate academic achievement standards combined does not exceed 3.0 percent of all students assessed. Likewise, a State may grant an exception to an LEA and permit the LEA to exceed the 1.0 percent cap under the conditions listed in § 200.13(c)(5). If an LEA does not abide by these provisions and exceeds the 1.0 and 2.0 percent caps inappropriately, § 200.13(c)(7) already requires a State to count as non-proficient the proficient and advanced scores that exceed the caps and determine which scores to count as non-proficient in the schools and LEAs responsible for students who are assessed based on alternate or modified academic achievement standards.

Changes: None.

Comment: One commenter asked if a State would be allowed to assess students on alternate assessments based on alternate academic achievement standards if the State chose not to assess students based on modified academic achievement standards.

Discussion: The development of modified academic achievement standards and assessments based on those standards is voluntary and does not affect a State's implementation of alternate assessments based on alternate academic achievement standards. Therefore, a State that already provides an alternate assessment based on alternate academic achievement standards may choose not to provide an alternate assessment based on modified academic achievement standards.

Changes: None.

Comment: Several commenters opposed the prohibition on a State requesting an exception to the 1.0 percent cap on the number of proficient and advanced scores on alternate assessments based on alternate academic achievement standards that may be included in AYP determinations. Some commenters recommended permitting a State to exceed a combined total of 3.0 percent; other commenters supported a ''dotted line'' approach that would set an absolute cap of 3.0 percent, but would permit a State to exceed the 1.0 percent cap or the 2.0 percent cap. Some commenters stated that, by not allowing exceptions, the Department was eliminating the distinction between students with the most significant cognitive disabilities and students for whom modified academic achievement standards are appropriate and asked what would happen to the scores of students in a State that had previously received an exception to exceed the 1.0 percent cap. Commenters also were concerned about rural States and the need for exceptions for very small school districts. Other commenters supported not allowing exceptions. One commenter stated that there should be a lower cap, and that exceptions should be permitted based on a lower cap.

Discussion: The final regulations on alternate academic achievement standards permitted a State to request an exception to the 1.0 percent cap to account for extraordinary circumstances in the State that warranted an exception, or for a rural State with small numbers of students. Since the final regulations were issued in December 2003, the Department has granted exception requests to four States. Two requests were for statistical reasons due to the rural nature of the State. The other two requests were for very small increments over 1.0 percent. In both of the latter cases neither State has used the exception because less than 1.0 percent of students tested scored proficient or advanced on the alternate assessment based on alternate academic achievement standards.

Based on the requests submitted to date, we believe that there is no real need to have an exception to the 1.0 percent cap at the State level. When there are truly unique circumstances within an LEA, such as a hospital with special services, the LEA exception process should suffice. In addition, as we stated in the preamble to the proposed regulations on modified academic achievement standards, we do not believe that it is appropriate or necessary to permit more than 3.0 percent of proficient and advanced scores on alternate assessments based on alternate or modified academic achievement standards to be included in AYP determinations.

We do not agree with the commenters who proposed an absolute cap of 3.0 percent while allowing a State to exceed the 1.0 or 2.0 percent caps. Section 200.13(c)(3) permits a State's or LEA's number of proficient and advanced scores based on modified academic achievement standards to exceed the 2.0 cap only if the number of proficient and advanced scores based on alternate academic achievement standards is less

than 1.0 percent. We believe that this may encourage the participation of students who are currently assessed based on alternate academic achievement standards to be assessed based on the more challenging modified academic achievement standards. A State may not exceed the 1.0 percent cap when there are less than 2.0 percent of proficient and advanced scores on modified academic achievement standards because we do not want to create an incentive to identify more students for alternate assessments based on the less challenging alternate academic achievement standards.

Changes: None.

Comment: One commenter recommended changing § 200.13(c)(5)(i)(C) to require an LEA to document that it is ''fully and effectively'' implementing the State's guidelines for IEP Teams before it is granted an exception to the 1.0 percent cap on proficient and advanced scores based on alternate academic achievement standards.

Discussion: Section 200.13(c)(5) permits a State to grant an exception to an LEA to exceed the 1.0 percent cap on proficient and advanced scores based on alternate academic achievement standards if the LEA demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed, and if the LEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed.

We do not believe it is necessary to add the requirement suggested by the commenter that an LEA demonstrate that it has fully and effectively implemented the State's guidelines. A State must seriously consider whether to grant an exception to an LEA to exceed the 1.0 percent cap because the State may not exceed the 1.0 percent cap. We believe that, in the course of determining whether to grant an exception to an LEA, a State will consider whether the LEA has followed the State's guidelines and appropriately identified students to participate in an alternate assessment based on alternate academic achievement standards.

Changes: None.

Making Adequate Yearly Progress (§ 200.20)

Comment: One commenter stated that multiple assessment administrations should be permitted for all students, not just for students with disabilities.

Discussion: Current § 200.20(c)(3) applies to all students, not just students with disabilities. Therefore, the removal of current § 200.20(c)(3) permits multiple test administrations for all students.

Changes: None.

Comment: Most commenters supported removing current § 200.20(c)(3), which requires a State to use a student's results from the first administration of the State assessment to determine AYP. However, a number of commenters opposed this change and requested that the regulations continue to require a State to use the results from the first administration of a test. A few commenters stated that the results from only the first administration of an assessment should be used because these scores provide a more accurate measure of school accountability. The commenters stated that accountability determinations based on the first assessment administered reflect the effectiveness of a school's core academic program, while scores from subsequent administrations improve a school's AYP and give credit for successful remediation.

One commenter expressed concern that administering an assessment multiple times compromises the reliability of accountability determinations because students learn the test. Another commenter requested additional guidance regarding how many times a State may administer an assessment and whether different forms of the assessment must be used. Some commenters suggested limiting retests to one additional test administration each year to avoid excessive testing and delays in releasing AYP data.

One commenter suggested changing the regulations to prevent retesting a student with a different type of assessment or in a different manner (e.g., with an accommodation) for the sole purpose of obtaining a proficient score. Several commenters expressed concern that the removal of current § 200.20(c)(3) would result in excessive testing. Other commenters stated that allowing a State to use the best score from multiple administrations of a test might result in teachers concentrating on test preparation instead of improving instruction.

Discussion: A State that permits multiple administrations of its assessment must ensure that the assessment continues to be reliable and valid and provides an accurate measure of school accountability.

We understand that permitting multiple administrations of an assessment may raise concerns about over-testing and focusing on test preparation, rather than instruction. However, we continue to believe that allowing a State to use the best score of multiple administrations of an assessment will motivate students, parents, schools, and States to continue working to attain grade-level achievement and thereby result in greater student success.

Changes: None.

Comment: A few commenters recommended allowing a student's IEP Team to determine the number of times the student may retake an assessment.

Discussion: The IEP Team is responsible for determining how a student will participate in State and district-wide assessments. (*See* § 300.320(a)(6) of the IDEA regulations.) Determining the number of times a student retakes an assessment is not the role of the IEP Team. IEP Teams do not have the authority to override a State policy regarding the number of times a student may take an assessment.

Changes: None.

Including Scores of Students Previously Identified Under IDEA in AYP Calculations for the Students With Disabilities Subgroup (§ 200.20(f))

Comment: A number of commenters supported proposed § 200.20(f)(1), which permits a State, in calculating AYP for the students with disabilities subgroup, to include, for up to two years, the scores of students who were previously identified under section 602(3) of the IDEA but who no longer receive special education services. These commenters applauded this section as acknowledging students' academic achievement and recognizing the positive impact of schools, teachers, and parents in facilitating that success.

A number of other commenters, however, disagreed. These commenters expressed concern that allowing a State to include former students with disabilities in the students with disabilities subgroup would mask the true performance of students with disabilities and shift the focus away from improving instruction for those students. One commenter stated that including former students with disabilities in the disabilities subgroup would ensure that the disability label would continue to follow the students.

Discussion: We recognize that the students with disabilities subgroup is one whose membership can change from year to year as students who were once identified as needing services and an IEP exit the subgroup. Because these students have exited the subgroup, school assessment results for the students with disabilities subgroup would not reflect the gains the exiting students have made in academic achievement. Recognizing this situation, the final regulations allow a State to

include ''former students with disabilities'' within the students with disabilities subgroup in making AYP determinations for up to two AYP determination cycles after they no longer receive special education services.

At the same time, however, we recognize that it is important that parents and the public have a clear picture of the academic achievement of those students with disabilities who remain identified under section 602(3) of the IDEA. Thus, the final regulations distinguish between including former students with disabilities in the subgroup for reporting assessment data and including them in the subgroup when reporting AYP on State and LEA report cards.

