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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 8, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8132 of April 24, 2007

Malaria Awareness Day, 2007

By the President of the United States of America

A Proclamation

Americans are fortunate to live in a land that eliminated malaria decades ago. Today, our country helps fight this disease in Africa, because we believe in the timeless truth: To whom much is given, much is required. On Malaria Awareness Day, we renew our commitment to helping combat malaria in Africa and around the world.

Tragically, one child in Africa dies every 30 seconds from malaria, a disease that is highly treatable and preventable. To reduce malaria's mortality rate in the hardest-hit African countries, I announced the President's Malaria Initiative in 2005, a five-year, $1.2 billion program. At last year's White House Summit on Malaria, Laura and I were pleased to announce the expansion of this initiative to several additional countries. These efforts are making a difference, and millions of people have already benefited from insecticide-treated bed nets, indoor spraying, and anti-malaria medicine.

Across our Nation, Americans are answering the call to act. By simply donating an insecticide-treated bed net, one individual can help save a life. For more information about how to help and for a list of humanitarian organizations, visit fightingmalaria.gov.

Americans are a compassionate people who care deeply about the plight of others and the future of our world, and we can all be proud of the work our Nation is doing to fight disease and despair. By standing with the people of Africa in the fight against malaria, we can help lift a burden of unnecessary suffering, provide hope and health, and forge lasting friendships.

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 25, 2007, as Malaria Awareness Day. I encourage Americans to answer the universal call to love a neighbor and join in our goal of eradicating malaria on the African continent.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth 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. 07–2136
Filed 4–27–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27529; Directorate Identifier 2007–CE–018–AD; Amendment 39–15038; AD 2007–09–06]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft (Type Certificate No. A36EU Formerly Held by AVIONS MUDRY et CIE) Model CAP 10 B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

> Several recent inspections have revealed that some spar wooden centre blocks have shown cracks. Investigation revealed that cracks are generated by the wood drying. Actions specified in this AD are intended to detect and correct any defects on the central wing spar block.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 21, 2007.

On May 21, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by June 4, 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2007–0015, dated January 12, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products.

The MCAI states:

> Several recent inspections have revealed that some spar wooden centre blocks have shown cracks. Investigation revealed that cracks are generated by the wood drying. Actions specified in this AD are intended to detect and correct any defects on the central wing spar block.
>
> This AD is requiring the installation of two reinforcement plates on the wing spar to counter the shear loading, implementation of corrective actions to slow down the wood drying and is also introducing new repetitive inspections.

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

Relevant Service Information

APEX Aircraft has issued Service Bulletin No. 060307 R1, Amendment date November 2, 2006; Apex Aircraft CAP10C—Main Spar Wooden Center Block—Reinforcement Instructions No. 1001766, dated October 6, 2006; and Apex Aircraft Document No. 1001133–A, DR400 Spar Consolidation, Applying Araldite 2015 Adhesive, dated February 4, 2003. 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 AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the 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 have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of cracks found on the central wing spar block. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27529; Directorate Identifier 2007–CE–018–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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.

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 amends14 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:

2007–09–06 APEX Aircraft (Type Certificate No. A36EU formerly held by AVIONS MUDRY et CIE): Amendment 39–15038; Docket No. FAA–2007–27529; Directorate Identifier 2007–CE–018–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model CAP 10 B airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) fitted with major change 000302, wood/carbon-made wings, part-number 11.56.00.010, serial numbers 001 to 084 inclusive.

Subject

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

Reason

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

Several recent inspections have revealed that some spar wooden center blocks have shown cracks. Investigation revealed that cracks are generated by the wood drying. Actions specified in this AD are intended to detect and correct any defects on the central wing spar block.

This AD is requiring the installation of two reinforcement plates on the wing spar to counter the shear loading, implementation of corrective actions to slow down the wood drying and is also introducing new repetitive inspections.

Actions and Compliance

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

(1) Before further flight after May 21, 2007 (the effective date of this AD):

(i) Fabricate a placard that incorporates the following words (using at least ⅛-inch letters) and install this placard on the instrument panel within the pilot's clear view: ''FLICK MANEUVERS ARE PROHIBITED''; and

(ii) Insert a copy of this AD into the Limitations section of the Pilot's Operating Handbook (POH).

(iii) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may fabricate the placard required in paragraph (f)(1)(i) of this AD and may insert the information into the POH as required in paragraph (f)(1)(ii) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(2) Within the next 50 hours time-in-service (TIS) after May 21, 2007 (the effective date of this AD), inspect the front and rear spar webs for cracks and damage using Apex Aircraft Service Bulletin No. 060307 R1, Amendment date November 2, 2006.

(3) If any crack or damage is found during the inspection required in paragraph (f)(2) of this AD, the wing must be considered as unairworthy until the implementation of the relevant repair solution. Before further flight, contact Apex Aircraft to obtain a repair

solution and incorporate the repair. Continued operation with cracks in the front and rear spar webs is prohibited.

(4) If no cracks or damages are found in either the rear or the front wing spar web during the inspection required in paragraph (f)(2) of this AD, before further flight install reinforcement plates, part number 97.56.00.002, using Apex Aircraft CAP10C—Main Spar Wooden Center Block—Reinforcement Instructions No. 1001766–A, dated June 10, 2006; and Apex Aircraft Document No. 1001133–A, DR400 Spar Consolidation, Applying Araldite 2015 Adhesive, dated February 4, 2003.

(5) After doing the actions required in paragraphs (f)(2), (f)(3), and (f)(4) of this AD:

(i) Flick maneuvers previously prohibited by paragraph (f)(1) of this AD are now permitted. Before further flight, remove the placard required in paragraph (f)(1)(i) of this AD and remove the insertion into the POH required in paragraph (f)(1)(ii) of this AD.

(ii) Repetitively inspect the front and rear spar webs for cracks and damage thereafter at intervals not to exceed 13 months using Apex Aircraft Service Bulletin No. 060307 R1, Amendment date November 2, 2006; and

(iii) If any crack or damage is found during any inspection required by paragraph (f)(5)(ii) this AD, before further flight contact Apex Aircraft to obtain a repair solution and incorporate the repair.

(6) After 50 hours TIS after May 21, 2007 (the effective date of this AD), do not install an Apex Aircraft wood/carbon-made wing, part number 11.56.00.010, unless it has been inspected and is found to be crack free and modified using Apex Aircraft Service Bulletin No. 060307 R1, Amendment date November 2, 2006; and Apex Aircraft CAP10C—Main Spar Wooden Center Block—Reinforcement Instructions No. 1001766–A, dated October 6, 2006.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI allows continued flight if cracks are found in the wing spar webs that do not exceed certain limits. The applicable service bulletin specifies replacing the wing spar webs only if cracks are found exceeding limits specified in Apex Aircraft Service Bulletin No. 060307 R1, Amendment date November 2, 2006, as does the MCAI. This AD does not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The wing spar webs are considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in these areas.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, Small Airplane Directorate, ATTN: Sarjapur Nagarajan, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2007–0015, dated January 12, 2007; Apex Aircraft Service Bulletin No. 060307 R1, Amendment dated November 2, 2006; Apex Aircraft CAP10C—Main Spar Wooden Center Block—Reinforcement Instructions No. 1001766, dated October 6, 2006; and Apex Aircraft Document No. 1001133–A, DR400 Spar Consolidation, Applying Araldite 2015 Adhesive, dated February 4, 2003, for related information.

Material Incorporated by Reference

(i) You must use Apex Aircraft Service Bulletin No. 060307 R1, Amendment date November 2, 2006; Apex Aircraft CAP10C—Main Spar Wooden Center Block—Reinforcement Instructions No. 1001766–A, dated October 6, 2006; and Apex Aircraft Document No. 1001133–A, DR400 Spar Consolidation, Applying Araldite 2015 Adhesive, dated February 4, 2003, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Apex Aircraft, Bureau de Navigabilit, 1 route de Troyes, 21121 DAROIS—France, telephone: (33) 380 35 65 10; fax: (33) 380 35 65 15; e-mail: *apex-aircraft.com*.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri on April 20, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–7980 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23842; Directorate Identifier 2005–NM–145–AD; Amendment 39–15034; AD 2007–09–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, 777–300, and 777–300ER Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200, 777–300, and 777–300ER series airplanes. This AD requires repetitive inspections for discrepancies of the splined components that support the inboard end of the inboard trailing edge flap; related investigative, corrective, and other specified actions if necessary; a one-time modification of the inboard support of the inboard trailing edge flap by installing a new isolation strap and attachment hardware; and repetitive replacement of the torque tube assembly. For certain Boeing Model 777–200 series airplanes, this AD also specifies prior or concurrent accomplishment of one-time inspections of the flap seal panels for cracking and minimum clearances, and of the torque tubes for damage; and related investigative and corrective actions if necessary. This AD also provides a terminating action (modification of the inboard main flap) for the repetitive inspections. This AD results from reports of corrosion on the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap, as well as a structural reassessment of the torque tube joint that revealed the potential for premature fatigue cracking of the torque tube that would not be detected using reasonable inspection methods. We are issuing this AD to detect and correct corrosion or cracking of the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap. Cracking in these components could lead to a

fracture, which could result in loss of the inboard trailing edge flap and consequent reduced controllability of the airplane.

DATES: This AD becomes effective June 4, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 4, 2007.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 777–200 and 777–300 series airplanes. That supplemental NPRM was published in the **Federal Register** on October 3, 2006 (71 FR 58314). That supplemental NPRM proposed to require repetitive inspections for discrepancies of the splined components that support the inboard end of the inboard trailing edge flap; related investigative, corrective, and other specified actions if necessary; a one-time modification of the inboard support of the inboard trailing edge flap by installing a new isolation strap and attachment hardware; and repetitive replacement of the torque tube assembly. That supplemental NPRM also specified prior or concurrent accomplishment, for certain Boeing Model 777–200 series airplanes, of one-time inspections of the flap seal panels for cracking and minimum clearances, and of the torque tubes for damage; and related investigative and corrective actions if necessary. That supplemental NPRM also provided a terminating action (modifying the inboard main flap) for the repetitive inspections.

Comments

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

Support for the Supplemental NPRM

Boeing, Continental Airlines, and United Airlines concur with the contents of the supplemental NPRM.

Request To Clarify Inspection Threshold

United Airlines would like to know if the inspection threshold limits specified in paragraph (l)(2) of the supplemental NPRM should be applied from the airplane manufacture date or after the accomplishment of the torque tube assembly replacement done in accordance with paragraph (l)(1). The compliance times in the proposed rule are accomplished in accordance with the service bulletin, which requires the inspections to be accomplished at the times and intervals noted in the Boeing 777 Maintenance Planning Document (MPD). The MPD has inspection thresholds based on the time in service rather than the torque tube assembly replacement done in accordance with paragraph (l)(1) of the supplemental NPRM.

We agree that this threshold for inspection needs clarification. Therefore, we have added a clarification in the AD to permit the use of a threshold measured from the actions done in accordance with paragraph (l)(1) of this AD, rather than delivery of the airplane, as specified in paragraph (l)(2) of the AD. However, the conservative method of measuring the threshold from delivery of the airplane may still be used.

Request To Clarify Inspection Requirement

Continental Airlines states that the supplemental NPRM seems to indicate that the initial inspection in paragraph (h) must be accomplished for the splined components before the modification done in accordance with Boeing Service Bulletin 777–57–0054, dated February 23, 2006, can be performed. Continental does not believe it is necessary to perform the initial inspection when the splined component will be replaced with new or improved parts per the modification. Continental believes that the AD should have a provision to allow upfront modification of the splined components without doing the inspections in accordance with Boeing Service Bulletin 777–57A0048, Revision 1, dated June 9, 2005.

We agree that it is not necessary in this circumstance to do the initial inspection. Replacing certain parts with new or improved parts in accordance with Boeing Service Bulletin 777–57–0054 terminates the inspections specified in Boeing Service Bulletin 777–57A0048, Revision 1. Therefore, we have clarified paragraphs (h) and (l)(1) of the AD to help avoid potential confusion and unnecessary inspection.

Requests Regarding Service Information

The Modification and Replacement Parts Association (MARPA) requests that service documents essential to the accomplishment of the supplemental NPRM be (1) incorporated by reference into the regulatory document, and (2) published in the docket management system (DMS).

We infer that MARPA would like to have documents incorporated by reference during the NPRM phase of rulemaking. We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the actions required by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

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

Request To Reference Defective Parts Manufacturer Approval (PMA) Parts

The same commenter also requests that the supplemental NPRM be

modified to consider the possibility of defective PMA parts and permit the use of PMA parts that meet the ''new and improved'' criteria pursuant to existing laws and regulations and the issues set forth in the current proposed regulatory action.

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

Conclusion

We have carefully reviewed the available data, including the comments 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

There are about 353 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection for discrepancies of the splined components.	20	None	$1,600, per inspection cycle.	132	$211,200, per inspection cycle.
Modification (installing isolation strap and hardware).	Negligible	$17,156	$17,156	132	$2,264,592.
Replacement of torque tube assembly.	Negligible [1]	24,230	$24,230	132	$3,198,360, per replacement cycle.
Modification (terminating action).	32 to 36, depending on airplane configuration.	145,659	$148,219 to 148,539	132	$19,564,908 to 19,607,148.
Prior or concurrent inspection.	1	None	$80	Up to 132	As much as $10,560.

[1] Provided that the replacement is performed at the same time as a scheduled inspection.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2007–09–04 Boeing: Amendment 39–15034. Docket No. FAA–2006–23842; Directorate Identifier 2005–NM–145–AD.

Effective Date

(a) This AD becomes effective June 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –300, and –300ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 777–57–0054, dated February 23, 2006.

Unsafe Condition

(d) This AD results from reports of corrosion on the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap, as well as a structural reassessment of the torque tube joint that revealed the potential for premature

fatigue cracking of the torque tube that would not be detected using reasonable inspection methods. We are issuing this AD to detect and correct corrosion or cracking of the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap. Cracking in these components could lead to a fracture, which could result in loss of the inboard trailing edge flap and consequent reduced controllability 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.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in paragraphs (g), (h), (i), (j), and (k) of this AD, means Boeing Service Bulletin 777–57A0048, Revision 1, dated June 9, 2005.