Under section 1111(h)(1)(C) and section 1111(h)(2)(B) (as that section applies to an LEA and each school served by the LEA) of the ESEA, information on subgroups is reported in two distinct ways. Under section 1111(h)(1)(C)(i), (iii), (iv), (v), and (vi) and section 1111(h)(2)(B) (as that section applies to an LEA and each school served by the LEA) of the ESEA, information is reported for all students and the students in each subgroup, regardless of whether a student's achievement is used in determining if the subgroup has made AYP (i.e., reporting includes students who have not been enrolled for a full academic year, as defined by the State, and students in subgroups too small to meet the State's minimum group size for determining AYP). For reporting under these provisions, former students with disabilities may not be included in the students with disabilities subgroup because it is important that parents and the public have a clear picture of the academic achievement of students with disabilities who are currently identified under section 602(3) of the IDEA and are receiving services. On the other hand, section 1111(h)(1)(C)(ii) and section 1111(h)(2)(B) (as that section applies to an LEA and each school within the LEA) provide for a comparison between the achievement levels of subgroups and the State's annual measurable achievement objectives for AYP in reading/language arts and mathematics (for all students and disaggregated by race/ethnicity, disability status, English proficiency, and status as economically disadvantaged). For this section of State and LEA report cards, a State and its LEAs are reporting on how students whose assessment scores were used in determining AYP (i.e., students enrolled for a full academic year) for reading/language arts and mathematics compare to the State's annual measurable objective for AYP. For reporting AYP by subgroup, former students with disabilities may be included in the students with disabilities subgroup. In this way, a school's and district's accountability status will reflect their good work in successfully enabling students with disabilities to make progress so that they no longer need special education services while providing parents and the public clear information on how the subgroup of students with disabilities who are still receiving services is performing.

We note, of course, that former students with disabilities, because they are no longer receiving services under section 602(3) of the IDEA, would not be eligible to be assessed based on either alternate or modified academic achievement standards.

With regard to the commenter who expressed concern that including the scores of former students with disabilities in the students with disabilities subgroup would ensure that the disability label would follow the student, we do not agree. Students who no longer receive special education services are not ''labeled'' as such. The inclusion of their scores in the students with disabilities subgroup is for AYP purposes only.

Since the publication of the NPRM on modified academic achievement standards, the Department published final regulations on the accountability for recently-arrived and former limited English proficient (LEP) students (71 FR 54187 (Sept. 13, 2006)) (referred to in this notice as the LEP regulations). The final LEP regulations permit a State, in determining AYP for the subgroup of LEP students, to include, for up to two AYP determination cycles, the scores of students who were LEP, but who no longer meet the State's definition of limited English proficiency. The final regulations regarding including the scores of former students with disabilities in AYP determinations that are a part of this notice mirror the final LEP regulations in current § 200.20(f)(2). Therefore, we have incorporated the provisions from proposed § 200.20(f)(1), regarding former students with disabilities, into current § 200.20(f)(2). Incorporating these provisions into current § 200.20(f)(2) has resulted in several changes to the structure of current § 200.20(f)(2) and the provisions in proposed § 200.20(f)(1). For example, current § 200.20(f)(2) has been organized into paragraphs (f)(2)(i)(A) and (f)(2)(i)(B) to include provisions regarding the scores of former LEP students and former students with disabilities in the LEP subgroup and students with disabilities subgroup, respectively. We have not detailed all these changes in the discussion that follows because, while the structure of new § 200.20(f)(2) differs from proposed § 200.20(f), the content regarding former students with disabilities is the same as proposed § 200.20(f), with one exception, which is noted in the ''Changes'' section in the next comment.

Changes: We have incorporated the provisions in proposed § 200.20(f) into current § 200.20(f)(2). With these changes, proposed paragraphs (a)(1), (b), and (c)(1) are no longer needed and have been removed.

Comment: Several commenters noted that the proposed regulations could permit a State to include only the scores of some students who have exited the students with disabilities subgroup. The commenters recommended that the regulations be amended to clarify that the scores of *all* former students with disabilities must be included in determining AYP if the scores of any former students with disabilities are included. The commenters reasoned that a State should not have the option to include only the proficient and advanced scores of former students with disabilities in order to raise the achievement level of the students with disabilities subgroup.

Discussion: We agree with the commenters. Whether to include the scores of former students with disabilities in the students with disabilities subgroup for up to two years is a discretionary decision of each State. However, if a State makes the decision to include the scores of former students with disabilities for AYP calculations, it must include the scores of *all* such students; it may not include just the scores of some students—for example, those who scored proficient or advanced—and exclude the scores of others. Of course, former students with disabilities must be included in each other subgroup to which they belong—e.g., economically disadvantaged, Hispanic, etc. We have changed the regulations to require a State to use the scores of *all* former students with disabilities for AYP calculations if the State decides to include the scores of any former student with a disability.

Changes: New § 200.20(f)(2)(ii) has been changed by adding ''must include the scores of all such students, but'' at the end of the sentence.

Comment: One commenter recommended that proposed § 200.20(f)(1) be amended to clarify that former students with disabilities also may be included in calculating the participation rate for the students with disabilities subgroup.

Discussion: We do not believe it is appropriate to permit a State to include former students with disabilities in calculating the participation rate for the students with disabilities subgroup. Those students will be counted as participants in the ''all students'' group and in any other subgroup to which they belong. These final regulations permit a State to include the scores of former students with disabilities to determine AYP for the students with disabilities subgroup so that a school and LEA receive the benefits of their efforts in providing special education and related services that enabled students with disabilities to no longer need special education services. There is no similar justification for including former students with disabilities in calculating the participation rate of the students with disabilities subgroup. In fact, it is important for the public to know the participation rate of just students with disabilities because historically they have been excluded from Statewide assessments.

Changes: None.

Comment: Several commenters recommended that proposed § 200.20(f)(2) be amended to require that the number of former students with disabilities whose scores are used for AYP must also be included in the subgroup size for all purposes for which the scores are used. The commenters reasoned that the only reason to permit inclusion of the scores of former students with disabilities in determining AYP without adding those students to the number of students who make up the subgroup is to keep those students from increasing the subgroup beyond the minimum group size and thereby making it visible in AYP.

Discussion: The regulations are designed to assist schools and LEAs that have a students with disabilities subgroup of sufficient size (without including former students with disabilities) to yield statistically reliable information to demonstrate their progress with that subgroup by enabling those schools and LEAs to include the scores of former students with disabilities in AYP calculations for up to two years after the students no longer need special education services. Therefore, we decline to require a State or LEA that takes advantage of this flexibility also to include former students with disabilities in determining whether the students with disabilities subgroup meets the State's minimum group size. Nothing in these regulations would prevent a State or LEA that wishes to include former students with disabilities in the students with disabilities subgroup in determining whether a school or LEA has a sufficient number of students to yield statistically reliable information under § 200.7(a) from doing so.

Changes: None.

Definitions (§ 200.103)

Comment: A few commenters recommended including a definition of ''universal design'' in these regulations.

Discussion: We do not believe it is appropriate to include a definition of ''universal design'' in these regulations because it is a term of art with different meanings when applied to different products and services. As applied to assessments, universal design generally means that assessments are developed to be accessible for the widest possible range of students.

Changes: None.

Comment: A few commenters recommended defining ''pupil services'' to mean ''related services,'' as defined in section 602(26) of the IDEA.

Discussion: Equating ''pupil services'' with ''related services'' would be inconsistent with the ESEA. Section 9101(36) of the ESEA already defines ''pupil services'' as including ''related services.'' Therefore, we decline to make the change requested by the commenter.

Changes: None.

Part 300—Assistance to States for the Education of Children With Disabilities

This summary includes comments made in response to the Title I NPRM published in the **Federal Register** on December 15, 2005 (70 FR 74624), as well as comments made in response to the proposed IDEA regulations published in the **Federal Register** on June 21, 2005 (70 FR 35839) to implement the IDEA as reauthorized by the Individuals with Disabilities Education Improvement Act of 2004, Public Law No. 108–446, enacted on December 3, 2004, regarding the inclusion of children with disabilities in State and district-wide assessment systems in accordance with section 612(a)(16) of the IDEA.

Participation in Assessments (§ 300.160)

General (§ 300.160)

Comment: A few commenters requested that the regulations clearly state that all students must participate in a State's assessment program except for a child with a disability who is medically fragile and cannot tolerate the stress of participating in an assessment.

Discussion: We cannot make the requested change. Section 300.160(a), consistent with section 612(a)(16)(A) of the IDEA, is clear that a State must ensure that all children with disabilities are included in State and district-wide assessment programs. Neither the IDEA nor these regulations permit categorical exceptions to this requirement.

Changes: None.

Comment: One commenter expressed concern that LEAs would have difficulty developing alternate assessments for district-wide assessments and requested assistance in identifying ways for LEAs to meet the requirements in section 612(a)(16)(A) of the IDEA.

Discussion: Section 612(a)(16)(A) of the IDEA is clear that all children must participate in State as well as district-wide assessments. This has been a requirement since the 1997 reauthorization of the IDEA. LEAs that conduct district-wide assessments must provide an alternate assessment for children who cannot participate in the district-wide assessment even with accommodations. Identifying the manner in which an LEA meets this requirement, however, is a matter that is best determined by State and local officials.

Changes: None.

Comment: One commenter recommended requiring benchmarks or short-term objectives to be developed for students with disabilities participating in alternate assessments based on modified academic achievement standards.

Discussion: Section 614(d)(1)(A)(i)(I)(cc) of the IDEA requires benchmarks or short-term objectives to be included only in the IEPs of children with disabilities who participate in alternate assessments based on alternate academic achievement standards. Alternate assessments based on modified academic achievement standards are not alternate assessments based on alternate academic achievement standards. Therefore, we do not believe that benchmarks or short-term objectives should be required for children with disabilities who participate in alternate assessments based on modified academic achievement standards. Congress specifically limited the requirement for benchmarks and short-term objectives to the IEPs of children with the most significant cognitive disabilities who participate in alternate assessments based on alternate academic achievement standards. As the Senate Committee on Health, Education, Labor, and Pensions noted in Sen. Rep. No. 108–185 (p. 28), ''Short-term objectives and benchmarks can focus too much on minor details and distract from the real purpose of special education, which is to ensure that all children and youth with disabilities

achieve high educational outcomes and are prepared to participate fully in the social and economic fabric of their communities.''

We believe that students participating in alternate assessments based on modified academic achievement standards will benefit more when IEP Teams focus on goals that are based on grade-level content standards, rather than on short-term objectives or benchmarks. In the discussion of comments under § 200.1(e)(2)(iii) in this notice, we explain why we are requiring that the IEPs of children taking alternate assessments based on modified academic achievement standards include goals based on the academic content standards for the grade in which the student is enrolled and that the IEP be designed to monitor the student's progress in achieving the student's standards-based goals.

Changes: None.

Accommodation Guidelines (§ 300.160(b))

Comment: A few commenters requested that the regulations clarify that accommodations that invalidate a score when used in an assessment may continue to be used in classroom instruction. Other commenters recommended that the regulations clarify that the accommodation guidelines are to be used by IEP Teams to recommend necessary and reasonable accommodations to enable a student to participate both in the instructional program and in the assessment.

Discussion: The requirements in § 300.160(b) pertain to guidelines for the use of accommodations in assessments, and do not speak to the use of accommodations in the classroom. However, there is nothing in the IDEA or these regulations that would prohibit the use of accommodations in classroom instruction that, if used in a State assessment, would invalidate a student's score. Likewise, there is nothing in the IDEA or these regulations that would prohibit a State from encouraging IEP Teams to use the accommodation guidelines for assessments to determine the instructional supports to be provided in the classroom. Such instructional supports are generally referred to as supplementary aids and services. Section 300.320(a)(4)(i), consistent with section 614(d)(1)(A)(i)(IV)(aa) of the IDEA, requires the IEP Team to identify the supplementary aids and services to be provided to a child to enable the child to advance appropriately toward meeting the child's annual IEP goals.

Changes: None.

Comment: One commenter recommended requiring States and LEAs to have methodologies in place to determine that the accommodations provided are valid and reliable and can be objectively determined. A few commenters recommended requiring a State to submit proposed accommodations for review and approval by a panel of peer reviewers.

Discussion: The Department's peer review of Statewide assessment systems under Title I of the ESEA already requires a State to provide evidence that the State's assessments are valid and reliable for the purposes for which the assessments are used, and are consistent with relevant, nationally recognized professional and technical standards. A State must also provide evidence that appropriate accommodations are available to students with disabilities.

For State and LEA assessments that are not part of a State's assessment system under Title I of the ESEA, a State and its LEAs also have an obligation, under the IDEA, to ensure that children with disabilities have available the accommodations that are necessary to measure the academic achievement and functional performance of the child. In order to do this, States and LEAs need to determine, for each particular assessment, the accommodations that will not result in invalid scores and identify those accommodations in their accommodation guidelines. We have revised § 300.160(b)(2)(i) to make this clear.

The IDEA does not dictate a specific process to be followed in determining allowable accommodations, and, therefore, we decline to adopt the recommendations that we do so at this time. We will continue to evaluate whether States are ensuring that accommodations that would not result in invalid scores are available and revisit this decision if the need to do so becomes apparent.

The commenters who recommended requiring a State to submit proposed accommodations for review and approval by a panel of peer reviewers seem to be proposing a review to determine the appropriateness of accommodations that would be divorced from any review of the technical qualities of the State's assessments. Since decisions about whether a particular accommodation is or is not allowed depend on how a test is constructed and validated, we are not making the requested change. As required by §§ 200.2(b)(2) and 200.6(a)(1), a State already is under the obligation to ensure that its assessments under Title I of the ESEA are designed to be used by the widest possible number of students, and to ensure that accommodations are provided, when necessary, to measure the academic achievement of students with disabilities.

Changes: Section 300.160(b)(2)(i) has been changed to require a State's guidelines (or in the case of a district-wide assessment, an LEA's guidelines) to identify the accommodations for each assessment that do not invalidate the score.

Comment: One commenter noted that the regulations must continue to allow IEP Teams to select accommodations based on the needs of their students, without regard to whether the accommodation could yield a valid score.

Discussion: Several sections of the IDEA must be considered to evaluate the proper role of a State in identifying accommodations that do not invalidate the scores of children with disabilities (and result in children being counted as nonparticipants) and the responsibility of individual IEP Teams to select accommodations for individual children. Under section 612(a)(16) of the IDEA, a State has a responsibility to ensure that all children with disabilities are included in State and district-wide assessments. Under section 614(d)(1)(A)(i)(VI) of the IDEA and § 300.320(a)(6)(i) of the IDEA regulations, a child's IEP must include the individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child.

A State's role in this regard is thus twofold—it must ensure that children with disabilities are included in the assessments and that the accommodations that are offered to individual children with disabilities are ones that allow a child's academic achievement to be measured. This carries with it, we believe, a responsibility for each State to clearly identify for IEP Teams those accommodations that, if used, will not result in an invalid score, so that children with disabilities will be appropriately included in assessments. Therefore, as noted earlier, we have changed § 300.160(b)(2)(i) to require State and LEA guidelines to identify the accommodations for each assessment that do not result in invalid scores. We also believe that, to meet its responsibility to ensure that children with disabilities are included in assessments, a State needs to instruct IEP Teams to select only accommodations that do not result in invalid scores. The child's IEP Team, though, remains the primary decisionmaker for the accommodations

that will be made available to the child. Therefore, we have changed § 300.160(b)(2)(ii) to make clear that State and LEA guidelines must instruct IEP Teams to select only accommodations that do not result in invalid scores.

Changes: We have changed § 300.160(b)(2)(ii) to require that State and LEA guidelines instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate a score.

Comment: Several commenters stated that a State's accommodation guidelines should focus on ''appropriate accommodations'' and not require ''valid accommodations.'' These commenters stated that the focus should be on universally-designed assessments that allow many more accommodations, rather then denying children with disabilities the right to use the accommodations that are necessary to meet the child's needs. Another commenter recommended defining ''appropriate accommodations'' and ''individually appropriate accommodations'' as accommodations that are needed to meet a child's unique needs that maintain and preserve test validity, reliability, and technical testing standards.

Discussion: Tests administered with accommodations that do not maintain test validity are not measuring academic achievement and functional performance. Therefore, providing these accommodations would be inconsistent with § 300.320(a)(6)(i) and section 614(d)(1)(A)(i)(VI)(aa) of the IDEA, which require each IEP to include the appropriate accommodations that are necessary to measure the academic and functional performance of a child on State and district-wide assessments. With regard to the recommendation that a State focus on universally designed assessments, new § 300.160(g) (proposed § 300.160(f)) already incorporates the requirement in section 612(a)(16)(E) of the IDEA that a State, in the case of Statewide assessments, and an LEA, in the case of district-wide assessments, to the extent possible, use universal design in developing and implementing assessments. Moreover, § 200.2(b)(2) of the Title I regulations requires a State's assessment system to ''[b]e designed to be valid and accessible for use by the widest possible range of students, including students with disabilities.''

It is not necessary to provide specific definitions of the terms ''appropriate accommodations'' and ''individually appropriate accommodations'' because we have revised the provisions in § 300.160(b) to clarify what the accommodations guidelines need to include.

Changes: None.

Comment: One commenter requested that the regulations require a State and its LEAs to provide research-based decision-making tools for IEP Team members to determine appropriate testing accommodations. A few commenters recommended that the Department provide guidance regarding accommodations for children with disabilities and require States and LEAs to provide professional development to school personnel regarding the participation of students with disabilities in State and district-wide assessments.

Discussion: We do not believe that additional regulations are necessary to address the commenters' concerns. Section 300.160(b) already requires each State (or in the case of a district-wide assessment, an LEA) to develop guidelines for IEP Teams to use regarding the provision of appropriate accommodations. Section 200.6(a)(1)(ii)(B) of the Title I regulations also requires each State to ensure that regular and special education teachers, and other appropriate staff know how to administer assessments, including making appropriate use of accommodations for students with disabilities.

The Department has devoted considerable resources to provide technical assistance to States regarding the appropriate use of accommodations for children with disabilities. For example, the Office of Special Education Programs supports the National Center on Educational Outcomes (*See http://www.education.umn.edu/nceo/*) and the Office of Elementary and Secondary Education supports a Comprehensive Center on Accountability and Assessments (*See http://www.aacompcenter.org/*). In addition, the Department's Institute of Education Sciences supports research to address questions of how assessments for accountability can best be designed and used to capture and represent proficiency and growth for children with disabilities (*See http://ies.ed.gov/ncser/*).