(g) Where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Initial Inspection

(h) For all airplanes: Do a detailed inspection for any discrepancy of the splined components of the inboard trailing edge flap, in accordance with the Accomplishment Instructions of the service bulletin. The splined components of the inboard trailing edge flap include the torque tube, closeout rib fitting assembly, carrier beam pillow block fitting assembly, and drive crank support. Discrepancies of the torque tube and closeout rib fitting include light contact wear, corrosion pits, corrosion, cracking, or fracture. Discrepancies of the carrier beam pillow block fitting assembly and drive crank support consist of light contact wear and damage to the cadmium plating. Do the initial inspection at the applicable time specified in Table 7 under paragraph 1.E., ''Compliance,'' of the service bulletin, except as provided by paragraph (g) of this AD. Doing the modification in paragraph (l)(1) of this AD terminates the inspection requirements of this paragraph.

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

No Discrepancy/Other Specified Actions

(i) If no discrepancy is found during the inspection required by paragraph (h) of this AD, perform all applicable specified actions, including the modification to install a new isolation strap and attachment hardware, in accordance with the Accomplishment Instructions of the service bulletin. Then, repeat the inspection at the applicable time specified in Table 7 under paragraph 1.E., ''Compliance,'' of the service bulletin. Doing the modification in paragraph (l)(1) of this AD terminates the repetitive inspection requirements of this paragraph.

Related Investigative/Corrective/Other Specified Actions and Repetitive Inspections

(j) For any discrepancy found during any inspection required by paragraphs (h) and (i) of this AD: Before further flight, accomplish all applicable related investigative, corrective, and other specified actions, including the modification to install a new isolation strap and attachment hardware, in accordance with the Accomplishment Instructions of the service bulletin. Then, evaluate the spline rework to determine the appropriate repetitive interval, in accordance with the Accomplishment Instructions of the service bulletin. Thereafter, repeat the inspection at the applicable interval specified in Table 7 under paragraph 1.E., ''Compliance,'' of the service bulletin. Doing the modification in paragraph (l)(1) of this AD terminates the repetitive inspection requirements of this paragraph.

Replacement of Torque Tube Assembly

(k) For all airplanes: Replace the torque tube assembly with a new torque tube assembly, in accordance with the Accomplishment Instructions of the service bulletin. Do the initial replacement at the applicable compliance time specified in Notes (c) and (d), as applicable, of Table 7 in paragraph 1.E., ''Compliance,'' of the service bulletin, except as provided by paragraph (g) of this AD. Repeat the replacement thereafter at the applicable interval specified in Notes (c) and (d), of Table 7 under paragraph 1.E., ''Compliance,'' of the service bulletin. Doing the modification in paragraph (l)(1) of this AD terminates the repetitive replacement requirements of this paragraph.

Modification

(l) For all airplanes: Within 60 months after the effective date of this AD, do the actions in paragraphs (l)(1) and (l)(2) of this AD.

(1) Modify the inboard main flap in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57–0054, dated February 23, 2006. Doing this modification terminates the repetitive requirements of paragraphs (i), (j), and (k), of this AD; and inspection requirements of the splined components of the torque tube and the closeout rib fitting assemblies, as required by paragraph (h) of this AD.

(2) Revise the FAA-approved maintenance inspection program for performing periodic inspections and maintenance of the torque tube splined joints in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57–0054, dated February 23, 2006. For the purpose of the inspections required by this paragraph, the inspection threshold may be measured from the installation of the modification required by paragraph (l)(1) of this AD.

Concurrent Requirement

(m) For Boeing Model 777–200 series airplanes, as identified in Boeing Service Bulletin 777–27–0034, Revision 1, dated April 20, 2006: Prior to or concurrently with the actions in paragraph (l) of this AD, do a general visual inspection of the flap seal panels for cracking and minimum clearances, and a detailed inspection of the torque tubes for damage; and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–27–0034, Revision 1, dated April 20, 2006; except where the service bulletin specifies the corrective action of replacing the torque tube, the replacement must be done in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57–0054, dated February 23, 2006.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Actions Done in Accordance With Previous Issues of Service Bulletins

(n) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 777–27–0034, dated February 11, 1999; or Boeing Alert Service Bulletin 777–57A0048, dated September 9, 2004; are acceptable for compliance with the corresponding actions of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Material Incorporated by Reference

(p) You must use the service information specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707,

Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Boeing Service Bulletin	Revision level	Date
777–27–0034.	1	April 20, 2006.
777–57–0054.	Original ...	February 23, 2006.
777–57A–0048.	1	June 9, 2005.

Issued in Renton, Washington, on April 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–7853 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27558; Directorate Identifier 2007–NM–053–AD; Amendment 39–15036; AD 2007–06–52]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–800 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2007–06–52 that was sent previously to all known U.S. owners and operators of Boeing Model 737–800 series airplanes by individual notices. This AD requires inspecting spoilers to determine spoiler position after every landing and after any rejected takeoff maneuvers. For airplanes on which any spoiler is found in the up position with the speedbrake handle in the down position, this AD requires replacement of the flight spoiler actuator with a flight spoiler actuator having a certain part number. This AD also requires an operational test of the speedbrake control system after any maintenance actions that operate the spoiler system and replacement of the flight spoiler actuator if necessary. This AD also provides for optional terminating action for those requirements. In addition, this AD requires you to report to the manufacturer any spoiler panel that is found in the up position with the speedbrake handle in the down position. This AD results from a report of seven flight spoiler actuator jams on Model 737–800 Short Field Performance airplanes. We are issuing this AD to detect and correct any spoiler panel that is found in the up position with the speedbrake handle in the down position, which could result in a spoiler actuator hardover, and could cause the spoiler surface to jam in the fully extended position. Two or more hardover failures of the spoiler surfaces in the up direction on the same wing, if undetected prior to takeoff, can cause significant roll and consequent loss of control of the airplane.

DATES: This AD becomes effective May 7, 2007 to all persons except those persons to whom it was made immediately effective by emergency AD 2007–06–52, issued March 14, 2007, which contained the requirements of this amendment.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of May 7, 2007.

We must receive comments on this AD by June 29, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On March 14, 2007, we issued emergency AD 2007–06–52, which applies to certain Boeing Model 737–800 series airplanes.

Background

On March 13, 2007, the FAA issued emergency AD 2007–06–51 for certain Boeing Model 737–800 series airplanes. That AD requires inspecting spoilers to determine spoiler position after every landing and after any rejected takeoff maneuvers. For airplanes on which any spoiler is found in the up position with the speedbrake handle in the down position, that AD requires replacement of the flight spoiler actuator with a flight spoiler actuator having a certain part number. That AD also requires an operational test of the speedbrake control system after any maintenance actions that operate the spoiler system and replacement of the flight spoiler actuator if necessary. That AD also provides for optional terminating action for those requirements. In addition, that AD requires you to report to the manufacturer any spoiler panel that is found in the up position with the speedbrake handle in the down position.

That AD resulted from a report of seven flight spoiler actuator jams on Model 737–800 Short Field Performance (SFP) airplanes. Two reports involved in-service airplanes that were discovered during a routine maintenance walk-around and were believed to have occurred on the previous landing during auto speedbrake extension. Five other reports occurred during spoiler system testing at Boeing prior to delivery. An additional two reports of spoiler actuator input lever binding were identified during bench testing after Boeing began to investigate this issue.

The two in-service failures of flight spoilers resulted in the spoilers not retracting after the speedbrake handle was moved to the DOWN position after landing, on a Boeing Model 737–800 airplane equipped with an SFP package. In both of these cases, the spoiler was discovered in the full-extended position during a routine maintenance walk-around. The spoiler remained in the full-extended position after cycling of the speedbrake handle.

Further investigation revealed that the spoiler actuator failure is most likely to occur when the speedbrakes are deployed on the ground (automatically or manually) for either a rejected takeoff or normal landing. The takeoff

configuration warning will not sound if any flight spoiler remains extended with the speedbrake handle in the DOWN position. The cause of the failure has been identified as interference within the actuator main control valve.

This condition, if not corrected, could result in a spoiler actuator hardover, which could cause the spoiler surface to jam in the fully extended position. Two or more hardover failures of the spoiler surfaces in the up direction on the same wing, if undetected prior to takeoff, can cause significant roll and consequent loss of control of the airplane.

Actions Since Issuance of Previous AD

Since that AD was issued, we have become aware of two incorrect part numbers identified throughout emergency AD 2007–06–51. The identified incorrect part numbers do not exist. The incorrect part numbers were for the replacement flight spoiler actuator and the flight spoiler actuator that may no longer be installed.

In light of this, we have determined that emergency AD 2007–06–51 must be superseded to reflect the correct part numbers.

Relevant Service Information

We have reviewed Boeing 737 Flight Crew Operations Manual Bulletin No. TBC–67, dated March 5, 2007. The bulletin describes procedures for inspecting spoilers to determine spoiler position after landing and after any rejected takeoff maneuvers. For airplanes on which any spoiler is found in the up position with the speedbrake handle in the down position, the bulletin specifies to contact maintenance.

FAA's Determination and Requirements of This AD

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued emergency AD 2007–06–52 to detect and correct any spoiler panel that is found in the up position with the speedbrake handle in the down position, which could result in a spoiler actuator hardover, and could cause the spoiler surface to jam in the fully extended position. Two or more hardover failures of the spoiler surfaces in the up direction on the same wing, if undetected prior to takeoff, can cause significant roll and consequent loss of control of the airplane. This new AD supersedes emergency AD 2007–06–51. This new AD requires the actions specified in emergency AD 2007–06051, but corrects certain part numbers. This AD requires accomplishing the actions specified in the service information described previously, except as described in ''Differences Between This AD and the Service Information.''

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on March 14, 2007, to all known U.S. owners and operators of Boeing Model 737–800 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Differences Between This AD and the Service Information

In addition to the inspection specified in the service information, this AD also requires that, after any maintenance action that operates the spoiler system, the ''Speedbrake Control System Operational Test'' specified in Chapter 27–62–00 of the Boeing 737–600/700/800/900 Aircraft Maintenance Manual (AMM) be accomplished. This AD also specifies that the Master Minimum Equipment List Item 27–7, ''Auto Speed Brake System,'' is no longer applicable to Model 737–800 series airplanes equipped with an SFP package. This AD also provides an optional terminating action of installing flight spoiler actuator, part number (P/N) P665A0001–01 or higher dash number, in all eight flight spoiler positions.

Although the service information specifies that operators may contact maintenance for disposition if any spoiler remains in the up position with the speedbrake handle in the down position, this AD requires operators to replace the flight spoiler actuator with a flight spoiler actuator, having P/N P665A0001–01 or higher dash number, using a method approved by the FAA.

Operators should note that the service information specifies doing an inspection. However, this AD requires doing a ''visual check,'' which may be done by qualified ground personnel or flightcrew. We have determined that these visual checks may be properly performed by flightcrew because the checks do not require tools, precision measuring equipment, training, or pilot logbook endorsements, or the use of or reference to technical data that are not contained in the body of the AD.

Interim Action

We consider this AD interim action. We are currently considering requiring the replacement of the flight spoiler actuator, which will constitute terminating action for the visual checks and operational tests required by this AD action.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–27558; Directorate Identifier 2007–NM–053–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2007–06–52 Boeing: Amendment 39–15036. Docket No. FAA–2007–27558; Directorate Identifier 2007–NM–053–AD.

Effective Date

(a) This AD becomes effective May 7, 2007, to all persons except those persons to whom it was made immediately effective by emergency AD 2007–06–52, issued on March 14, 2007, which contained the requirements of this amendment.

Affected ADs

(b) This AD supersedes emergency AD 2007–06–51, issued March 13, 2007.

Applicability

(c) This AD applies to the Boeing Model 737–800 series airplanes, certificated in any category, serial numbers 32685, 34277 through 34281 inclusive, 34474, 34475, 34654 through 34656 inclusive, 34690, 34948, 34949, 35091 through 35093 inclusive, 35103, 35134, 35176 through 35183 inclusive, 35330, 35331, 35558, 35559, and 36323 through 36328 inclusive.

Unsafe Condition

(d) This AD results from a report of seven flight spoiler actuator jams on Model 737–800 Short Field Performance (SFP) airplanes. The cause of the failure has been identified as interference within the actuator main control valve. We are issuing this AD to detect and correct any spoiler panel that is found in the up position with the speedbrake handle in the down position, which could result in a spoiler actuator hardover, and could cause the spoiler surface to jam in the fully extended position. Two or more hardover failures of the spoiler surfaces in the up direction on the same wing, if undetected prior to takeoff, can cause significant roll and consequent 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.

Visual Check and Corrective Action

(f) Within 24 clock hours after the effective date of this AD, do the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable. The visual checks required by paragraphs (f)(1) and (f)(2) of this AD may be performed by qualified personnel or flightcrew, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(b) and 14 CFR 121.363 and 121.380.

(1) After every landing, visually check the spoilers to determine spoiler position, in accordance with Boeing 737 Flight Crew Operations Manual Bulletin No. TBC–67, dated March 5, 2007.

(i) If all spoilers are determined to be properly stowed, no further action is required by this paragraph.

(ii) If any spoiler is found to be improperly stowed (in the up position with the speedbrake handle in the down position), before further flight, replace the flight spoiler actuator with a flight spoiler actuator, having part number (P/N) P665A0001–01 or higher dash number, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. The ''Flight Spoiler Actuator Removal'' task and the ''Flight Spoiler Actuator Installation'' task in Chapter 27–61–51 of the Boeing 737–600/700/800/900 Aircraft Maintenance Manual (AMM) are approved methods for the replacement (removal and installation) of the flight spoiler actuator.

(2) After any rejected takeoff maneuver, do the visual check specified in paragraph (f)(1) of this AD.

(3) After any maintenance action that operates the spoiler system, do an operational test of the speedbrake control system in accordance with a method approved by the Manager, Seattle ACO, FAA. The ''Speedbrake Control System Operational Test'' specified in Chapter 27–62–00 of the Boeing 737–600/700/800/900 AMM is one approved method for the operational test of the speedbrake control system. If any spoiler panel is found to be fully extended with the speedbrake handle down, or if any spoiler panel is found fully retracted when the speedbrake handle is up, before further flight, replace the flight spoiler actuator in accordance with the actions specified in paragraph (f)(1)(ii) of this AD.

Master Minimum Equipment List Item

(g) As of the effective date of this AD, the Master Minimum Equipment List Item 27–7, ''Auto Speed Brake System,'' is no longer applicable to Model 737–800 series airplanes equipped with an SFP package.