Changes: None.

Comment: One commenter recommended requiring a State to have in effect policies and procedures that explain how children with disabilities are included in assessments. The commenter stated that the policies and procedures related to assessments must include a clear statement that the IEP Team, including the parent, makes the decision regarding a child's participation in State and district-wide assessments; how parents will be notified when decisions regarding the child's participation in assessments will be made; and when reports will be distributed to parents and the public. A few commenters requested that the regulations require the IEP to include the accommodations to be provided to a child.

Discussion: The requirements recommended by the commenters are already addressed in these and other existing regulations. Section 300.160(a), consistent with section 612(a)(16) of the IDEA, requires each State to have in effect policies and procedures to ensure that all children with disabilities in the State are included in State and district-wide assessments, with appropriate accommodations and alternate assessments where necessary. Section 300.320(a)(6), consistent with section 614(d)(1)(A)(i)(VI) of the IDEA, requires a child's IEP Team, which includes the parent, to include in the IEP any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. If the IEP Team determines that a child will take an alternate assessment, the IEP Team must explain why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child. Section 300.322(b) requires that the notice to the parent regarding an IEP Team meeting indicate the purpose of the meeting, in addition to the time and location of the meeting. Finally, new § 300.160(f) (proposed § 300.160(e)) requires that reports on the performance of children with disabilities on State and district-wide assessments be available to the public with the same frequency and in the same detail as reports on the assessment of nondisabled children.

Changes: None.

Comment: One commenter stated that the requirement for valid accommodations will lead to increased litigation because it violates section 607(a) and (b) of the IDEA.

Discussion: We disagree with the commenter. Section 607(a) of the IDEA states that the Secretary shall issue regulations only to the extent that such regulations are necessary to ensure compliance with the specific requirements of the IDEA. Section 607(b) of the IDEA provides that the Secretary cannot publish final regulations that would procedurally or substantively lessen the protections provided to children with disabilities in

the regulations that were in effect on July 20, 1983, except to the extent that such regulations reflect the clear and unequivocal intent of Congress in legislation. We believe that § 300.160(a) is necessary to ensure that the requirements in sections 612(a)(16) and 614(d)(1)(A)(i)(VI)(aa) of the IDEA are met, does not lessen protections for children with disabilities that were in regulations in effect in 1983 (the 1983 regulations did not address assessments), and reflects the clear and unequivocal intent of Congress. Section 614(d)(1)(A)(i)(VI)(aa) of the IDEA requires each IEP Team to include in an IEP the appropriate accommodations that are necessary to measure the academic and functional performance of a child on State and district-wide assessments. Tests administered with accommodations that do not maintain test validity are not measuring academic achievement. Moreover, the importance of identifying valid accommodations was recognized on page 97 of the House Committee Report No. 108–77 (2003):

> * * * States have an affirmative obligation to determine what types of accommodations can be made to assessments while maintaining their reliability and validity * * *. The Committee is intent on ensuring that each child with a disability receives appropriate accommodations, but is equally intent that these accommodations not invalidate the particular assessment.

Similarly, the Senate Committee Report No. 108–185 (2003) on page 30 acknowledges that appropriate accommodations will not affect the test's validity. Accordingly, we disagree that the validation requirement violates section 607(a) or (b) of the IDEA.

Changes: None.

Comment: One commenter requested a definition of ''valid.'' Another commenter stated that the regulations should make clear that accommodations that alter the construct being assessed are not allowed.

Discussion: As used in § 300.160(a), a ''valid'' accommodation is an accommodation that does not alter the construct that the test is intended to measure. Accommodations that affect test validity do not measure a child's academic achievement. We believe the requirement for valid accommodations is sufficient to guide IEP Teams and, therefore, decline to add the suggested language to the regulation.

The Department's nonregulatory guidance on standards and assessment defines validity (*See* question F–4.) and further clarifies a State's responsibilities for the validity and reliability of assessments under Title I. This document can be found at *http://www.ed.gov/policy/elsec/guid/saaguidance03.doc.* We do not believe additional clarification is needed in these regulations.

Changes: None.

Comment: Several commenters requested that definitions of ''accommodations'' and ''modifications'' be included in these regulations because definitions of these two terms vary across States.

Discussion: The terms ''accommodations'' and ''modifications'' are terms of art and have different meanings depending on the context in which they are used. The terms are used in a number of ways, for example, to refer to changes to a test or testing environment, or to adaptations to an educational environment, the presentation of educational material, the method of response, or the educational content. We do not believe it is appropriate to define such terms of art in these regulations. We also note that the term ''modifications'' is not used in the IDEA amendments of 2004 or the ESEA, as amended by NCLB.

Changes: None.

Comment: One commenter stated that special accommodations should be given for children with the most significant cognitive disabilities.

Discussion: Section 1111(b)(3)(C)(ix)(II) of the ESEA and section 612(a)(16) of the IDEA already require a State to provide appropriate accommodations for students with disabilities to participate in State assessment systems. This includes accommodations for alternate assessments.

Changes: None.

Alternate Assessments (New § 300.160(c)) (Proposed § 300.160(d))

Comment: One commenter stated that the regulations must specify that States and LEAs are required to develop two alternate assessments—one measuring the same academic achievement standards as all other students and the other based on alternate academic achievement standards for students with the most significant cognitive disabilities. A few commenters requested clarification as to whether alternate assessments are based on high academic achievement standards or alternate academic achievement standards. One commenter stated that a State should be required to provide a definition of what constitutes an alternate assessment.

Discussion: Section 612(a)(16)(C)(i) of the IDEA is clear that a State must develop and implement alternate assessments and guidelines for children with disabilities, but does not specify whether the alternate assessments must be based on grade-level academic achievement standards, modified academic achievement standards, or alternate academic achievement standards. Modified academic achievement standards under § 200.1(e) and alternate academic achievement standards under § 200.1(d) are optional. However, having an alternate assessment is not optional if there are children with disabilities who cannot be appropriately assessed with the regular assessment. Therefore, if a State chooses not to develop an alternate assessment based on modified or alternate academic achievement standards, the State must have an alternate assessment based on grade-level academic achievement standards, unless all children with disabilities can be appropriately assessed using the regular assessment.

Section 612(a)(16)(A) of the IDEA and § 300.160(a) of these regulations require a State to ensure that all children with disabilities are included in general State and district-wide assessments. Section 612(a)(16)(C)(i) of the IDEA and new § 300.160(c) (proposed § 300.160(d)) further require that a State (or in the case of a district-wide assessment, an LEA) develop and implement alternate assessments and guidelines for children with disabilities who cannot participate in regular assessments even with accommodations. Under §§ 200.1(e) and 200.6(a)(3) of the Title I regulations published in this notice and new § 300.160(c), a State has the option of developing alternate assessments based on modified academic achievement standards. For clarity, we have redesignated proposed § 300.160(c) as new § 300.160(c)(2)(ii) so that it is clear that an assessment based on modified academic achievement standards is an alternate assessment.

Because a State has options regarding the type of alternate assessments that it will provide for students with disabilities, a State would not necessarily report on the number of students who participated in each of the alternate assessments. To acknowledge this and for clarity, we have made clear in new § 300.160(f)(2) through (f)(4) (proposed § 300.160(e)(2) through (e)(4)) that a State must report the number of children with disabilities, if any, who are assessed, using an Alternate assessment based on grade-level, modified, or alternate academic achievement standards, respectively. We also have removed the regulatory citations for the different academic achievement standards (e.g., ''described in paragraph (d)(2)(i)'') and added the name of the particular achievement standard to which we are referring (e.g., ''grade-level'') in new § 300.160(f)(2)

through (f)(4) (proposed § 300.160(e)(2) through (e)(4)).

With regard to the request to clarify whether alternate assessments are based on high achievement standards or alternate academic achievement standards, this will depend on the type of alternate assessment. We believe that the regulations are clear that there are three types of alternate assessments permitted under Title I and the IDEA: alternate assessments based on grade-level academic achievement standards; Alternate assessments based on modified academic achievement standards; and alternate assessments based on alternate academic achievement standards.

We do not believe it is necessary for a State to provide a definition of what constitutes an alternate assessment, as requested by one commenter. New § 300.160(c)(2) (proposed § 300.160(d)(2)) clearly lays out that alternate assessments under Title I of the ESEA must be aligned with a State's challenging academic content standards and challenging academic achievement standards and, if a State has adopted modified academic achievement standards or alternate academic achievement standards, measure student achievement against those standards.

Changes: We have (1) redesignated proposed § 300.160(c) as new § 300.160(c)(2)(ii) and renumbered the subsequent paragraph; (2) added ''if any'' following ''number of children with disabilities'' in new paragraphs (f)(2) through (f)(4) (proposed paragraphs (e)(2) through (e)(4)); and (3) replaced the regulatory citation in new paragraphs (f)(2) through (f)(4) (proposed (e)(2) through (e)(4)) with the name of the particular academic achievement standards to which we are referring.