Optional Terminating Action

(h) Installation of flight spoiler actuator, P/N P665A0001–01 or higher dash number, in all eight flight spoiler positions ends the requirements of paragraph (f) of this AD.

Reporting

(i) If any spoiler is found to be improperly stowed during any visual check required by this AD, at the applicable time specified in paragraphs (i)(1) and (i)(2) of this AD, report the following information electronically to Boeing using the established Boeing Communications System (BCS): Airplane serial number, jam position, spoiler panel number or wing position of the spoiler that jammed, date of visual check, and flight hours accumulated on the airplane.

(1) For visual checks done before the effective date of this AD: Within 7 days after the effective date of this AD.

(2) For visual checks done after the effective date of this AD: Within 7 days after doing the inspection.

Parts Installation

(j) As of the effective date of this AD, no person may install a flight spoiler actuator, having P/N P665A0001–00, on any airplane.

Special Flight Permit

(k) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(m) You must use Boeing 737 Flight Crew Operations Manual Bulletin No. TBC–67, dated March 5, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, 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 April 18, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–7850 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27342 Directorate Identifier 2007–CE–014–AD; Amendment 39–15037; AD 2007–09–05]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B Airplanes

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

ACTION: Final rule.

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

A CAP10B aircraft experienced a reduced elevator deflection by about 13° due to an incorrect routing of the Push To Talk (PTT) wire bundle and improperly secured connectors which impeded the complete and free movement of the control stick.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 4, 2007.

On June 4, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 9, 2007 (72 FR 10624). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A CAP10B aircraft experienced a reduced elevator deflection by about 13° due to an incorrect routing of the Push To Talk (PTT) wire bundle and improperly secured connectors which impeded the complete and free movement of the control stick.

Actions specified in this AD are intended to inspect, detect and correct any discrepancy on the PTT electrical circuit connectors and wires that could lead to a reduction of the control stick movements.

Comments

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

Conclusion

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

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 31 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,480 or $80 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $90, for a cost of $330 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–09–05 APEX Aircraft (Type Certificate No. A36EU formerly held by AVIONS MUDRY et CIE): Amendment 39–15037; Docket No. FAA–2007–27342; Directorate Identifier 2007–CE–014–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model CAP 10 B airplanes, serial numbers 001 through 282, fitted with major change 000302 (wood-carbon wings), that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

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

A CAP10B aircraft experienced a reduced elevator deflection by about 13° due to an incorrect routing of the Push To Talk (PTT) wire bundle and improperly secured connectors which impeded the complete and free movement of the control stick.

Actions specified in this AD are intended to inspect, detect and correct any discrepancy on the PTT electrical circuit connectors and wires that could lead to a reduction of the control stick movements.

Actions and Compliance

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

(1) Within the next 50 hours time-in-service after June 4, 2007 (the effective date of this AD), inspect the wire routing for the proper location and attachment of the connectors as detailed in the accomplishment instructions of APEX Aircraft Mandatory Service Bulletin No. 050605, dated October 17, 2006.

(2) Before further flight, if a defect or discrepancy is found during the inspection in paragraph (f)(1) of this AD, modify the wire bundle and connectors routing as detailed in the accomplishment instructions of APEX Aircraft Mandatory Service Bulletin No. 050605, dated October 17, 2006.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No: 2007–0014, dated January 12, 2007; and APEX Aircraft Mandatory Service Bulletin No. 050605, dated October 17, 2006, for related information.

Material Incorporated by Reference

(i) You must use APEX Aircraft Mandatory Service Bulletin No. 050605, dated October 17, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Apex Aircraft, Bureau de Navigabilité, 1, route de Troyes, 21121 DAROIS—France; telephone: +33 380 35 65 10; fax +33 380 35 65 15; e-mail: *airworthiness@apex-aircraft.com;* Internet: *http://www.apex-aircraft.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on April 19, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–7994 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27616; Directorate Identifier 2007–NM–052–AD; Amendment 39–15035; AD 2007–06–53]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2007–06–53 that was sent previously to all known U.S. owners and operators of EMBRAER Model ERJ 170 and ERJ 190 airplanes by individual notices. This AD requires repetitively verifying the correct closure of the forward and aft cargo doors, inspecting the forward and aft cargo doors for interference between the lock handle and the aft edge liner assembly, repetitively inspecting the lateral roller fittings on the forward and aft cargo door frames for damage, and doing corrective actions if needed. This AD also requires reporting any signs of interference or damage to the manufacturer. This AD results from a report indicating that the aft cargo door opened in flight just after departure, and from a report indicating that an airplane was dispatched with an unsecured forward cargo door. We are issuing this AD to prevent a cargo door from opening during flight, which could lead to structural failure or loss of control.

DATES: This AD becomes effective May 7, 2007 to all persons except those persons to whom it was made immediately effective by emergency AD 2007–06–53, issued March 19, 2007, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the **Federal Register** as of May 7, 2007.

We must receive comments on this AD by June 29, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

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

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

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On March 19, 2007, we issued emergency AD 2007–06–53, which applies to all EMBRAER Model ERJ 170 and ERJ 190 airplanes.

Background

The FAA received a report that the aft cargo door of a Model ERJ 190 airplane opened in flight just after takeoff. The airplane returned to the departure airport and landed without incident. We advised the Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, of the report and worked closely with the ANAC to assess the safety implications of the report. The assessment of the event indicated that the door was not fully closed when the airplane took off. Inspection of the airplane revealed that the door frame lateral roller fitting was cracked and the roller fitting cover plate was distorted. The roller fitting cover plate distortion caused a malfunction in the door position indication system. A similar situation was found on the forward cargo door on a Model ERJ 170 airplane. In that instance, the problem was discovered by ground personnel, and the door was secured prior to takeoff. The cargo door design is the same for the Model ERJ 190 and ERJ 170 airplanes. Therefore, an unsafe condition may exist on all EMBRAER Model ERJ 170 and ERJ 190 airplanes. We are issuing this AD to prevent a cargo door from opening during flight, which could lead to structural failure or loss of control.

Relevant Service Information

EMBRAER has issued Alert Service Bulletins 170–52–A036 (for Model ERJ 170 airplanes) and 190–52–A018 (for Model ERJ 190 airplanes), both dated March 12, 2007. The alert service bulletins describe the following procedures:

- Removal of the roller fitting cover plate;
- A one-time visual inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly;
- Rework of the aft edge liner assembly, which must be done immediately if there are signs of interference, and may be deferred for a specified time if there are no signs of interference;
- A one-time visual inspection of the forward and aft cargo doors to detect signs of damage of the lateral roller fitting; and
- Immediate replacement of any damaged fitting with one having the same part number.

The ANAC mandated the actions in the alert service bulletins and issued Brazilian airworthiness directives 2007–03–01 and 2007–03–02, both effective March 16, 2007, to ensure the continued airworthiness of these airplanes in Brazil.

The alert service bulletins refer to EMBRAER Service Bulletins 170–50–0006 and 190–50–0006 as additional sources of service information for removing the roller fitting cover plate and reworking the aft edge liner assembly. These service bulletins are currently at Revision 01, dated March 13, 2007.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued emergency AD 2007–06–53 to prevent a cargo door from opening

during flight; the door could detach from and strike the airplane and result in structural damage and possible loss of control of the airplane. The AD requires accomplishing the actions specified in the service information previously described. This AD also requires repetitively verifying, before each flight, the correct closure of the forward and aft cargo doors, and reporting positive inspection results to EMBRAER.

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on March 19, 2007, to all known U.S. owners and operators of EMBRAER Model ERJ 170 and ERJ 190 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Clarification of Qualifications for Performing Preflight Verifications

This AD permits the preflight verifications to be done by mechanics and flightcrew members. We have determined that this provision will accommodate operators' maintenance scheduling demands and yet ensure an acceptable level of safety.

Explanation of Reporting Requirement

This AD also requires that operators report the results of positive inspection findings to EMBRAER. The required inspection reports will help determine the extent in the fleet of potentially contributing conditions. Based on the results of these reports, we might determine that further corrective action is warranted.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification to the door position sensing system that will further address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–27616; Directorate Docket No. 2007–NM–052–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2007–06–53 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15035. Docket No. FAA–2007–27616; Directorate Identifier 2007–NM–052–AD.

Effective Date

(a) This AD becomes effective May 7, 2007, to all persons except those persons to whom it was made immediately effective by emergency AD 2007–06–53, issued on March 19, 2007, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that the aft cargo door of a Model ERJ 190 airplane opened in flight just after departure, and from a report indicating that a Model ERJ 170 airplane dispatched with an unsecured forward cargo door. The Federal Aviation Administration is issuing this AD to prevent a cargo door from opening during flight, which could lead to structural failure or loss of control.

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.

Preflight Verifications of Correct Door Closure

(f) As of 24 hours after the effective date of this AD: Before each flight after closing the cargo doors, verify that the forward and aft cargo doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green. Persons qualified to do this verification are mechanics and flightcrew members. If it cannot be verified that both doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green, repair before further flight. Repeat the verification before every flight until accomplishment of the actions required by paragraph (g) of this AD.

Inspection for Interference and Damage

(g) Within 10 days after the effective date of this AD, do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–52–A036 (for Model ERJ 170 airplanes) or 190–52–A018 (for Model ERJ 190 airplanes), both dated March 12, 2007, as applicable.

(1) Remove the roller fitting cover plate on the forward and aft cargo door frames.

(2) Perform a detailed inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly. Then rework the aft edge liner assembly at the applicable time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) If any sign of interference is detected: Rework the assembly before further flight.

(ii) If no sign of interference is detected: Rework the assembly within 150 flight cycles after the inspection.

(3) Perform a detailed inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage. If any damage is found, replace the lateral roller fitting before further flight with a new roller fitting having the same part number, in accordance with the applicable service bulletin.

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

Note 2: EMBRAER Alert Service Bulletins 170–52–A036 and 190–52–A018 refer to EMBRAER Service Bulletins 170–50–0006 and 190–50–0006, respectively, as additional sources of service information for the rework and roller fitting cover plate removal. Service Bulletins 170–50–0006 and 190–50–0006 are currently at Revision 01, dated March 13, 2007.

Repetitive Inspection for Damage

(h) Repeat the inspection specified in paragraph (g)(3) of this AD at intervals not to exceed 150 flight cycles.

Report

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Send EMBRAER a report of any signs of interference or damage found during each inspection required by paragraphs (g)(2), (g)(3), and (h) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Send the report to EMBRAER, EFTC, AOG Structure Team; *structure@embraer.com.br*; fax +55 12 3927 6600, extension 0484. 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 any inspection done after the effective date of this AD: Within 10 days after the inspection.

(2) For any inspection done before the effective date of this AD: Within 10 days after the effective date of this AD.

Parts Installation

(j) As of the effective date of this AD: No person may install a roller fitting cover plate on the forward and aft cargo door frames on any airplane.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(l) Brazilian airworthiness directives 2007–03–01 and 2007–03–02, both effective March 16, 2007, also address the subject of this AD.

Material Incorporated by Reference

(m) You must use EMBRAER Alert Service Bulletin 170–52–A036, dated March 12, 2007; or EMBRAER Alert Service Bulletin 190–52–A018, dated March 12, 2007; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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 April 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–7841 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25581 Directorate Identifier 2006–CE–041–AD; Amendment 39–15039; AD 2007–09–07]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Final rule.

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

* * * a Nose Landing Gear (NLG) hinge pin rupture that causes an uncommanded NLG retraction.

Investigations identified the unsafe condition resulting from an incomplete thermal treatment done on three hinge pin

batches lowering their mechanical properties with a high risk of deformation under service loads.

EADS SOCATA notes that an NLG hinge pin rupture could cause an uncommanded NLG retraction during landing. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 4, 2007.

On June 4, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 21, 2007 (72 FR 7838). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI advises of

* * * a Nose Landing Gear (NLG) hinge pin rupture that causes an uncommanded NLG retraction.

Investigations identified the unsafe condition resulting from an incomplete thermal treatment done on three hinge pin batches lowering their mechanical properties with a high risk of deformation under service loads.

EADS SOCATA notes that an NLG hinge pin rupture could cause an uncommanded NLG retraction during landing.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Comment Issue No. 1: Number of Affected Products

EADS SOCATA writes that TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006, affects 86 nose landing gear (NLG) (in the worst case 86 products). Further, that among these 86 NLG, only 47 NLG are equipped with defective pins.

The FAA agrees that not all aircraft contain the affected NLG part. However, to appropriately identify the product with the affected nose landing gear part serial number, the AD requires to first identify the concerned NLG, then to detect the defective hinge pins installed on the product, and then replace the affected parts. The check of the NLG part serial number for applicability is necessary on all products. Therefore, we are not changing the AD based on this comment.

Comment Issue No. 2: Cost of Compliance

EADS SOCATA notes that the proposed AD specifies that any required parts would cost about $1,025 for each product and that it would take about 2 work-hours per product to comply with basic requirements of this proposed AD. EADS SOCATA specifies that the identification of the batch number is immediate for products with correct pins. For any product with defective pins, all the costs, work-hours and required parts, associated with TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006, will be covered under warranty if the defective pins are returned to EADS SOCATA.

We have noted EADS SOCATA comments and have revised the costs of compliance to reflect only the labor to identify the NLG part serial number. Our standard warranty language will reflect EADS SOCATA's warranty program.

Comment Issue No. 3: Unsafe Condition Description

EADS SOCATA comments that the proposed AD describes the unsafe condition associated with TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006, as an NLG hinge pin rupture that causes an uncommanded NLG retraction. Further, EADS SOCATA estimates that a NLG hinge pin rupture could lead to a nose landing gear collapse in the case of a three-point landing.

The FAA notes that the unsafe condition language was copied directly from the Reason section of the associated MCAI. However, to clarify the unsafe condition we will change the AD to add that a NLG hinge pin rupture could cause an uncommanded NLG retraction during landing.

Conclusion

We 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 determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 256 products of U.S. registry. We also estimate that it will take about 0.5 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $10,240 or $40 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for

affected parties, some parties may incur costs higher than estimated here.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–09–07 EADS SOCATA: Amendment 39–15039; Docket No. FAA–2006–25581; Directorate Identifier 2006–CE–041–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model TBM 700 airplanes fitted with nose landing gear (NLG) part number (P/N) 21130–001–02 with serial numbers (S/N) B155 through B173 and S/N EUR 174 through EUR 240, that are certificated in any U.S. category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) describes the unsafe condition as follows:

* * * a Nose Landing Gear (NLG) hinge pin rupture that causes an uncommanded NLG retraction.