Comment: Several commenters recommended requiring public agencies to notify parents in writing when a child's IEP Team determines that the child will participate in an alternate assessment. A few commenters recommended requiring parents to be informed in writing of the consequences of their child taking an alternate assessment, including any effect on the child's eligibility for graduation with a regular high school diploma. The commenters stated that providing this information to parents is particularly important in a State that requires students to pass a State exam in order to receive a regular high school diploma.

Discussion: We agree that it is important for parents to be informed that their child will be assessed based on alternate or modified academic achievement standards. We also believe that it is important that parents, as well as other IEP Team members, are informed about any effects of State or local policies on their student's education that may result from taking an alternate assessment based on alternate or modified academic achievement standards. As the commenters point out, this information is particularly important in a State where students must pass a particular assessment to be eligible to receive a regular high school diploma. Therefore, we have added a regulation requiring a State to provide IEP Teams, which include the parent, with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma). We also have required a State to ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based those standards. This also is consistent with § 200.1(f)(1)(iii) and (iv) of the Title I regulations.

We do not believe it is necessary to add an additional requirement that such parental notification be provided in writing, as suggested by several commenters. Parents are integral members of the IEP Team and, as such, are involved in decisions about how their child will participate in the Statewide assessment system. Section 300.320(a)(6)(ii) of the IDEA regulations already provides that, if an IEP Team determines that a child will not participate in a particular regular State or district-wide assessment, the child's IEP must include a statement of why the child cannot participate in the regular assessment and how that child will be assessed. Under § 300.322(f), a copy of the child's IEP must be provided to the parents.

Changes: We have added new paragraph (d) to § 300.160 requiring a State to provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify the student for a regular high school diploma). We also have added a new paragraph (e) requiring a State to ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards. The subsequent paragraph has been redesignated as new paragraph (f).

Reports (New § 300.160(f)) (Proposed § 300.160(e))

Comment: One commenter strongly disagreed with reporting on the number of students with disabilities who receive accommodations. The commenter stated that, since accommodations do not change the outcome or alter the knowledge measured by the test, it is inappropriate to maintain this information.

Discussion: This is a statutory requirement and therefore cannot be deleted. Section 612(a)(16)(D)(i) of the IDEA requires a State (or in the case of a district-wide assessment, an LEA) to make available to the public information on the number of children with disabilities participating in regular assessments and the number of these children who were provided accommodations in order to participate in those assessments.

Changes: None.

Comment: A few commenters stated that accommodations that invalidate a test score should not be used and, therefore, it is unnecessary to qualify in new § 300.160(f)(1) (proposed § 300.160(e)(1)) that the number of children participating in regular assessments who were provided with accommodations refers to the number of children participating in regular assessments who were provided with accommodations ''that did not result in an invalid score.''

Discussion: We agree that accommodations that invalidate a test score should not be used. However, given the lack of consistency in the field regarding the use of the term ''accommodations,'' we believe it is important to be clear and to qualify in new § 300.160(f)(1) (proposed § 300.160(e)(1)) that reports on the assessment of children with disabilities who participate in regular assessments with accommodations include only those children who were provided with

accommodations that did not result in an invalid score. For clarity, we also have reordered the sequence in which the alternate assessments are listed in new paragraph (f) (proposed paragraph (e)) to be consistent with the order in new § 300.160(c)(2) (proposed § 300.160(d)(2)).

Changes: We have redesignated proposed § 300.160(e)(3), regarding alternate academic achievement standards, as new § 300.160(f)(4) and redesignated proposed § 300.160(e)(4)), regarding modified academic achievement standards, as new § 300.160(f)(3).

Comment: A few commenters recommended requiring a State to report on the number of children with disabilities who participated in the regular assessment with accommodations that invalidated their test scores. One commenter recommended requiring a State to report on the number of children who received accommodations that invalidated their test scores on alternate assessments based on alternate academic achievement standards and alternate assessments based on modified academic achievement standards.

Discussion: Children taking an assessment with accommodations that invalidate their score should not be reported as participants. We specify in § 300.160(b)(2)(ii) that a State must instruct IEP Teams to select only those accommodations for each assessment that do not result in invalid scores. Therefore, we decline to make the changes requested by the commenters.

Changes: None.

Comment: One commenter requested that a State be required to report on the performance of children with disabilities for each assessment, not just for regular assessments and alternate assessments.

Discussion: We agree that the regulation would be clearer if it identified separately alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards. We have made this change in new § 300.160(f)(5) (proposed § 300.160(e)(5)). In addition, we have added the language inadvertently omitted requiring the performance results for children with disabilities to be compared to the achievement of all children, including children with disabilities, as specified in section 612(a)(16)(D)(iv) of the Act.

Changes: We have changed § 300.160(f)(5) (proposed § 300.160(e)(5)) to separately identify regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards. We also have added an introductory phrase requiring comparison with assessment results for all children, including children with disabilities.

Comment: One commenter recommended requiring a State to widely distribute information about the reports required in new § 300.160(f) (proposed § 300.160(e)) by posting the reports on Web sites, making the reports available in schools and libraries, and providing parents with notices that the information is available.

Discussion: New § 300.160(f) (proposed § 300.160(e)), consistent with section 612(a)(16)(D)(i) of the IDEA, requires a State (or in the case of a district-wide assessment, an LEA) to make available to the public, and report to the public, with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the information outlined in new § 300.160(f) (proposed § 300.160(e)) regarding the participation and performance of children with disabilities on State and district-wide assessments. The manner in which the information is provided to the public (*e.g.*, via Web sites, parent notices) is a matter that is best left to State and local officials to determine.

Changes: None.

Universal Design (New § 300.160(g)) (Proposed § 300.160(f))

Comment: One commenter recommended requiring a State to document where universal design principles are not used.

Discussion: New 300.160(g) (proposed § 300.160(f)), consistent with section 612(a)(16)(E) of the IDEA, requires a State (or in the case of a district-wide assessment, an LEA), to the extent feasible, to use universal design principles in developing and administering assessments. We believe that implementing the commenter's recommendation (e.g., documenting ''universal design principles'') would require significant resources and time and be a burden for a State to report. Therefore, we decline to make the change requested by the commenter.

Changes: None.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is significant under section 3(f)(4) of the Executive Order.

1. Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

Summary of Public Comments: Several commenters suggested that the cost of implementing an alternate assessment based on modified academic achievement standards would be significant and that the Federal government should fund new assessments, including universally designed assessments. Some commenters disagreed with the figures from a study by the Government Accountability Office (GAO) cited in the NPRM, regarding the amount of funds spent on assessments in several States.

These comments were considered in conducting the analysis of the costs and benefits of the final regulations. The Department's estimates and assumptions on which they are based are described below.

Summary of Potential Costs and Benefits

These regulations provide States with additional flexibility in implementing the accountability requirements in Title I and the IDEA with respect to students with disabilities. Specifically, the final regulations permit States to develop and implement alternate assessments based on modified academic achievement standards for the group of students with disabilities, for whom, according to recent research and the experience of many States, these alternate assessments are appropriate, and then to use their

results in making AYP determinations. Implementation of these alternate assessments and standards would be a component of State and local efforts to improve educational outcomes for this group of students, consistent with the principles and objectives of NCLB.

The primary impact of the regulations is on the students with disabilities who are eligible to be assessed based on modified academic achievement standards. The regulations provide educational benefits to students by permitting States and LEAs to assess eligible students with disabilities using assessments that are appropriately challenging but better designed to measure their educational strengths and weaknesses and evaluate their achievement of grade-level content, and to provide information that would be helpful to teachers to guide instruction to meet the academic needs of these students so they can work toward grade-level achievement. Based on an actual enrollment of 26.3 million students [10] in grades 3 through 8 and 10 in school year 2004–2005, we estimate that as many as 530,000 children with disabilities could be affected by, and benefit from, this change in the assessment and accountability structure in school year 2008–2009.

The potential costs to students would be the harm associated with including the ''wrong'' children in the group to be assessed based on modified academic achievement standards. Given the history of inappropriately low expectations for children with disabilities, the potential harm relates to finding students to be eligible for alternate assessments based on modified academic achievement standards who, in fact, with appropriate instruction and high quality special education services, might be able to achieve at the same high level as their non-disabled peers. The risk is that low expectations could impede the ability of these students to perform to their potential. The Secretary believes that the risk of including the ''wrong'' students in the group to be assessed based on modified academic achievement standards is not high because of the central role that IEP Teams play in determining how individual children will be assessed. Moreover, any harm would be minimal because the regulations require the assessment determinations to be made on an annual basis by the IEP Team and they also include a number of safeguards to ensure that students who are to be assessed based on modified academic achievement standards have access to grade-level content so that they can work toward grade-level achievement. The Secretary has concluded that the educational benefits of assessing a large number of students whose disabilities have prevented them from achieving grade-level proficiency using more appropriate assessments and standards will outweigh any potential harm associated with assessing children based on modified academic achievement standards who might have been able to reach grade-level proficiency in the same time frame as other students. In addition to these benefits to children, these regulations will give teachers and schools credit for work that they do with these students to help them progress toward grade-level achievement, even if they are unable to reach grade-level proficiency.