Investigations identified the unsafe condition resulting from an incomplete thermal treatment done on three hinge pin batches lowering their mechanical properties with a high risk of deformation under service loads.

EADS SOCATA notes that an NLG hinge pin rupture could cause an uncommanded NLG retraction during landing.

Actions and Compliance

(f) Within 30 days after June 4, 2007 (the effective date of this AD), unless already done, do the following:

(1) Identify the NLG hinge pin batch number as instructed in paragraph B of the accomplishment instructions of EADS SOCATA TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006.

(i) For airplanes with the correct pin batch numbers, no further action is required. Return the airplane to service as instructed in EADS SOCATA TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006.

(ii) For airplanes with pins from the defective pin batch numbers or for which the batch number cannot be read, do all the actions as instructed in paragraphs B 5), C, and D of the accomplishment instructions of EADS SOCATA TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006.

(2) As of 30 days after June 4, 2007 (the effective date of this AD), do not install on any EADS SOCATA Model TBM 700 airplane an NLG actuator hinge pin coming from the three defective batches identified as EUR BC 21344–000–01, EUR BD 21344–000–01, and EUR BF 21344–000–01 on NLG part number 21130–001–02.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The service bulletin and MCAI require interim operational instructions until the corrective actions are done. This AD requires the corrective action at the same time as the pin batch number check.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4119; fax: (816) 329–4090., has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) This AD is related to European Aviation Safety Agency Emergency AD No. 2006–0271–E, Issue date: September 4, 2006, which references EADS SOCATA TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006.

Material Incorporated by Reference

(i) You must use EADS SOCATA TBM Aircraft Mandatory Alert Service Bulletin SB 70–147, Amendment 1, dated September 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of

this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62.41.73.00; fax: 33 (0)5 62.41.76.54; or SOCATA Aircraft, INC., North Perry Airport, 7501 Airport Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on April 20, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8003 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27208 Directorate Identifier 2007–CE–010–AD; Amendment 39–15040; AD 2007–09–08]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Model P68 Series Airplanes

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

ACTION: Final rule.

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

The backrest recline of pilot and copilot seats requires the removal of a ''quick release pin'' not correctly indicated in the AFM and not ready detectable by the passengers. Moreover the operation of removal the device is difficult. This cause difficulty or disables the access to the escapes of the cabin in case of emergency evacuation.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 4, 2007.

On June 4, 2007 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 9, 2007 (72 FR 10620). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

The backrest recline of pilot and copilot seats requires the removal of a ''quick release pin'' not correctly indicated in the AFM and not ready detectable by the passengers. Moreover the operation of removal the device is difficult. This cause difficulty or disables the access to the escapes of the cabin in case of emergency evacuation.

Carry out the operational cheks/inspection/modification:

—Kit SB 128/A–1 applicable to aircraft model P68C. Serial numbers (S/N) 429, 434 and 435 are excluded;

—Kit SB 128/A–2 applicable only to P68C aircraft with S/N 429, 434 and 435;

—Kit SB 128/B applicable to aircraft model P68 Observer 2;

—Kit SB 128/C applicable to aircraft model P68TC Observer; called for by the referenced Service Bulletin, in accordance with the procedures in there specified, within the terms set forth under ''COMPLIANCE'' of this AD.

Comments

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

Conclusion

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

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 required 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 AD.

Costs of Compliance

We estimate that this AD will affect 15 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,400 or $160 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–09–08 Vulcanair S.p.A. (Type certificate No. A31EU formerly held by Partenavia Costruzioni Aeronautiche S.p.A.): Amendment 39–15040; Docket No. FAA–2007–27208; Directorate Identifier 2007–CE–010–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models P68C, P68 Observer 2, and P68TC Observer airplanes, serial numbers 412 through 424 (except 418), 429, 434, and 435, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 51: Structures.

Reason

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

The backrest recline of pilot and copilot seats requires the removal of a ''quick release pin'' not correctly indicated in the AFM and not ready detectable by the passengers. Moreover the operation of removal the device is difficult. This cause difficulty or disables the access to the escapes of the cabin in case of emergency evacuation.

Carry out the operational cheks/inspection/modification:

—Kit SB 128/A–1 applicable to aircraft model P68C. Serial numbers (S/N) 429, 434 and 435 are excluded;

—Kit SB 128/A–2 applicable only to P68C aircraft with S/N 429, 434 and 435;

—Kit SB 128/B applicable to aircraft model P68 Observer 2;

—Kit SB 128/C applicable to aircraft model P68TC Observer; called for by the referenced Service Bulletin, in accordance with the procedures in there specified, within the terms set forth under ''COMPLIANCE'' of this AD.

Actions and Compliance

(f) Unless already done, do the following actions within 30 days after June 4, 2007 (the effective date of this AD):

(1) For Model P68C airplanes, all serial numbers except 429, 434, and 435: Install Kit SB 128/A–1, following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004;

(2) For Model P68C airplanes, serial numbers 429, 434, and 435: Install Kit SB 128/A–2 following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004;

(3) For Model P68 Observer 2 airplanes, all serial numbers: Install Kit SB 128/B, following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004; or

(4) For Model P68TC Observer airplanes, all serial numbers: Install Kit SB 128/C, following Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Ente Nazionale per l'Aviazione Civile (ENAC), AD N. 2004–522, Rev. 0, dated December 20, 2004; and Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004, for related information.

Material Incorporated by Reference

(i) You must use Vulcanair S.p.A. P68 Variants Mandatory Service Bulletin No. 128, dated October 12, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Vulcanair S.p.A, Via G. Pascoli, 7, Casoria (Naples), 80026 Italy; telephone: +39 081 5918111; fax: +39 081 5918172; e-mail: *info@vulcanair.com*; Internet: *http://www.vulcanair.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on April 20, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8071 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–003; Order No. 676–B]

Standards for Business Practices and Communication Protocols for Public Utilities

Issued April 19, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations under the Federal Power Act to incorporate by reference revisions to the Coordinate Interchange business practice standards (WEQ–004) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) on June 22, 2006. These standards identify the processes and communications necessary to coordinate energy transfers that cross boundaries between entities responsible for balancing load and generation.

Incorporating these revised standards by reference into the Commission's regulations will ensure that the Coordinate Interchange business practice standards incorporated by reference in the Commission's regulations are compatible with the North American Electric Reliability Council's Interchange Scheduling and Coordination Reliability Standards that the Commission approved as mandatory and enforceable Reliability Standards in Order No. 693.

DATES: This Final Rule will become effective May 30, 2007. The incorporation of the standard is approved by the Director of the Federal Register on May 30, 2007. Implementation of the standards is required the later of the date on which the NERC standards become mandatory or the effective date of this rule.

FOR FURTHER INFORMATION CONTACT:

Patricia Schaub (technical issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6816.

Kay Morice (technical issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6507.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

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

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) [1] to incorporate by reference revisions to the Coordinate Interchange business practice standards (WEQ–004) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) on June 22, 2006. These standards identify the processes and communications necessary to coordinate energy transfers that cross boundaries between entities responsible for balancing load and generation.

I. Background

2. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development and promotion of business practice standards that promote an efficient marketplace for wholesale and retail natural gas and electricity. Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.

3. NAESB's standards include business practices that streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries—wholesale gas, wholesale electric, retail gas, and retail electric. All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.

4. NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments.

5. The Coordinate Interchange business practice standards (WEQ–004) facilitate the transfer of electric energy between entities responsible for balancing load and generation (Balancing Authorities). The term ''Interchange'' in this context refers to energy transfers across boundaries between Balancing Authorities. The Coordinate Interchange business practice standards identify the processes needed to facilitate interchange transactions, and specify the arrangements and data to be communicated to the entity responsible for authorizing implementation of interchange transactions (Interchange Authority).

6. The revised Coordinate Interchange business practice standards (WEQ–004) being adopted in this Final Rule replace the earlier version of these standards previously incorporated by reference in the Commission's regulations in Order No. 676.[2] The standards that the Commission incorporated by reference into regulations in Order No. 676 were designed to be consistent with the Version 0 reliability standards of the North American Electric Reliability Council (NERC) dealing with Coordinate Interchange.

7. In April, August, and November 2006, NERC filed proposed reliability standards for Commission approval under section 215 of the FPA, including Version 1 and Version 2 standards governing Interchange Scheduling and Coordination (INT Reliability Standards).

8. On June 22, 2006, the WEQ membership ratified revised Coordinate Interchange standards to keep the WEQ's Coordinate Interchange business practices consistent with the applicable NERC INT Reliability Standards. On November 16, 2006, NAESB filed its revised Coordinate Interchange standards with the Commission.

9. On February 20, 2007, the Commission issued a notice of proposed rulemaking to assure that the Commission's business practice standards and reliability standards on Coordinate Interchange would continue

[1] 16 U.S.C. 791a, *et seq.*

[2] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, 71 FR 26199 (May 4, 2006), FERC Stats. & Regs., Regulations Preambles ¶ 31,216 (Apr. 25, 2006), *reh'g denied,* Order No. 676–A, 116 FERC ¶ 61,255 (2006).

to be consistent.[3] The Coordinate Interchange NOPR proposed that the Commission incorporate by reference the revised Coordinate Interchange business practice standards (WEQ–004) adopted by the WEQ on June 22, 2006.

10. In addition, the Coordinate Interchange NOPR noted that NAESB's standards correspond to NERC's Version 1 INT Reliability Standards, and invited comment on whether NERC's Version 2 INT Reliability Standards necessitate any additional business practice standards beyond those discussed in the NOPR.

11. The WEQ revised its Coordinate Interchange business practice standards for three main reasons: (1) To incorporate business practice standards that had previously been included by NERC in its proposed reliability standards; (2) to modify the definitions and standards to better integrate with NERC's corresponding reliability standards; and (3) to eliminate an appendix and update standards to reflect current operating conditions in the Eastern and Western Interconnections, and within the Electric Reliability Council of Texas (ERCOT).

12. On March 16, 2007, the Commission approved NERC's INT Reliability Standards as mandatory and enforceable reliability standards in Order No. 693.[4]

13. On March 28, 2007, the New York Independent System Operator, Inc. (NYISO) filed comments in response to the Coordinate Interchange NOPR expressing its general support for NAESB's revisions to the WEQ–004 Standard and stating that it has no objection to incorporating the revised standards into the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). NYISO requests, however, that the Final Rule not upset any existing waivers of the WEQ–004 Standard the Commission has already granted to entities. NYISO's comments were the only comments filed in response to the Coordinate Interchange NOPR.

II. Discussion

14. In this Final Rule, the Commission is amending its regulations under the FPA to incorporate by reference revisions to the Coordinate Interchange business practice standards (WEQ–004) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) on June 22, 2006.[5] These standards update the business practice standards used by the electric industry so that they will dovetail with the reliability standards the Commission has approved. Adoption of these revised business practice standards ensures that public utilities comply with a consistent set of standards. To ensure such coordination, public utilities will be required to comply with these standards on the later of the date on which the NERC standards become mandatory or the effective date of this rule. We are pleased with the cooperation and coordination between NAESB and NERC. We appreciate the efforts that these organizations and the industry have made together to ensure that reliability standards and business practice standards work harmoniously.

15. In its revised reliability standards, NERC deleted certain business practice requirements with the expectation that NAESB would include these business practices in its business practice standards.[6]

16. The revised Coordinate Interchange business practice standards the WEQ adopted to replace the deleted NERC standards include:

- WEQ Standards 004–1 and 004–3.1 replace NERC INT–001–0 Requirement R1.1. The revised WEQ standards address how requests for Interchange should be made and who is responsible for submitting such requests.
- WEQ Standards 004–3, 004–5, 004–8.1, and 004–8.2 replace NERC's INT–001–0 Requirement R3. These standards establish the timing requirements for submitting requests for Interchange. The WEQ's timing table (Appendix D referenced in WEQ Standard 004–8.1) has been revised to better match up with the timing table in NERC's INT–005–1.
- WEQ Standard 004–5 replaces NERC's INT–001–0 Requirement R4. This standard addresses the data that should be included in a request for Interchange and who is responsible for ensuring that these data are included in the request for Interchange.
- WEQ Standard 004–12 replaces NERC's INT–001–0 Requirement R5. This standard requires that parties involved in an Interchange must have personnel and facilities on site and immediately available to receive notification of changes to the Interchange.
- WEQ Standards 004–17, 004–17.1, and 004–17.2 replace NERC's INT–003–0 Requirement R1.1.3. These standards establish the default ramp rates that apply to an Interchange unless otherwise agreed to by the parties involved.

17. The WEQ also modified the Coordinate Interchange definitions and business practice standards to better coordinate with NERC's INT Reliability Standards. This follows the Commission's directive in Order No. 676 that, ''[i]n future versions of the standards, NAESB should use the NERC definitions relating to reliability.''[7] The modifications include:

- New and revised definitions, such as changing ''Reliability Authority'' to ''Reliability Coordinator''.
- Changes to definitions resulting from WEQ's efforts to match the language used in NERC's ''Glossary of Terms Used in Reliability Standards'' (Glossary) where appropriate. For example, the WEQ added a definition for ''Arranged Interchange'' using the same language as NERC.
- Changes to definitions, such as the ''Request for Interchange'' definition, where the words are not identical, but are compatible with NERC's, facilitating coordination with the NERC INT Reliability Standards but reflecting the different responsibilities of the two organizations.
- Changes to definitions, where NERC does not have a corresponding definition in its Glossary, but the WEQ modified its definitions, such as the ''Approval Entity'' definition, to reflect the definition changes previously discussed.
- Changes to delete definitions no longer needed in the Coordinate Interchange business practice standards or that had been replaced by other definitions. Deleted definitions include: ''Checkout Process''; ''Interchange Transaction''; ''Interchange Transaction Tag''; ''Interconnection''; ''Market Operator''; ''Scheduling Agent''; and ''Transmission Service Provider''.
- Changes to the Coordinate Interchange business practice standards made to better coordinate with NERC's

[3] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 72 FR 8318 (Feb. 27, 2007), FERC Stats. & Regs. ¶ 32,612 (Feb. 20, 2007) (Coordinate Interchange NOPR).

[4] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, Final Rule, 72 FR 16416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 at P 795 through P 887 (Mar. 16, 2007).

[5] The specific standards developed by the WEQ that we are incorporating by reference in this Final Rule are as follows: Coordinate Interchange (WEQ–004, June 22, 2006) including Purpose, Applicability, and Standards 004–0 through 004–17.2, and 004–A through 004–D.

[6] The deleted NERC standards include Requirements R1.1, R3, R4, and R5 of INT–001–0, which relate to the timing and content of e-tags, and Requirement R1.1.3 of INT–003–0, which addresses ramp starting time and duration. *See Mandatory Reliability Standards for the Bulk Power System,* Notice of Proposed Rulemaking, 71 FR 64,770 (Nov. 3, 2006), FERC Stats. & Regs. ¶ 32,608 at 32,913 & note 3 (2006).

[7] Order No. 676 at P 40.

INT Reliability Standards. The standards were modified to: (1) incorporate the revised definitions; (2) provide greater detail, as in WEQ Standard 004–3; (3) add new standards to clarify and better coordinate with NERC, such as in WEQ Standard 004–2.2; and (4) delete standards that are no longer appropriate, such as WEQ Standard 004–1.2.

18. The Coordinate Interchange business practices standards were also modified to reflect the current business practices of the Eastern and Western Interconnections and ERCOT. Language previously included in Appendix A was moved to Coordinate Interchange business practice standards 004–3, 004–3.1, and 004–8.2.

19. NYISO requests that the Commission not overturn any existing waivers of the WEQ–004 Standard that the Commission previously granted to entities. NYISO states that, in an order issued on November 16, 2006, the Commission granted it waivers of certain NAESB business practice standards, including certain portions of the WEQ–004 Standard.[8] NYISO points to the waiver it received of WEQ–004–8.1 and Appendices A, B and D, to the extent these components of the WEQ–004 Standard govern physical transmission capacity reservations. In requesting that waiver, the NYISO explained that such standards would not be applicable in the locational-based marginal price (LBMP) market it operates. NYISO also maintains that entities should not have to reapply for waivers they have already obtained.

20. As we stated in Order No. 676, when parties seek regional or generic variations of the standards, they should raise their concerns in the WEQ standard development process:

> Now that the WEQ is developing these standards, we prefer that initially all regional and other generic requests for variances, such as to accommodate different business models, be raised during the WEQ standards development process, and we encourage participation by all interested persons in that process. * * * By first submitting the request to the WEQ during development of the standard, the request may be resolved during the WEQ process. Even if the request is not resolved by the WEQ, the process will help create a record should the requester seek a variance or waiver when the standard is presented to the Commission.[9]

21. We are very pleased that since the issuance of Order No. 676, parties have sought to raise their regional differences at NAESB, and this effort has resulted in consideration of these issues in the revised Coordinate Interchange Standards that we are adopting in this Final Rule.[10] For example, the WEQ–004 Coordinate Interchange standards have been significantly revised, incorporating regional business practices for the Eastern, Western and ERCOT regions. NAESB also has voted to add a voting segment for ISOs/RTOs so these organizations can have any variance or other issues related to their business model addressed through the NAESB process. Having the industry determine such variances is preferable to having these issues raised in individual waiver requests with the Commission.

22. Because the Coordinate Interchange standards for which parties have previously been granted waivers have been revised as discussed above, we find that it will be necessary for all entities who have received waiver of any of the Coordinate Interchange standards to file to request a waiver of the revised standard. While we recognize the burden of having parties reapply for waivers, we cannot rule on individual waiver requests in a generic rulemaking proceeding and cannot determine without a specific waiver request whether any of the changes made by NAESB to the coordinate interchange standards have resolved any of the issues that gave rise to our grant of a waiver of the prior standard. As we stated in Order No. 676, utilities will not be required to comply with any standard for which they request waiver until we act on the waiver request.[11] However, small entities that have obtained waiver of the Order No. 676 standards because they meet the criteria for small public utility waivers provided in Order No. 676 need not apply for a waiver of the revised Coordinate Interchange standards, because their waivers were predicated on their status as small entities, which has not changed.[12]

23. Parties seeking waivers of the requirements of this Order must file a request on or before the implementation date for this rule, specifying the exact provisions of the standards for which the waiver is sought, and including a full statement of the reasons the applicant believes such a waiver would be appropriate. The request should cover only the Coordinate Interchange business practice standards; waivers of other business practice standards remain unaffected by this Order.

III. Implementation Dates and Procedures

24. Utilities are required to implement the Coordinate Interchange standards that we are incorporating by reference in this Final Rule by the later of the date when the Reliability Standards that the Commission approved in Order No. 693 become mandatory or the effective date of this rule.

25. To reduce the burden on filers, as we did in Order No. 676, although public utilities must fully comply with the requirements of this Final Rule as soon as it becomes effective, we are not requiring public utilities immediately to file revised open access transmission tariffs (OATTs) incorporating these changes. When NAESB files the next version of the WEQ's electric standards, if the Commission decides to incorporate the new version of the WEQ's electric standards in its regulations, public utilities will at that time be required to file revised OATTs including these standards.

IV. Notice of Use of Voluntary Consensus Standards

26. Office of Management and Budget (OMB) Circular A–119 (section 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the Final Rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the WEQ.

V. Information Collection Statement

27. OMB's regulations in 5 CFR 1320.11 (2005) require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB assigns an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

28. This Final Rule will affect will affect the following existing data collection: Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717)

29. The following burden estimate is based on the projected costs for the industry to implement revisions to the WEQ's Coordinate Interchange standards (WEQ–004). The following

[8] New York Independent System Operator, Inc., 117 FERC ¶ 61,197 (2006).

[9] Order No. 676 at P 78.

[10] *See, supra*, discussion in P 18.

[11] Order No. 676 at P 102.

[12] Order No. 676 at P 85–87.

burden estimates cover compliance with this rule:

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–717	220	1	8	1760
Totals				1760

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 1760.

Information Collection Costs: The Commission projects the average annualized cost for all respondents to be the following:[13]

	FERC–717
Annualized Capital/Startup Costs	$264,000
Annualized Costs (Operations & Maintenance)	N/A
Total Annualized Costs	264,000

30. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments addressed the reporting burden were filed.

31. The Commission's regulations adopted in this rule are necessary to establish a more efficient and integrated wholesale electric power grid. Requiring such information ensures both a common means of communication and common business practices that provide entities engaged in the wholesale transmission of electric power with timely information and uniform business procedures across multiple transmission providers. These requirements conform to the Commission's goal for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

32. OMB regulations [14] require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this Final Rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) (*formerly* Open Access Same Time Information System).

Action: Proposed collection.

OMB Control No.: 1902–0173.

Respondents: Business or other for profit, (Public Utilities—Not applicable to small businesses.).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This rule will upgrade the Commission's business practice and communication protocols (methods by which computers coordinate their communications) governing Coordinate Interchange transactions to complement the NERC INT Reliability Standards approved by the Commission in Order No. 693. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid. The standards being adopted define procedures for market participants to request the implementation of Interchange Transactions or agreements to transfer energy from a seller to a buyer that crosses one or more Balancing Authority boundaries.

33. The information collection requirements of this Final Rule are based on the transition from transactions being made under the Commission's existing business practice standards governing Coordinate Interchange transactions to conducting such transactions under the revised Coordinate Interchange standards (WEQ–004) adopted in this rule. The implementation of these data requirements will help the Commission carry out its responsibilities under the FPA. The Commission will use the data in rate proceedings to review rate and tariff changes by public utilities, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

34. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415 / Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov.*

or by contacting: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission. (Re: OMB Control Nos. 1902–0096 & 1902–0173) , Tel: (202) 395–4650, E-mail: *omb_submissions@omb.eop.gov.*

VI. Environmental Analysis

35. The Commission is required to prepare an environmental assessment or an environmental impact statement for any action that may have a significant adverse effect on the human environment.[15] As the Commission stated in the Interchange NOPR, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in this categorical exclusion are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended.[16] The categorical exclusion also includes information gathering, analysis, and dissemination.[17] The requirements imposed by this Final Rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[18] As a result, neither an environmental impact statement nor an environmental assessment is required.

[13] The total annualized costs for the information collection is $264,000. This number is reached by multiplying the total hours to prepare responses (1760 hours) by an hourly wage estimate of $150 (a composite estimate that includes legal, technical and support staff rates, $90+$35+$25). $264,000 = $150 × 1760.

[14] 5 CFR 1320.11.

[15] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[16] 18 CFR 380.4(a)(2)(ii).

[17] 18 CFR 380.4(a)(5).

[18] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

VII. Regulatory Flexibility Act Certification

36. The Regulatory Flexibility Act of 1980 (RFA) [19] generally requires a description and analysis of any final rule that will have significant economic impact on a substantial number of small entities. The rule adopted here imposes requirements only on public utilities, which are not small businesses, and these requirements are, in fact, designed to benefit all customers, including small businesses.

37. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small businesses and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: tiering or establishment of different compliance or reporting requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. As the Commission originally stated in Order No. 889, the OASIS regulations now known as ''Standards for Business Practices and Communication Protocols for Public Utilities'' apply only to public utilities that own, operate, or control transmission facilities subject to the Commission's jurisdiction, and should a small entity be subject to the Commission's jurisdiction, it may file for waiver of these regulations.[20] The Commission is not modifying its prior determinations on this issue in this Final Rule.

38. The procedures the Commission is following in this Final Rule are in keeping with exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,[21] the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VIII. Document Availability

39. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

40. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM05–5'' in the docket number field.

41. User assistance is available for eLibrary and the Commission's Web site during the Commission's normal business hours. For assistance contact the Commission's Online Support services at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

IX. Effective Date and Congressional Notification

42. This Final Rule will become effective May 30, 2007. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[22]

List of Subjects

18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission.

Philis J. Posey,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends Chapter I, Title 18, part 38 of the *Code of Federal Regulations,* as follows:

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

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

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 38.2, paragraph (a)(4) is revised to read as follows:

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) * * *

(4) Coordinate Interchange (WEQ–004, June 22, 2006);

* * * * *

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BILLING CODE 6717–01–P

[19] 5 U.S.C. 601–612.

[20] Small entities that qualified for a waiver from the requirements of Order Nos. 888 and 889 may apply for a waiver of the requirement to comply with the standards incorporated by reference in the regulations we are adopting in this Final Rule.

[21] 5 U.S.C. 605(b).

[22] *See* 5 U.S.C. 804(2).

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB50

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Board amends its regulations to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, to increase from $200 to $530 the minimum amount of monthly earnings to count during a trial work period and then index that amount to the Social Security national average wage index.

DATES: These rules are effective on April 30, 2007.

ADDRESSES: Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Office of General Counsel, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act provides for disability annuities for employees, widow(er)s, and children of deceased railroad employees who are unable to engage in any regular employment because of a physical or mental impairment. Regular employment is defined by reference to the definition of substantial gainful activity under the Social Security Act. Sections 220.141 and 220.142 of the Board's regulations reflect this definition and define ''substantial gainful activity'' (SGA) as work activity that involves doing significant physical or mental activities for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not profit is realized. Section 220.143 sets forth earnings levels at which the Board considers a person to be engaged in SGA regardless of the severity of his or her impairment. The amount of average monthly earnings that ordinarily demonstrates SGA was increased effective July 1, 1999, when the Board

raised from $500 to $700 the average monthly earnings guidelines used to determine whether work done by a person is substantial gainful activity.

These regulations increase certain thresholds for disabled workers. Under this rule, the average monthly earnings guideline, which is used to determine whether work done by disabled workers is substantial gainful activity, is increased to $740.00 for calendar year 2001 and is thereafter automatically adjusted each year based on increases in the Social Security national average wage index. See 42 U.S.C. 409(k)(1). The amount that is used to determine if a disabled individual has performed ''services'' during a trial work period also is subject to an automatic annual adjustment. These changes conform to changes in the regulations of the Social Security Administration that became final effective January 29, 2001 (65 FR 82905, December 29, 2000).

In order to be eligible for disability benefits, an applicant must not be performing substantial gainful activity. A beneficiary's ongoing eligibility for disability benefits is also subject to this rule. Therefore, the Board has established both upper and lower thresholds as guidelines for determining, respectively, what is prima facie evidence of engaging in SGA and what is prima facie evidence of not engaging in SGA. Except for those who work in sheltered workshops, disabled workers with earnings between the two thresholds are subject to further examination. Currently, the upper and lower thresholds are $700 and $300, respectively. For those working in sheltered workshops, earnings below the upper threshold are prima facie evidence that the worker is not performing SGA.

Under this rule, beginning January 1, 2001, the upper threshold is adjusted annually, based on the Social Security national average wage index, to conform to the SGA level determined by the Social Security Administration (SSA) and published in the **Federal Register** each October as part of SSA's notice that includes new adjustments. Under this rule, the SGA amount will never be lower than the previous year's amount. However, there may be years in which there is no increase.

As part of this rule, the Board also eliminates the lower SGA threshold so that earnings below the upper threshold would be prima facie evidence that a disabled worker is not engaging in SGA, regardless of whether the worker is working in competitive employment or in a sheltered workshop.

The Board also increases the monthly amount that a disabled worker may earn within a trial work period without jeopardizing the amount of time remaining in the trial work period. This change is being made to conform the Board's regulations to the monthly earnings allowed within a trial work period in the regulations of the Social Security Administration. Currently, a disabled worker may test his or her ability to work and still be considered disabled by working during a trial work period. A disabled beneficiary will continue to be considered disabled until the beneficiary performs ''service'' in at least nine months within a rolling 60-month period. Since 1990, the Board has considered any month in which at least more than $200 is earned to be a month of service.

Under the final rule, the threshold amount is increased to $530 for 2001, and then is adjusted annually thereafter based on the Social Security national average wage index to conform to the amount determined by the Social Security Administration and published in the **Federal Register** every October. The Board notes that while the SGA amount has increased since 1990, during the same period, the trial work period services amount has remained unchanged. As with the change shown for the SGA threshold amount, the trial work period amount will never be lower than the previous year's amount.

Final Regulations—Background

The Board revises Sections 220.143(b)(2) and (b)(4) to adjust annually the earnings guidelines that we use to determine whether an employee is engaged in substantial gainful activity. Beginning January 2001, the average monthly earnings considered to be substantial gainful activity is increased from $700 to $740. Beginning January 2001, the guideline is the higher of the previous year's amount or an increased amount as computed and published by the Social Security Administration based on the Social Security national average wage index.