Although States are not required to take advantage of the flexibility provided in these regulations, States may elect to do so, and, as a result, may incur additional administrative costs associated with the development of modified academic achievement standards and assessments based on those standards. However, little information is available for estimating these costs; we have used the limited information available to us to develop a rough estimate of the development costs for States that choose to take advantage of this flexibility.

This analysis is based on a 2003 report, issued by the GAO, ''Title I: Characteristics of Tests Will Influence Expenses: Information Sharing May Help States Realize Efficiencies,'' that examined the costs of developing assessments based on grade-level academic achievement standards and provides estimates for the ongoing development expenditures for existing assessments for 7 States.[11] We have some concerns about the accuracy of this information, its generalizibility, and its direct relevance to estimating the costs of developing alternate assessments based on modified academic achievement standards. With those caveats, we believe the report does provide some indication of the variation in costs among States in developing assessments and represents the best information available to us at this point in time.[12]

If we assume that GAO's category of ongoing development, which includes question writing and review, involves the kinds of activities that States would undertake in developing alternate assessments based on modified academic achievement standards, the GAO data can be used as a basis for projecting the possible costs of developing assessments based on modified academic achievement standards. For example, we can estimate an upper limit on the total costs of developing these alternate assessments—$169 million—by using the GAO data reported for Massachusetts [13] and assuming that 52 jurisdictions would choose to develop alternate assessments based on modified academic achievement standards for each of the 17 assessments required by Title I to be administered in 2008–2009. Although this upper-bound estimate represents the best information available to us at this point in time, we believe it may significantly overstate the costs of developing these alternate assessments insofar as the estimate GAO included for Massachusetts, which was more than 2.4 times as large as the estimates included for 5 of the other States, may not be indicative of the costs of assessment development in other States using different types of questions or approaches to assessment.

In addition, this estimate does not reflect the reduced costs for the 4 States that already have alternate assessments based on modified academic achievement standards in place under the interim flexibility policy. States that adopted alternate assessments based on modified academic achievement standards under the interim flexibility policy would still be required to undergo peer review once the final regulations are in effect. However, if the peer review determines that no adjustments are needed to any of the assessments in these States, the estimated cost of producing alternate assessments in the other 48 jurisdictions would be reduced to $155 million.

In addition, we do not know the extent to which States would elect to develop alternate assessments based on modified academic achievement standards for each grade and subject, since States that choose to take advantage of the flexibility are not required to develop modified academic achievement standards in every grade or every subject. However, in light of what we know about the performance of students with disabilities on State assessments and AYP determinations,

[10] Common Core of Data (CCD), ''State Nonfiscal Survey of Public Elementary/Secondary Education, 2004–05 v.1c, National Center for Education Statistics, U.S. Department of Education.

[11] U.S. Government Accountability Office, Report 03–389, pg. 17.

[12] We received a comment from one State indicating that the cost of developing its assessments was approximately $250,000. However, we do not have any information about how that figure was derived and have, therefore, declined to use that estimate in this analysis.

[13] GAO reported test development expenditures of $190,870 for the State of Massachusetts.

we think it is highly unlikely that all States would elect to develop alternate assessments based on modified academic achievement standards for all of the required 17 assessments. If we assume that typically States would develop only 8 assessments (e.g., reading/language arts and mathematics assessments for grades 6, 7, 8, and a high school grade), which may be a more accurate estimate of the impact of the rule based on the available information, the total costs would be estimated to be $79 million for 52 jurisdictions and $73 million for 48 jurisdictions.

Since the regulations would not require that States adopt separate test administration or scoring procedures, we assume that no additional costs would be incurred in administering assessments based on modified academic achievement standards. In addition, although many States choose to create new assessments or revise parts of assessments at regular intervals, this is not required by these regulations so these estimates assume that development costs are nonrecurring.

States that elect to develop modified academic achievement standards would also incur minimal costs for the development and implementation of guidelines for IEP Teams to apply in determining whether these modified academic achievement standards are appropriate for particular students with disabilities. The Department will provide non-regulatory guidance regarding alternate assessments and modified academic achievement standards that States can use in developing their IEP Team guidelines.

We assume States that elect to take advantage of this new flexibility to use modified academic achievement standards and assessments based on these standards will do so because they believe they will realize net benefits, primarily because of the benefits to students of being more appropriately assessed and, secondarily, because of the effect on AYP determinations. The benefits to States from adopting assessments based on modified academic achievement standards depend on such factors as whether the State has implemented assessments based on alternate academic achievement standards and whether the assessments are adaptable to a wide range of abilities, and the extent to which students with disabilities are able to participate appropriately in the State's general assessments. It also will depend, in part, on the extent to which the scores for the 2.0 percent of students affected by these regulations increase enough to meet the AYP goals for schools currently in need of improvement. Testing data for the 2003–2004 school year for 33 States for the Department's ''Study of State Implementation of Accountability and Teacher Quality Under NCLB,'' published in the ''National Assessment of Title I Interim Report: Volume I; Implementation of Title I,'' indicates that 13.0 percent of schools missed AYP solely due to the achievement of the students with disabilities subgroup. Under Title I, LEAs are required to spend an amount equal to 20.0 percent of their Title I allocations to fund supplemental services and choice-related transportation in schools that fail to make AYP for two or more consecutive years and are identified for improvement. LEAs will have greater flexibility in the use of their Title I allocations if fewer schools miss AYP goals and are subject to consequences as a school in need of improvement.

States that decide to adopt modified academic achievement standards and implement alternate assessments based on those standards will be able to use funds from Title I, Title VI State Assessment Grants, and IDEA programs to finance those activities. The costs of developing and implementing assessments vary considerably but are modest when compared to the amounts available under Federal programs that States can draw on for test development and implementation. The fiscal year 2007 appropriation for Title I Grants to Local Educational Agencies is approximately $12.8 billion, and States could reserve approximately 1 percent of this amount for administrative expenses, including paying the costs of developing assessments. The appropriation for IDEA Grants to States is $10.8 billion, and States could reserve more than $900 million for such activities as the development and provision of appropriate accommodations and assessments of children with disabilities under Title I. For State Assessment Grants, the appropriation is $408 million. The Department believes that the regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal sources.

For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These provisions require States and LEAs to take certain actions only if States choose to implement the flexibility these regulations afford. The Department believes that these activities will be financed through the appropriations for Title I and the IDEA and that the responsibilities encompassed in these laws and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal sources.

Paperwork Reduction Act of 1995

There are several sections of the revised Title I regulations (§§ 200.1, 200.6, and 200.20) and one section of the revised IDEA regulations (§ 300.160) that require collection of information under the Paperwork Reduction Act. The following chart describes those regulatory sections, the information being collected, and the collections the Department will submit to the Office of Management and Budget for approval and public comment. Separate notices will be published in the **Federal Register** requesting comment on these collections.

Regulatory section	Collection information	Collection
§ 200.1(f)	Requires SEAs opting for the flexibility offered by these regulations to develop and monitor the implementation of clear guidelines for IEP Teams to apply in determining students who will be assessed based on modified academic achievement standards.	Information collection 1810–0576, ''Consolidated State Application.''

Regulatory section	Collection information	Collection
§ 200.6(a)(4) and § 300.160(f)(3)	Requires SEAs to report in their annual State performance reports the total number and percentage of students tested in math and reading with alternate assessments based on modified academic achievement standards.	Information collection 1875–0240, ''Annual Mandatory Collection of Elementary and Secondary Education Data for ED*Facts*.''
§ 200.20	Permits SEAs and LEAs to include the scores of former students with disabilities in the students with disabilities subgroup when reporting AYP on SEA and LEA report cards.	Information collection 1810–0581, ''State Educational Agency and Local Educational Agency and School Data Collection and Reporting under ESEA, Title I, Part A.''

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

The need for the NPRM was raised to the Department by State and LEA assessment professionals who were concerned that the assessment alternatives contemplated in the existing Title I regulations (regular assessments based on grade-level academic achievement standards and alternate assessments for students with the most significant cognitive disabilities), and reflected in the IDEA, did not recognize that there was a group of students with disabilities who were not the most significantly cognitively disabled, but who could not achieve to grade-level academic achievement standards. Based on the concerns raised, the Department convened several meetings with State and LEA officials, parents of students with disabilities, and researchers to learn more about the issues involved in assessing students with disabilities, the concerns of parents and advocates for ensuring that all students with disabilities be held to high academic achievement standards, and about how some States were designing assessments for students with disabilities. In issuing the NPRM, however, we did not believe that the proposed regulations had Federalism implications as defined in the Executive order.

We received several comments on Federalism issues. First, several commenters stated that proposed § 200.1(e)(1)(iii), which would require that modified academic achievement standards not preclude a student from earning a regular high school diploma, would be an intrusion into State graduation standards if a State was required to diminish its standards for a regular diploma to include students who are assessed based on modified academic achievement standards. As we have stated elsewhere in this preamble, the intent of proposed § 200.1(e)(1)(iii) was not to require States to alter their graduation requirements or to provide a regular high school diploma to a student who scores proficient on an alternate assessment based on modified academic achievement standards. Rather, we wanted to ensure that a student is not automatically precluded from attempting to earn a regular high school diploma simply because the student was assessed based on modified academic achievement standards. To clarify our intent, we have removed proposed § 200.1(e)(1)(iii) and replaced it with § 200.1(f)(2)(iv), which requires a State to ensure that students who take alternate assessments based on modified academic achievement standards are not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma.