The Board also amends Sec. 220.143(b)(2) and (b)(4) to clarify that this guideline applies to earnings from sheltered work. This standard also applies to the self-employed in certain circumstances by cross-references that have been and continue to be present in Sec. 220.144 of this part.

The Board revises Sec. 220.143(b)(3) and (b)(6) to provide, beginning January 2001, that we will ordinarily find that an employee whose average monthly earnings are equal to or less than the ''substantial gainful activity amount'' set forth in Sec. 220.143(b)(2) has not engaged in substantial gainful activity without considering other information beyond the employee's earnings. The Board also makes conforming changes to Sec. 220.143(b)(4).

The Board revises Sec. 220.170 to increase from $200 to $530 the minimum amount of monthly earnings that we consider shows that a person is performing or has performed ''services'' for counting trial work period months, effective January 1, 2001. We also will adjust the amount annually to the higher of the previous year's amount or an increased amount based on the Social Security national average wage index, beginning January 1, 2002. In addition, effective January 1, 2001, for a self-employed person with net earnings from self-employment equal to or less than the dollar threshold for ''services'' the Board increases the number of hours of self-employed work in a business each month that the Board will consider shows services are performed from more than 40 hours to more than 80 hours.

The Board published the proposed rule on June 9, 2003 (68 FR 34341) and invited comments by August 8, 2003. No comments were received. This final rule is similar to the proposed rule published on June 9, 2003 except for the following changes that have been made to the proposed draft to be more consistent with similar regulations issued by the Social Security Administration (SSA) and to provide clarification about the subject matter:

- § 220.143(b)(2)—A phrase has been added to provide clarification concerning earnings from sheltered employment.
- § 220.143(b)(2)(i) and (ii)—The year 2002 in both sections has been changed to 2001 to be more consistent with the other sections being revised.
- § 220.143 Table 1—The reference to calendar year 2001 and the corresponding monthly earnings for that year have been eliminated for consistency with the other sections being revised.
- § 220.143(b)(4)—The phrase ''Before January 1, 2002'' has been removed from the heading because the section deals with sheltered employment before and after January 1, 2002. The year 2002 in the first sentence has been changed to 2001 to be more consistent with other sections being revised. The phrase ''in paragraph (b)(2)'' has been changed to ''in Table 1 of this section'' wherever it appears. A new sentence was added at the end of this subsection to explain what occurs for months beginning January 1, 2001 for claimants working in sheltered workshops.
- § 220.143(b)(6)(i) and (ii)—The year 2002 in both sections has been changed

to 2001 to be more consistent with the other sections being revised.

• § 220.170(b)—The first two sentences of this subsection have been revised to clarify the description of what is meant by ''services.''

• § 220.170(b)(2)(ii)—This subsection has been revised to state that if an individual performed more than 80 hours, instead of the previous limit of 40 hours, of self-employed activities in a business in a month beginning in calendar year 2001, the Board will consider services were performed.

• § 220.170(b) Table 1—This table has been revised to show the $200 limit applies in calendar years 1990–2000, not 1990–2001 as shown in the proposed rule. Table 2—This table has been revised to change the hours of work for a self-employed individual from 40 hours to 80 hours beginning in calendar year 2001.

The most significant revision to the proposed rule that was published in June, 2003 increases the minimum monthly hours of work from 40 to 80 that show a self-employed individual performed services. This change makes the Board's regulations consistent with those of the Social Security Administration, which were also modified when a final rule was published by that agency on December 29, 2000, to show 80 hours. This change is less restrictive and will encourage beneficiaries with disabilities to more realistically test their ability to work with respect to self-employment activities.

Collection of Information Requirements

The amendments to this part do not impose information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

The primary purpose of this rule is to conform the Railroad Retirement Board rules governing substantial gainful activity and a trial work period to the regulations of the Social Security Administration. The Board published a proposed rule to amend these sections on June 9, 2003 (68 FR 34341) and invited comments by August 8, 2003. No comments were received. The draft final rule is similar to the proposed rule except for the changes identified in the Supplementary Information. The single most significant revision to the proposed rule that was published in June 2003 increases the minimum monthly hours of work from 40 to 80 that show that a self-employed individual performed services. This change and the other changes made by the final draft rule, like the changes in the published proposed regulation, have been made in order to make the regulations of the Railroad Retirement Board more consistent with similar regulations issued by the Social Security Administration and to provide clarification about the subject matter. In addition, the changes made by this rule will generally make the current regulatory provisions less restrictive in order to encourage individuals to try to return to work. For all of these reasons, the decision was made to have the rule take effect upon publication.

Prior to publication of this final rule, the Board submitted the rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This final rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this final rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The amendments made by this final rule are significant. The amendments to §§ 220.143 and 220.170 will index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, and increases from $200 to $530 the minimum amount of monthly earnings to count during a trial work period, and then index that amount to the Social Security national average wage index.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the definition of ''agency'' contained in 5 U.S.C. 551(l). Section 551(l)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

List of Subjects in 20 CFR Part 220

Railroad Retirement.

■ For the reasons stated in the preamble, the Railroad Retirement Board amends part 220 of chapter II of title 20 of the Code of Federal Regulations as follows:

PART 220—DETERMINING DISABILITY

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

Subpart L—Substantial Gainful Activity

■ 2. Section 220.143 is amended by revising paragraphs (b)(2), (b)(3), (b)(4), and (b)(6) to read as follows:

§ 220.143 Evaluation guides for an employed claimant.

* * * * *

(b) * * *

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant (including earnings from sheltered work, see paragraph (b)(4) of this section) show that the claimant engaged in substantial gainful activity if:

(i) *Before January 1, 2001*, the earnings averaged more than the amount(s) in Table 1 of this section for the time(s) in which the claimant worked.

(ii) *Beginning January 1, 2001*, the earnings are more than an amount determined for each calendar year to be the larger of:

(A) The amount for the previous year, or

(B) The amount established by the Social Security Administration to constitute substantial gainful activity for such year.

TABLE 1.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY PERFORMED

For months	Monthly earnings averaged more than
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity.* Beginning January 1, 2001, if the claimant's earnings are equal to or less than the amount(s) determined under paragraph (b)(2)(ii) of this section for the year(s) in which the claimant works, the Board will generally consider that the earnings from the claimant's work as an employee will show the claimant has not engaged in substantial gainful activity. Before January 1, 2001, if the claimant's earnings were less than the amount(s) in Table 2 of this section for the year(s) in which the claimant worked, the Board will generally consider that the earnings from the claimant's work as an employee will show that the claimant has not engaged in substantial gainful activity.

TABLE 2.—AMOUNTS INDICATING SUBSTANTIAL GAINFUL ACTIVITY NOT PERFORMED

For months	Monthly earnings averaged less than
In calendar years before 1976	$130
In calendar year 1976	150
In calendar year 1977	160
In calendar year 1978	170
In calendar year 1979	180
In calendar years 1980–1989	190
In calendar years 1990–2000	300

(4) *If the claimant worked in a sheltered workshop.* Before January 1, 2001 if the claimant worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the Board will ordinarily consider that the claimant's earnings from this work show that the claimant has engaged in substantial gainful activity if the claimant's earnings average more than the amounts in Table 1 of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those indicated in Table 1 of this section will ordinarily show that the claimant has not engaged in substantial gainful activity without the need to consider the other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When the claimant's earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in Table 1 of this section, the Board will consider the provisions of paragraph (b)(6) of this section only if there is evidence that the claimant may have done substantial gainful activity. For work performed in a sheltered workshop or comparable facility beginning January 1, 2001, the rules of paragraph (b)(2), (3), and (6) apply the same as they do to any other work done by an employee.

* * * * *

(6) *Earnings that are not high enough to ordinarily show that the claimant engaged in substantial gainful activity.* (i) Before January 1, 2001, if the claimant's average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although the Board may apply it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) Beginning January 1, 2001, if the claimant's average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, the Board will generally not consider other information in addition to the claimant's earnings unless there is evidence indicating that the claimant may be engaging in substantial gainful activity or that the claimant is in a position to defer or suppress his or her earnings.

(iii) Examples of other information the Board may consider include, whether—

(A) The claimant's work is comparable to that of unimpaired people in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) The claimant's work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for any Regular Employment

■ 3 . Section 220.170 is amended by revising paragraph (b) to read as follows:

§ 220.170 The trial work period.

* * * * *

(b) *What the Board means by services.* When used in this section, services means any activity (whether legal or illegal), even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work done without remuneration to be services if it is done merely as therapy or training, or if it is work usually done in a daily routine around the house, or in self-care.

(1) *If the claimant is an employee.* The Board will consider the claimant's work as an employee to be services if:

(i) Before January 1, 2002, the claimant's earnings in a month were more than the amount(s) indicated in Table 1 of this section for the year(s) in which the claimant worked.

(ii) *Beginning January 1, 2002*, the claimant's earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine whether a person has performed services for counting trial work period months.

(2) *If the claimant is self-employed.* The Board will consider the claimant's activities as a self-employed person to be services if:

(i) *Before January 1, 2002*, the claimant's net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which the claimant worked, or the hours the claimant worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which the claimant worked.

(ii) *Beginning January 1, 2002*, the claimant worked more than 80 hours a month in the business, or the claimant's net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine whether a person has performed services for counting trial work period months.

TABLE 1.—FOR NON SELF-EMPLOYED

For months	You earn more than
In calendar years before 1979	$50
In calendar years 1979–1989	75
In calendar years 1990–2000	200
In calendar year 2001	530

TABLE 2.—FOR THE SELF-EMPLOYED

For months	Your net earnings are more than	Or you work in the business more than (hours)
In calendar years before 1979	$50	15
In calendar years 1979–1989	75	15
In calendar years 1990–2000	200	40
In calendar year 2001	530	80

* * * * *

Dated: April 24, 2007.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E7–8155 Filed 4–27–07; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9324]

RIN 1545–BF04

Designated Roth Accounts Under Section 402A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under sections 401(k), 402(g), 402A, and 408A of the Internal Revenue Code (Code) relating to designated Roth accounts. These final regulations provide guidance concerning the taxation of distributions from designated Roth accounts under qualified cash or deferred arrangements under section 401(k). These final regulations will affect administrators of, employers maintaining, participants in, and beneficiaries of section 401(k) and section 403(b) plans, as well as owners and beneficiaries of Roth IRAs and trustees of Roth IRAs.

DATES: *Effective Date:* These final regulations are effective April 30, 2007.

Applicability Date: These regulations generally apply to taxable years beginning on or after January 1, 2007. For dates of applicability, see §§ 1.401(k)–1(f)(6), 1.402A–1, A–15, 1.402A–2, A–4 and 1.408A–10, A–6.

FOR FURTHER INFORMATION CONTACT: R. Lisa Mojiri-Azad or William D. Gibbs at 202–622–6060, or Cathy A. Vohs, 202–622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations was reviewed and approved by the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number OMB–1545–1992.

The collection of information in these final regulations is in 26 CFR 1.402A–2. This information is required to comply with the separate accounting and recordkeeping requirements of section 402A. This information will be used by the IRS and employers maintaining designated Roth accounts to insure compliance with the requirements of section 402A. The collection of information is required to obtain a benefit. The likely recordkeepers are state or local governments, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated annual burden per respondent under control number OMB–1545–1992 is 2.3 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations under section 402A, and amendments to regulations under sections 401(k), 402(g), and 408A of the Internal Revenue Code. Section 402A, which sets forth rules for designated Roth contributions, was added to the Code by section 617(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 103) (EGTRRA), effective for taxable years beginning after December 31, 2005. These final regulations also reflect certain provisions of the Pension Protection Act of 2006, Public Law 109–280, (120 Stat. 780) (PPA '06), including section 811 of PPA '06, which repealed the sunset provisions of EGTRRA with respect to section 402A.

Section 401(k) sets forth rules for qualified cash or deferred arrangements under which an employee may make an election between cash and an employer contribution to a plan qualified under section 401(a). Section 403(b) permits a similar salary reduction agreement under which payments are made to a section 403(b) plan. Section 402(e)(3) provides that an amount is not

includible in an employee's income merely because the employee has an election whether these contributions will be made to the trust or annuity or received by the employee in cash.

Amounts contributed pursuant to these qualified cash or deferred arrangements and salary reduction agreements are defined in section 402(g)(3) as elective deferrals. Section 402(g)(1) provides a limit on the amount of elective deferrals that may be excluded from an employee's income for a taxable year. Section 402(g)(2) provides for the distribution of elective deferrals that exceed the annual limit on elective deferrals (an excess deferral).

A designated Roth contribution is an elective deferral, as described in section 402(g)(3)(A) or (C), that has been designated by an employee, pursuant to section 402A, as not excludable from the employee's gross income. Under section 402A(b)(2), designated Roth contributions must be maintained by the plan in a separate account (a designated Roth account).

Under section 402(a), a distribution from a plan qualified under section 401(a) is taxable under section 72 to the distributee in the taxable year distributed. However, pursuant to section 402A(d)(1), a qualified distribution from a designated Roth account is excludable from gross income. A qualified distribution is defined in section 402A(d)(2) as a distribution that is made after completion of a specified 5-year period and the satisfaction of other specified requirements.

If the distribution is not a qualified distribution, pursuant to section 72, the distribution is included in the distributee's gross income to the extent allocable to income on the contract and excluded from gross income to the extent allocable to investment in the contract (basis). The amount of a distribution allocated to investment in the contract is generally determined by applying to the distribution the ratio of the investment in the contract to the account balance.

Section 402(c) provides rules under which certain distributions from a plan qualified under section 401(a) may be rolled over into another eligible retirement plan. In such a case, the distribution is not currently includible in the distributee's gross income. Under section 402(c)(2), as amended by section 822 of PPA '06, to the extent some or all of the distribution from a plan qualified under section 401(a) would not have been includible in gross income if it were not rolled over, that portion of the distribution can only be rolled over into an individual retirement plan, or through a direct rollover to another qualified plan or section 403(b) plan that agrees to separately account for such rolled over amounts. Section 403(b)(8)(B) provides that the rules of section 402(c)(2) also apply for purposes of the rollover rules under section 403(b)(8).

Under section 402(c)(8) and 402A(c)(3), a distribution from a designated Roth account can be rolled over only to another designated Roth account or to a Roth IRA. Under section 408A, a Roth IRA is a type of individual retirement plan (IRA) under which contributions are never deductible and qualified distributions are excludable from gross income. Section 408A(d)(4) sets forth special ordering rules for the return of basis in the case of a distribution from a Roth IRA. Under the section 408A(d)(4) ordering rules, in a nonqualified distribution from a Roth IRA, basis is recovered before income.

Section 617(d) of EGTRRA amended section 6051(a)(8) to require the reporting of designated Roth contributions on Form W–2, ''Wage and Tax Statement,'' and added a new subsection (f) to section 6047 to require plan administrators or other responsible persons of section 401(k) or 403(b) plans to make such returns and reports regarding designated Roth contributions to the Secretary of the Treasury and such other persons the Secretary may prescribe.

Final regulations under section 401(k) were issued on December 29, 2004 (69 FR 78144). Those final regulations reserved § 1.401(k)–1(f) for special rules for designated Roth contributions. On January 3, 2006, final regulations were issued that fill in that reserved paragraph and provide additional rules applicable to designated Roth contributions (71 FR 6). The provisions of the final regulations under section 401(k) regarding designated Roth contributions do not address the taxability of distributions from designated Roth accounts or the reporting requirements that apply to contributions of designated Roth contributions or distributions from the accounts.

On January 26, 2006, a notice of proposed rulemaking (REG–146459–05) under section 402A was published in the **Federal Register** (71 FR 4322). The proposed regulations also would have provided guidance with respect to designated Roth contributions under section 403(b) plans by amending the proposed regulations under section 403(b), published in the **Federal Register** on November 16, 2004 (69 FR 67075). This guidance has not been finalized in this Treasury Decision, but will instead be included in the final regulations under section 403(b). Written comments responding to the notice of proposed rulemaking under section 402A were received. A public hearing was held on July 26, 2006. After consideration of all comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted below.

These final regulations under section 402A are intended to provide comprehensive guidance on the taxation of distributions from designated Roth accounts under section 401(k) and section 403(b) plans. These regulations also provide guidance on the reporting requirements with respect to these accounts and include amendments to the provisions of the final section 401(k) regulations relating to designated Roth contributions. In addition, these final regulations include amendments to the regulations under section 402(g) issued in 1991 in order to reflect the enactment of section 402A (as well as other statutory changes since those regulations were issued) and to make changes to conform the regulations under section 402(g) to the final section 401(k) regulations. These final regulations also add a new § 1.408A–10 to the existing regulations under section 408A for Roth IRAs (§ 1.408A–1 through 9) issued in 1999 to reflect the interaction between section 408A and section 402A.

Explanation of Provisions

Overview

These final regulations, like the proposed regulations, provide guidance on the taxation of distributions from designated Roth accounts and other related issues. A designated Roth account is a separate account under a section 401(k) plan or section 403(b) plan to which designated Roth contributions are made, and for which separate accounting of contributions, gains, and losses are maintained. These final regulations retain the rule from the proposed regulations that any transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of directly or indirectly transferring value from another account into the designated Roth account violates the separate accounting requirement under section 402A.

The taxation of a distribution from a designated Roth account depends on whether or not the distribution is a qualified distribution. A qualified

distribution from a designated Roth account is not includible in the employee's gross income. A qualified distribution is generally a distribution that is made after a 5-taxable-year period of participation and that either (1) is made on or after the date the employee attains age 59½, (2) is made after the employee's death, or (3) is attributable to the employee's being disabled within the meaning of section 72(m)(7). In response to comments, these final regulations clarify that, in the case of distribution to an alternate payee or beneficiary, the age, death or disability of the participant are used to determine whether the distribution is qualified. The only exception is in the case of a rollover by an alternate payee or surviving spouse to a designated Roth account under a plan of his or her own employer.

Determination of 5-Taxable-Year Period for Qualified Distributions

In order for a distribution from a designated Roth account to be a qualified distribution and thus not includible in gross income, a 5-taxable-year requirement must be satisfied. These final regulations, like the proposed regulations, reflect the rule in section 402A that the 5-taxable-year period during which a distribution is not a qualified distribution begins on the first day of the employee's taxable year for which the employee first had designated Roth contributions made to the plan and ends when 5 consecutive taxable years have been completed. However, if a direct rollover is made from a designated Roth account under another plan, the 5-taxable-year period for the recipient plan begins on the first day of the employee's taxable year for which the employee first had designated Roth contributions made to the other plan, if earlier.

Commentators inquired as to when designated Roth contributions made by a reemployed veteran for a year of qualified military service pursuant to section 414(u), are treated as made for purposes of the 5-taxable-year period of participation. In response to these comments, the final regulations provide that designated Roth contributions made by a reemployed veteran are treated as made in the taxable year with respect to which the contributions relate. Reemployed veterans may identify the year for which a contribution is made for other purposes, such as for entitlement to a match, and the treatment for the five year period of participation rule follows that identification. Absent such an identification, for purposes of determining the first year of the five years of participation under section 402A(d)(2)(B), the contribution is treated as made in the veteran's first taxable year in which the veteran's qualified military service begins, or if later, the first taxable year in which designated Roth contributions could be made under the plan.

Commentators asked how the 5-taxable-year period of participation rule applies to a required minimum distribution made for an earlier year, such as a distribution made on April 1 following the year an employee attains age 70½. They also asked whether, if payments under an annuity stream commence before a qualifying event, the payments after the qualifying event could be qualified distributions (assuming the 5-year period of participation is satisfied). The determination of whether a payment is a qualified distribution is determined based upon the actual year of the payment from the account and does not take into account whether the payment is part of a series of distributions or whether the payment is attributable to a prior calendar year.

In response to comments, these final regulations provide that certain contributions do not start the 5-taxable-year period of participation. For example, a year in which the only contributions consist of excess deferrals will not start the 5-taxable-year period of participation. Further, excess contributions that are distributed to prevent an ADP failure also do not begin the 5-taxable-year period of participation. Finally, contributions returned to the employee pursuant to section 414(w) also do not start the 5-taxable-year period of participation.

Taxation of Nonqualified Distributions

These final regulations retain the rules from the proposed regulations for taxation of nonqualified distributions and provide that a distribution from a designated Roth account that is not a qualified distribution is taxable to the distributee under section 402 (or section 403(b)(1)), treating the designated Roth account as a separate contract under section 72. In applying that treatment, the portion of any distribution that is includible in gross income as an amount allocable to income on the contract and the portion not includible in income as an amount allocable to investment in the contract is generally determined under section 72(e)(8) (or, in the case of an amount received as an annuity, section 72 (b) or (d), as applicable).

Some commentators requested that the special ordering rules in section 408A(d), which provide that the first distributions from a Roth IRA are a return of contributions (and thus not includible in gross income) until all contributions have been returned as basis, be applied to distributions from a designated Roth account. They noted that a pro rata basis recovery rule in section 72 is difficult to explain to employees receiving a hardship distribution from a designated Roth account because the entire distribution reduces the amount of elective contributions (including designated Roth contributions) available for hardship distribution while, for purposes of determining the amount includible in income under sections 402(a) and 72, only a portion of the distribution is treated as recovery of basis attributable to the designated Roth contributions.

As noted in the preamble to the proposed regulations, because section 402A does not provide that the special ordering rules of section 408A(d) apply to distributions from designated Roth accounts, these final regulations do not apply those special ordering rules. Although designated Roth contributions to a designated Roth account bear some similarity to contributions to a Roth IRA (e.g., contributions to either type of account are after-tax contributions, and qualified distributions from either type of account are excludable from gross income), there are many differences between these types of arrangements. The only special rule under section 402A for nonqualified distributions from a designated Roth account is that the account is treated as a separate contract for purposes of section 72.

Thus, these final regulations do not apply the basis recovery rules in section 408A to distributions from designated Roth accounts. Furthermore, the limit on elective contributions available for hardship distribution is an aggregate limit that takes into account both pre-tax elective contributions and designated Roth contributions. For example, an employee could take all hardship distributions from the pre-tax account, even though part of the amount available for hardship is attributable to designated Roth contributions. Thus, the amount of elective deferrals available for distribution from a designated Roth account on account of hardship generally would be a different amount than the total designated Roth contributions even if the ordering rule in section 408A(d)(4) applied to distributions from designated Roth accounts.

Rollover of Designated Roth Contributions

As described above in the Background section of this preamble, section

402(c)(2), after amendment by section 822 of PPA '06, provides that, if a portion of the distribution from a plan qualified under section 401(a) is not includible in income (determined without regard to the rollover), that portion of the distribution can only be rolled over by a direct rollover of the distribution to another qualified plan, or to a section 403(b) plan, that provides for separate accounting for amounts transferred (and earnings thereon) including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution that is not so includible. Alternatively, the distribution can be rolled over to an IRA in either a 60-day rollover or direct rollover.

Section 402A(c)(3) provides that a rollover contribution of a distribution from a designated Roth account may only be made to the extent it is otherwise allowable. Section 402(c)(2) provides rules regarding when a rollover contribution of amounts not includable in gross income are allowable. As noted in the preamble to the proposed regulations, the IRS and Treasury Department believe that the rules in section 402(c)(2) relating to the rollover of a distribution of an amount not includable in gross income apply to a distribution from a designated Roth account.[1] Thus, these regulations retain the rule in the proposed regulations that, in order to roll over any portion of the basis in a designated Roth account into a designated Roth account under another plan, the rollover of the distribution must be accomplished through a direct rollover (i.e., a rollover to another designated Roth account is not available for the portion of the distribution not includible in gross income if the distribution is made directly to the employee). However, for purposes of these regulations, the requirement that the receiving plan separately account for designated Roth contributions that are rolled over has been eliminated because such contributions are independently subject to the separate account requirement of Treas. Reg. § 1.401(k)–1(f).[2]

In response to comments, the final regulations clarify that, for purposes of these regulations, if any amount is paid as a direct rollover, that amount is treated as a separate distribution from any amount paid directly to the distributee for purposes of applying section 402(c)(2). Finally, to insure that there is proper accounting in the recipient plan, as described under the heading *Reporting and Recordkeeping,* these final regulations retain the provision in the proposed regulations requiring the distributing plan making the direct rollover is required to report the amount of the investment in the contract and the first year of the 5-year period to the recipient plan so that the recipient plan will not need to rely on information from the distributee.

In response to comments, the definition of designated Roth account has been revised to clarify that the definition only includes accounts under a plan to which designated Roth contributions are made in lieu of elective contributions or deferrals. Thus, the final regulations clarify that a distribution from a designated Roth account may only be rolled over to a section 401(k) plan or section 403(b) plan if that has a designated Roth program.

As in the proposed regulations, the final regulations provide that if the entire amount of a distribution from a designated Roth account is rolled over to another designated Roth account, the amount of the rollover contribution allocated to investment in the contract in the recipient designated Roth account is the amount that would not have been includible in gross income (determined without regard to section 402(e)(4)) if the distribution had not been rolled over. Thus, if an amount that is a qualified distribution is rolled over, the entire amount of the rollover contribution is allocated to investment in the contract. In response to comments, the final regulations clarify that, if the entire account balance of a designated Roth account is rolled over to another designated Roth account, and, at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the investment in the contract in the distributing plan is included in the investment in the contract of the recipient plan.[3]

If a distribution from a designated Roth account is made to an employee, the employee is still able to roll over the entire amount (or any portion thereof) into a Roth IRA within a 60-day period. Under section 402(c)(2), if only a portion of the distribution is rolled over, the portion that is rolled over is treated as consisting first of the amount of the distribution that is includible in gross income. These final regulations, like the proposed regulations, provide that the income limits for contributions for Roth IRAs do not apply for this purpose.

Alternatively, the proposed regulations provided that the employee is permitted to roll over the taxable portion of the distribution to a designated Roth account within a 60-day period. In such a case, additional reporting is required from the recipient plan, as described below under the heading *Reporting and Recordkeeping.* In addition, the employee's period of participation under the distributing plan is not carried over to the recipient plan for purposes of determining whether the employee satisfies the 5-taxable-year requirement under the recipient plan. Commentators objected to this different treatment for indirect rollover contributions claiming that it reduces portability. The IRS and Treasury Department believe that this rule is more consistent with the statutory language and will further encourage direct rollover of distributions from designated Roth accounts which will reduce leakage of these distributions from retirement savings solution. Thus, this rule is retained in the final regulations. However, the final regulations provide that such an indirect rollover contribution starts the 5-taxable-year period of participation under the receiving plan for a participant who has made no prior designated Roth contributions to that plan.

Determination of 5-Taxable-Year Period After a Rollover to a Roth IRA

Section 402A and section 408A each provide for a 5-taxable-year period that must be completed in order for a distribution from a designated Roth account or a Roth IRA to be a qualified distribution. However, each of these sections contains different rules for determining when the 5-taxable-year requirement is satisfied. Generally, under section 402A, satisfaction of the 5-taxable-year requirement with respect to a designated Roth account under a plan is based on the years since a designated Roth contribution was first made by the employee under that plan. In contrast, the 5-year period under section 408A begins with the first

[1] For distributions from designated Roth accounts, there is the same need for proper accounting of investment in the contract as for distributions from other accounts that include after-tax contributions. In addition, it is necessary to track whether the employee has satisfied the 5-year rule for qualified distributions.

[2] The proposed regulations would have reflected the rule in section 402(c)(2) prior to amendment by PPA '06 that limited rollovers of distributions from qualified plans that are not includible in gross income to direct rollovers to other qualified trusts and not to section 403(b) plans. These final regulations do not retain this restriction on rollovers because of the amendments to section 402(c) made by section 822 of PPA '06.

[3] If the investment in the contract exceeds the account balance and the entire account balance is distributed (and not rolled over), see Rev. Rul. 72–305, 1972–1 C.B. 116, for guidance concerning a deduction for the difference.

taxable year for which a contribution is made to any Roth IRA.

Commentators suggested that, if a distribution from a designated Roth account to an individual is rolled into a Roth IRA, the individual receive credit under the 5-year rule in section 408A for the years since the individual first made a contribution to a designated Roth account. As noted in the preamble to the proposed regulations, the IRS and Treasury Department do not believe that the Code provides for this interaction between the two 5-year rules. Thus, these final regulations retain the rule under the proposed regulations that the 5-taxable-year period described in section 402A and the 5-taxable-year period described in section 408A(d)(2)(B) are determined independently. Thus, in the case of a rollover of a distribution from a designated Roth account maintained under a section 401(k) or 403(b) plan to a Roth IRA, the final regulations, like the proposed regulations, provide that the period that the rolled-over funds were in the designated Roth account does not count towards the 5-taxable-year period for determining qualified distributions from the Roth IRA. However, if an individual had established a Roth IRA in a prior year, the 5-year period for determining qualified distributions from a Roth IRA that began as a result of that earlier Roth IRA contribution applies to any distributions from the Roth IRA (including a distribution of an amount attributable to a rollover contribution from a designated Roth account).