Second, a few commenters stated that the criteria we proposed for modified academic achievement standards were too prescriptive and that States should have the flexibility to develop modified academic achievement standards in ways that meet their needs. As we stated elsewhere in this preamble, we do not agree with these commenters. We believe that allowing States to develop modified academic achievement standards without placing any parameters or restrictions on their use would likely result in lowered expectations for this group of students and limit opportunities for these students to access grade-level content and meet grade-level achievement standards.

Taking into account these comments, and these final regulations, we believe that we have sufficiently addressed any Federalism concerns raised by the commenters with respect to Executive Order 13132.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.010 Improving Programs Operated by Local Educational Agencies; 84.027 Assistance to States for the Education of Children with Disabilities).

List of Subjects

34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indians—education, Institutions of higher education, Local educational agencies, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—

education, Privacy, Private Schools, Reporting and recordkeeping requirements.

Dated: April 2, 2007.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 200 and 300 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

■ 2. Section 200.1 is amended by:

■ A. Revising paragraphs (a)(1) and (a)(2).

■ B. Redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively.

■ C. Adding new paragraphs (e) and (f).

The revisions and additions read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) * * *

(1) Be the same academic content and academic achievement standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as provided in paragraphs (d) and (e) of this section, which apply only to the State's academic achievement standards;

(2) Include the same knowledge and skills expected of all students and the same levels of achievement expected of all students, except as provided in paragraphs (d) and (e) of this section; and

* * * * *

(e) *Modified academic achievement standards.* (1) For students with disabilities under section 602(3) of the Individuals with Disabilities Education Act (IDEA) who meet the State's criteria under paragraph (e)(2) of this section, a State may define modified academic achievement standards, provided those standards—

(i) Are aligned with the State's academic content standards for the grade in which the student is enrolled;

(ii) Are challenging for eligible students, but may be less difficult than the grade-level academic achievement standards under paragraph (c) of this section;

(iii) Include at least three achievement levels; and

(iv) Are developed through a documented and validated standards-setting process that includes broad stakeholder input, including persons knowledgeable about the State's academic content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities.

(2) In the guidelines that a State establishes under paragraph (f)(1) of this section, the State must include criteria for IEP teams to use in determining which students with disabilities are eligible to be assessed based on modified academic achievement standards. Those criteria must include, but are not limited to, each of the following:

(i) The student's disability has precluded the student from achieving grade-level proficiency, as demonstrated by such objective evidence as the student's performance on—

(A) The State's assessments described in § 200.2; or

(B) Other assessments that can validly document academic achievement.

(ii)(A) The student's progress to date in response to appropriate instruction, including special education and related services designed to address the student's individual needs, is such that, even if significant growth occurs, the IEP team is reasonably certain that the student will not achieve grade-level proficiency within the year covered by the student's IEP.

(B) The determination of the student's progress must be based on multiple measurements, over a period of time, that are valid for the subjects being assessed.

(iii) If the student's IEP includes goals for a subject assessed under § 200.2, those goals must be based on the academic content standards for the grade in which the student is enrolled, consistent with paragraph (f)(2) of this section.

(f) *State guidelines.* If a State defines alternate or modified academic achievement standards under paragraph (d) or (e) of this section, the State must do the following—

(1) For students who are assessed based on either alternate or modified academic achievement standards, the State must—

(i) Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining—

(A) Students with the most significant cognitive disabilities who will be assessed based on alternate academic achievement standards; and

(B) Students with disabilities who meet the criteria in paragraph (e)(2) of this section who will be assessed based on modified academic achievement standards. These students may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under § 200.2;

(ii) Inform IEP teams that students eligible to be assessed based on alternate or modified academic achievement standards may be from any of the disability categories listed in the IDEA;

(iii) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State and local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma); and

(iv) Ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards under the State's guidelines in this paragraph are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

(2) For students who are assessed based on modified academic achievement standards, the State must—

(i) Inform IEP teams that a student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under § 200.2;

(ii) Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in developing and implementing IEPs for students who are assessed based on modified academic achievement standards. These students' IEPs must—

(A) Include IEP goals that are based on the academic content standards for the grade in which a student is enrolled; and

(B) Be designed to monitor a student's progress in achieving the student's standards-based goals;

(iii) Ensure that students who are assessed based on modified academic achievement standards have access to the curriculum, including instruction, for the grade in which the students are enrolled;

(iv) Ensure that students who take alternate assessments based on modified academic achievement standards are not

precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma; and

(v) Ensure that each IEP team reviews annually for each subject, according to the criteria in paragraph (e)(2) of this section, its decision to assess a student based on modified academic achievement standards to ensure that those standards remain appropriate.

* * * * *

■ 3. Section 200.6 is amended by:

■ A. Revising paragraph (a)(1) and (a)(2)(iii).

■ B. Adding paragraphs (a)(3) and (a)(4).

The revisions and additions read as follows:

§ 200.6 Inclusion of all students.

* * * * *

(a) *Students eligible under IDEA and Section 504*—(1) *Appropriate accommodations.* (i) A State's academic assessment system must provide—

(A) For each student with a disability, as defined under section 602(3) of the IDEA, appropriate accommodations that the student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(B) For each student covered under section 504 of the Rehabilitation Act of 1973, as amended (Section 504), appropriate accommodations that the student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(ii) A State must—

(A) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with disabilities who are tested against academic achievement standards for the grade in which a student is enrolled; and

(B) Ensure that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with disabilities and students covered under Section 504.

(2) * * *

(iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum.

(3) *Alternate assessments that are based on modified academic achievement standards.* (i) To assess students with disabilities based on modified academic achievement standards, a State may develop a new alternate assessment or adapt an assessment based on grade-level academic achievement standards.

(ii) An alternate assessment under paragraph (a)(3)(i) of this section must—

(A) Be aligned with the State's grade-level academic content standards;

(B) Yield results that measure the achievement of those students separately in reading/language arts and mathematics relative to the modified academic achievement standards;

(C) Meet the requirements in §§ 200.2 and 200.3, including the requirements relating to validity, reliability, and high technical quality; and

(D) Fit coherently in the State's overall assessment system under § 200.2.

(4) *Reporting.* A State must report separately to the Secretary, under section 1111(h)(4) of the Act, the number and percentage of students with disabilities taking—

(i) Regular assessments described in § 200.2;

(ii) Regular assessments with accommodations;

(iii) Alternate assessments based on the grade-level academic achievement standards described in § 200.1(c);

(iv) Alternate assessments based on the modified academic achievement standards described in § 200.1(e); and

(v) Alternate assessments based on the alternate academic achievement standards described in § 200.1(d).

* * * * *

■ 4. Section 200.7 is amended by redesignating paragraph (a)(2) as (a)(2)(i) and adding a new paragraph (a)(2)(ii) to read as follows:

§ 200.7 Disaggregation of data.

(a) * * *

(2)(i) * * *

(ii) Beginning with AYP decisions that are based on the assessments administered in the 2007–08 school year, a State may not establish a different minimum number of students under paragraph (a)(2)(i) of this section for separate subgroups under § 200.13(b)(7)(ii) or for the school as a whole.

* * * * *

■ 5. Section 200.13 is amended by:

■ A. Revising paragraph (c).

■ B. Adding an appendix at the end of the section.

The revisions and addition read as follows:

§ 200.13 Adequate yearly progress in general.

* * * * *

(c)(1) In calculating AYP for schools, LEAs, and the State, a State must, consistent with § 200.7(a), include the scores of all students with disabilities.

(2) With respect to scores based on alternate or modified academic achievement standards, a State may include—

(i) The proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards described in § 200.1(d), provided that the number of those scores at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics; and

(ii) The proficient and advanced scores of students with disabilities based on the modified academic achievement standards described in § 200.1(e)(1), provided that the number of those scores at the LEA and at the State levels, separately, does not exceed 2.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(3) A State's or LEA's number of proficient and advanced scores of students with disabilities based on the modified academic achievement standards described in § 200.1(e)(1) may exceed 2.0 percent of all students in the grades assessed if the number of proficient and advanced scores based on the alternate academic achievement standards described in § 200.1(d) is less than 1.0 percent, provided the number of proficient and advanced scores based on modified and alternate academic achievement standards combined does not exceed 3.0 percent of all students in the grades assessed.

(4) A State may not request from the Secretary an exception permitting it to exceed the caps on proficient and advanced scores based on alternate or modified academic achievement standards under paragraph (c)(2) and (3) of this section.

(5)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap on proficient and advanced scores based on the alternate academic achievement standards described in paragraph (c)(2)(i) of this section only if—

(A) The LEA demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed;

(B) The LEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the LEA that have drawn large numbers of families of students with the most significant cognitive disabilities, or that the LEA has such a small overall student population that it would take only a few students with such disabilities to exceed the 1.0 percent cap; and

(C) The LEA documents that it is implementing the State's guidelines under § 200.1(f).

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(6) A State may not grant an exception to an LEA to exceed the 2.0 percent cap on proficient and advanced scores based on modified academic achievement standards under paragraph (c)(2)(ii) of this section, except as provided in paragraph (c)(3) of this section.

(7) In calculating AYP, if the percentage of proficient and advanced scores based on alternate or modified academic achievement standards under § 200.1(d) or (e) exceeds the caps in paragraph (c) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores based on alternate and modified academic achievement standards.

(ii) Count as non-proficient the proficient and advanced scores that exceed the caps in paragraph (c) of this section.

(iii) Determine which proficient and advanced scores to count as non-proficient in schools and LEAs responsible for students who are assessed based on alternate or modified academic achievement standards.

(iv) Include non-proficient scores that exceed the caps in paragraph (c) of this section in each applicable subgroup at the school, LEA, and State level.

(v) Ensure that parents of a child who is assessed based on alternate or modified academic achievement standards are informed of the actual academic achievement levels of their child.

* * * * *

Appendix to § 200.13—When May a State or LEA Exceed the 1% and 2% Caps?

The following table provides a summary of the circumstances in which a State or LEA may exceed the 1% and 2% caps described in § 200.13.

WHEN MAY A STATE OR LEA EXCEED THE 1% AND 2% CAPS?

	Alternate academic achievement standards—1% cap	Modified academic achievement standards—2% cap	Alternate and modified academic achievement standards—3%
State	Not permitted	Only if State is below 1% cap, but cannot exceed 3%.	Not permitted.
LEA	Only if granted an exception by the SEA.	Only if LEA is below 1% cap, but cannot exceed 3%.	Only if granted an exception to the 1% cap by the SEA, and only by the amount of the exception.

■ 6. Section 200.20 is amended by:

■ A. Revising paragraph (c)(3).

■ B. Revising paragraph (f)(2).

■ C. Adding a new paragraph (g).

The revisions and addition read as follows:

§ 200.20 Making adequate yearly progress.

* * * * *

(c) * * *

(3) To count a student who is assessed based on alternate or modified academic achievement standards described in § 200.1(d) or (e) as a participant for purposes of meeting the requirements of this paragraph, the State must have, and ensure that its LEAs adhere to, guidelines that meet the requirements of § 200.1(f).

* * * * *

(f) * * *

(2)(i) In determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, a State may include, for up to two AYP determination cycles, the scores of—

(A) Students who were limited English proficient but who no longer meet the State's definition of limited English proficiency; and

(B) Students who were previously identified under section 602(3) of the IDEA but who no longer receive special education services.

(ii) If a State, in determining AYP for the subgroup of limited English proficient students and the subgroup of students with disabilities, includes the scores of the students described in paragraph (f)(2)(i) of this section, the State must include the scores of all such students, but is not required to—

(A) Include those students in the limited English proficient subgroup or in the students with disabilities subgroup in determining if the number of limited English proficient students or students with disabilities, respectively, is sufficient to yield statistically reliable information under § 200.7(a); or

(B) With respect to students who are no longer limited English proficient—

(*1*) Assess those students' English language proficiency under § 200.6(b)(3); or

(*2*) Provide English language services to those students.

(iii) For the purpose of reporting information on report cards under section 1111(h) of the Act—

(A) A State may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the State level under section 1111(h)(1)(C)(ii) of the Act;

(B) An LEA may include the scores of former limited English proficient students and former students with disabilities as part of the limited English proficient and students with disabilities subgroups, respectively, for the purpose of reporting AYP at the LEA and school levels under section 1111(h)(2)(B) of the Act; but

(C) A State or LEA may not include the scores of former limited English proficient students or former students with disabilities as part of the limited English proficient or students with disabilities subgroup, respectively, in reporting any other information under section 1111(h) of the Act.

(g) *Transition provision regarding modified academic achievement standards.* The Secretary may provide a State that is moving expeditiously to adopt and administer alternate assessments based on modified academic achievement standards flexibility in accounting for the achievement of students with

disabilities in AYP determinations that are based on assessments administered in 2007–08 and 2008–09. To be eligible for this flexibility, a State must meet criteria, as the Secretary determines appropriate, for each year for which the flexibility is available.

■ 7. Section 200.103 is amended by adding a new paragraph (c) to read as follows:

§ 200.103 Definitions.

* * * * *

(c) *Student with a disability* means child with a disability, as defined in section 602(3) of the IDEA.

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 8. The authority citation for part 300 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

■ 9. A new § 300.160 is added to read as follows:

§ 300.160 Participation in assessments.

(a) *General.* A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) *Accommodation guidelines.* (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must—

(i) Identify only those accommodations for each assessment that do not invalidate the score; and

(ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

(c) *Alternate assessments.* (1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must provide for alternate assessments that—

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards;

(ii) If the State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), measure the achievement of children with disabilities meeting the State's criteria under § 200.1(e)(2) against those standards; and

(iii) If the State has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards.

(d) *Explanation to IEP Teams.* A State (or in the case of a district-wide assessment, an LEA) must provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

(e) *Inform parents.* A State (or in the case of a district-wide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

(f) *Reports.* An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

(3) The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards.

(4) The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

(5) Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(g) *Universal design.* An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16))

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Federal Register

Monday,
April 9, 2007

Part V

The President

Proclamation 8120—Pan American Day and Pan American Week, 2007

Proclamation 8121—National Former Prisoner of War Recognition Day, 2007

Federal Register
Vol. 72, No. 67
Monday, April 9, 2007

Presidential Documents

Title 3—

The President

Proclamation 8120 of April 5, 2007

Pan American Day and Pan American Week, 2007

By the President of the United States of America

A Proclamation

Each year on Pan American Day and during Pan American Week, we underscore our commitment to supporting the citizens in the Pan American community, strengthening democracy in the Western Hemisphere, and advancing the cause of peace worldwide.

In 1890, the International Union of American Republics was established to promote cooperation among the Americas. Today, the United States and our neighbors in the Western Hemisphere are a community linked by common values, shared interests, and the close bonds of family and friendship. As the expansion of freedom continues in our region, the democratic nations of the Western Hemisphere are working together to build a safer and more prosperous society and to ensure that all the people of the Americas have the opportunity to achieve their dreams.

My Administration is working to advance the cause of social justice in the Pan American region, and we are committed to supporting our neighbors' efforts to meet the needs of their citizens. In 2004, we created the Millennium Challenge Corporation to provide increased aid to nations that govern justly, invest in the education and health of their people, and promote economic freedom. We are working with the citizens of the Pan American community to expand economic opportunity through debt relief and to encourage reforms through such mechanisms as the North America Free Trade Agreement, the Chile Free Trade Agreement, and the Dominican Republic-Central America-United States Free Trade Agreement. These agreements facilitate the flow of trade and help establish market economies. We have also recently notified the Congress of our intention to enter into a free trade agreement with Panama and signed free trade agreements with Peru and Colombia. These agreements will generate export opportunities for the United States and benefit the people of Panama, Peru, and Colombia by providing economic opportunity and helping to strengthen democratic institutions. By working with our democratic neighbors to build strong and vibrant economies, we are helping the citizens of the Western Hemisphere realize the promise of a free and just society.

The ties between the democratic nations of the Western Hemisphere are deep and lasting, and together we can continue our great strides toward freedom and prosperity for people everywhere.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 14, 2007, as Pan American Day and April 8 through April 14, 2007, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

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

[FR Doc. 07–1775
Filed 4–6–07; 8:47 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8121 of April 5, 2007

National Former Prisoner of War Recognition Day, 2007

By the President of the United States of America

A Proclamation

The men and women of the United States Armed Forces have made great sacrifices to defend our Nation. They have triumphed over brutal enemies, liberated continents, and answered the prayers of millions around the globe. On National Former Prisoner of War Recognition Day, we honor the brave individuals who put service above self and were taken captive while protecting America and advancing the cause of freedom.

Throughout our Nation's conflicts, American prisoners of war have defied ruthless enemies and endured tremendous hardships as they braved captivity. Their strength showed the power and resilience of the American spirit and the indomitable character of our men and women in uniform. Their sacrifices are a great example of courage, devotion, and love of country.

Our Nation's former prisoners of war have helped secure the priceless gift of freedom for all our citizens, and we will always be grateful to them and their families. On National Former Prisoner of War Recognition Day and throughout the year, we honor the American heroes who have been taken as prisoners of war and remember their legacy of bravery and selflessness.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 2007, as National Former Prisoner of War Recognition Day. I call upon the people of the United States to join me in honoring the service and sacrifices of all American prisoners of war. I call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

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

[FR Doc. 07–1776
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1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[8] Apr. 1, 2006
23	(869–060–00073–9)	45.00	Apr. 1, 2006
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–060–00098–4)	12.00	[6] Apr. 1, 2006
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[9] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[9] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2007 CFR set		1,389.00	2007
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Subscription (mailed as issued)		332.00	2007
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Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.