If a nonqualified distribution from a designated Roth account is rolled over into a Roth IRA, the portion of the distribution that constitutes a nontaxable return of investment in the contract is treated as basis in the Roth IRA. However, the final regulations, like the proposed regulations, provide that, if a qualified distribution from a designated Roth account is rolled over into a Roth IRA, the entire amount of the distribution will be treated as basis in the Roth IRA. As a result, a subsequent distribution from the Roth IRA in the amount of the rollover would be treated as a tax-free return of basis regardless of whether the individual had maintained a Roth IRA for 5 years (although the investment return on that amount earned in the Roth IRA would not be excluded from income when distributed unless the distribution satisfied the requirements for a qualified distribution from a Roth IRA). Similar to the case of a rollover to a designated Roth account, if the entire account balance of a designated Roth account is distributed and some or all of the distribution is rolled over to a Roth IRA, and, at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the investment in the contract in the distributing plan is included in the amount treated as a contribution to the Roth IRA.

Certain Amounts Not Qualified Distributions

Section 1.402(c)–2, A–4, provides a list of amounts that are not treated as eligible rollover distributions and are instead currently includible in income. These final regulations, like the proposed regulations, provide that these same amounts also cannot be qualified distributions. Distributions described in A–4(a) (distribution of elective deferrals in excess of the section 415 limits), (b) (corrective distribution of excess deferrals), and (c) (corrective distribution of excess contributions or excess aggregate contributions), have statutorily specified tax treatments. In the case of a deemed distribution under section 72(p) or the cost of current life insurance protection, an actual amount has not in fact been distributed. In the case of distributions of dividends deductible under section 404(k), section 72(e)(5)(D) and § 1.404(k)–1T provide that these amounts are treated as paid under a separate contract providing only for payment of deductible dividends. However, if a dividend described in section 404(k) has been reinvested in accordance with section 404(k)(2)(iii)(II), then a distribution of the reinvested amount can be a qualified distribution.

In response to comments regarding hardship distributions, the final regulations clarify that an amount is not precluded from being a qualified distribution merely because it is described in section 402(c)(4) as an amount not eligible for rollover. Thus, hardship distributions and required minimum distributions are not precluded from being qualified distributions. Similarly, payments in a stream of periodic payments are not precluded from being qualified distributions merely because they are described in section 402(c)(4)(A).

Distribution of Employer Securities and NUA

The final regulations retain the rules of the proposed regulations relating to the distribution of employer securities and the application of the net unrealized appreciation election of section 402(e)(4). If a qualified distribution includes employer securities, the distribution is not includible in gross income and the basis of each security in the hands of the distributee is the fair market value of the security on the date of the distribution. In such a case, the distributee will receive capital gains treatment at the time of any future disposition of the security, to the extent of any post-distribution appreciation. If a distribution with respect to employer securities is not a qualified distribution, the rules of section 402(e)(4) apply in the same manner as to any other distribution except that the designated Roth account is treated as a separate contract.

Some commentators inquired how these rules apply to the portion of a nonqualified distribution that exceeds the basis of the employer stock at the time of the distribution to the extent not includible in gross income as a return of the employee's designated Roth contributions. As explained in Rev. Rul. 74–398, 1974–2 C.B. 136, the basis of the stock at the time of the disposition will be increased to reflect such amount, so that such amount will not be subsequently taxed as appreciation at the time of a subsequent disposition of the stock.

Annuity Contracts

As noted above, in the *Overview* section of this preamble, these final regulations retain the rule from the proposed regulations that any transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of directly or indirectly transferring value from another account into the designated Roth account violates the separate accounting requirement under section 402A. Commentators asked for additional guidance on how this requirement is satisfied for separate accounts maintained within a single annuity contract, in particular how to allocate charges for guarantees under the contract which apply to the total of all accounts under the contract. The IRS and Treasury Department believe that it may be difficult for a single contract to have combined guarantees that apply to both accounts without the potential for a prohibited transfer of value between the accounts, and have not issued guidance on how to account for these guarantees (including related charges). However, this issue will continue to be considered by the IRS and Treasury Department. Therefore, the regulations authorize the Commissioner to provide additional guidance with respect to separate accounting within an annuity contract.

In response to comments, these final regulations clarify that, as previously indicated in § 1.402(c)–2, A–10(a), a distribution of an annuity contract from a designated Roth account is not a distribution event for purposes of section 402 or 402A. Thus, in such case, only distributions from the annuity contract are treated as distributions for those purposes. The determination of whether a distribution is a qualified or nonqualified distribution is made at the time of the distribution from the contract.

Reporting and Recordkeeping

These final regulations retain the rule of the proposed regulations that the plan administrator or other responsible party with respect to a plan with a designated Roth account is responsible for keeping track of the 5-taxable-year period for each employee and the amount of designated Roth contributions made on behalf of such employee. In addition, the plan administrator or other responsible party of a plan directly rolling over a distribution is required to provide the plan administrator of the recipient plan (that is, the plan accepting the eligible rollover distribution) with a statement indicating either the first year of the 5-taxable-year period for the employee and the portion of such distribution attributable to basis or that the distribution is a qualified distribution. If the distribution is not a direct rollover to a designated Roth account under another eligible plan, the plan administrator or responsible party must provide to the employee, upon request, this same information, except the statement need not indicate the first year of the 5-taxable-year period. The statement is required to be provided within a reasonable period following the direct rollover (or employee request), but in no event later than 30 days following the direct rollover (or employee request), and the plan administrator or other responsible party for the recipient plan is permitted to rely on these statements. If this information is provided on a statement attached to the check issued to the employee, this requirement would be satisfied.

As noted in the preamble, to the extent that a portion of a distribution is includible in income (determined without regard to the rollover), if any portion of that distribution is rolled over to a designated Roth account by the distributee rather than by direct rollover, the plan administrator of the recipient plan must notify the IRS of its acceptance of the rollover contribution. The final regulations clarify that this reporting is only required to the extent provided in Forms and Instructions. Such Instructions will specify the address to which the notification must be sent and will require the following information: (1) The employee's name and social security number; (2) the amount rolled over; (3) the year in which the rollover contribution was made; and (4) such other information as the Commissioner may prescribe in order to determine that the amount rolled over is a valid rollover contribution. Thus, until relevant Forms and Instructions are released, no reporting is required.

With respect to other reporting, generally, the same reporting requirements apply to plans with designated Roth accounts as apply to other plans. A contribution to and a distribution from a designated Roth account must be reported on Form W–2 and Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.,'' respectively, in accordance with the instructions thereto. An employee has no reporting obligation with respect to designated Roth contributions under a section 401(k) or 403(b) plan. However, an employee rolling over a distribution from a designated Roth account to a Roth IRA should keep track of the amount rolled over in accordance with the instructions to Form 8606, ''Nondeductible IRAs.''

Designated Roth Contributions as Excess Deferrals

Even though designated Roth contributions are not excluded from income when contributed, they are treated as elective deferrals for purposes of section 402(g). Thus, to the extent total elective deferrals for the year exceed the section 402(g) limit for the year, the excess amount can be distributed by April 15th of the year following the year of the excess without adverse tax consequences. However, if such excess deferrals are not distributed by April 15th of the year following the year of the excess, these final regulations, like the proposed regulations, provide that any distribution attributable to an excess deferral that is a designated Roth contribution is includible in gross income (with no exclusion from income for amounts attributable to basis under section 72) and is not eligible for rollover. These regulations provide that if there are any excess deferrals that are designated Roth contributions that are not corrected prior to April 15th of the year following the excess, the first amounts distributed from the designated Roth account are treated as distributions of excess deferrals and earnings until the full amount of those excess deferrals (and attributable earnings) are distributed.

Gap Period Income

In addition, these final regulations retain the rule in the proposed regulations which reflected the statutory provisions which require that any distribution of excess deferrals include the applicable earnings from the plan. Unlike the existing final regulations under section 402(g), the earnings include income for the period after the taxable year (gap period income). The calculation of gap period income is comparable to the calculation of the gap period income for excess contributions and excess aggregate contributions under the 2004 final regulations under section 401(k) and 401(m). Thus, gap period income must be included in the distribution of excess deferrals to the extent the employee is or would be credited with allocable gain or loss on those excess deferrals for the gap period if the total account were to be distributed. This gap period income rule applies to both pre-tax excess deferrals and designated Roth contributions and continues to apply even after the 2008 elimination of the rule for excess contributions and excess aggregate contributions under section 902(e)(3) of PPA '06.

Modifications to Final Roth 401(k) Regulations

Some comments received in connection with the proposed regulations raised concerns not about those regulations but rather about the special rules for designated Roth contributions in § 1.401(k)–1(f) that were finalized in TD 9237, published on January 3, 2006 (71 FR 6). In response to those comments these final regulations make two changes to those special rules. First, these regulations clarify and expand the rule in § 1.401(k)–1(f)(3)(ii) to provide that the balance of a participant's designated Roth account and a participant's other accounts under the plan are treated as accounts held under two separate plans (within the meaning of section 414(l)) for purposes of applying not only the special rule in A–11 of § 1.401(a)(31)–1 for *de minimis* distributions (reasonably expected to total less than $200) but also both the automatic rollover rules for mandatory distributions under section 401(a)(31)(B) and the rules in A–9 and A–10 of § 1.401(a)(31)–1 on the extent to which plans must allow split distributions. Thus, for example, if a participant has less than $1,000 in the participant's designated Roth account

and less than $1,000 in the participant's other accounts, the plan will not need to provide the participant with an automatic rollover with respect to the designated Roth account or the other accounts even if the total accrued benefit of the participant under the plan exceeds $1,000.

Second, in response to comments about compensation provided to certain foreign missionaries, the regulations are modified to require that an employer treat designated Roth contribution as not excludible from gross income as elective deferrals rather than treated as includible in gross income. As a result, if section 72(f)(2) applies to a contribution, an employee will have basis as a result of the contribution to the extent that contribution would have been excludible from gross income even if paid directly to the employee and such amount can be treated as a designated Roth contribution even though such amount is income that is not includible in taxable income. Thus, compensation for foreign missionaries is not precluded from being contributed to a designated Roth account merely because the compensation would not have been includible in gross income if paid directly. Finally, the regulations clarify that, for self-employed individuals, the requirement that a designated Roth contribution not be excludible from gross income as an elective deferral for being a designated Roth contribution is only satisfied if the self-employed individual does not claim a deduction for the contribution.

Commentators inquired as to whether catch-up contributions may be designated Roth contributions. Catch-up contributions are treated the same as any other elective deferrals and, thus, a participant's catch-up contributions may either be pre-tax elective deferrals or designated Roth contributions.

Finally, these final regulations revise the special rules for designated Roth contributions in § 1.401(k)-1(f) to reflect the repeal in PPA '06 of the sunset of the provisions relating to designated Roth contributions.

Effective Date

Section 402A applies to employees' taxable years beginning on or after January 1, 2006. These final regulations under section 402A are generally applicable for taxable years beginning on or after January 1, 2007. However, certain provisions in these final regulations under section 402A are applicable at the same time as section 402A. These include the clarification that the separate accounting requirement does not permit any transaction or accounting methodology that transfers value between designated Roth accounts and other accounts under a plan and the rules relating to rollovers to designated Roth accounts and Roth IRAs. Similarly, these final regulations under section 408A are applicable at the same time as section 402A. These final regulations also address the treatment of rollover contributions to Roth IRAs and designated Roth accounts.

The final regulations under section 402(g) relating to designated Roth contributions also are applicable at the same time as section 402A. Thus, these final regulations are applicable for excess deferrals for taxable years beginning on or after January 1, 2006. However, unlike the proposed regulations, the rule in these final regulations requiring distribution of gap period income on excess deferrals applies to excess deferrals for taxable years beginning on or after 2007, which are generally distributed on or after January 1, 2008.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 553(b) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that will maintain a designated Roth account already use a third party provider to administer the plan and the collection of information in these regulations, which is required to comply with the separate accounting and recordkeeping requirements of section 402A(b), will only minimally increase the third party provider's administrative burden with respect to the plan. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad, Bill Gibbs and Cathy Vohs, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.402A–1 is also issued under 26 U.S.C. 402A * * *

■ **Par. 2.** Section 1.401(k)–0 is amended as follows:
■ 1. The entries for 1.401(k)–1(f)(2), (3), (4) and (5) are revised.
■ 2. The entry for 1.401(k)–1(f)(6) is added.

§ 1.401(k)–0 Table of contents.

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§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

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(i) Frequency of elections.
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■ **Par. 3.** Section 1.401(k)–1(f) is amended as follows:
■ 1. Revise paragraph (f)(1)(ii) and (iii).
■ 2. Redesignate paragraphs (f)(2) through (5) as (f)(3) through (6).
■ 3. Add a new paragraph (f)(2).
■ 4. Revise the first sentence of newly redesignated paragraph (f)(3) and add a sentence at the end.
■ 5. Revise the last sentence of newly redesignated paragraph (f)(4)(ii).
■ 6. Revise newly redesignated paragraph (f)(6).

The addition and revision to § 1.401(k)–1 read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) Special rules for designated Roth contributions.
(1) * * *

(ii) Treated by the employer as not excludible from the employee's gross income (in accordance with paragraph (f)(2) of this section);

(iii) Maintained by the plan in a separate account (in accordance with paragraph (f)(3) of this section).

(2) *Inclusion treatment.* An elective contribution is generally treated as not excludible from gross income if it is treated as includible in gross income by the employer (e.g., by treating the contribution as wages subject to applicable income tax withholding). However, in the case of a self-employed individual, an elective contribution is treated as not excludible from gross income only if the individual does not claim a deduction for such amount. If an elective contribution would not have been includible in gross income if the amount had been paid directly to the employee (rather than being subject to a cash or deferral election), the elective contribution is nevertheless permitted to be a designated Roth contribution, provided the employee is entitled to treat the amount as an investment in the contract pursuant to section 72(f)(2).

(3) *Separate accounting required.* Under the separate accounting requirement of this paragraph (f)(3), contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth account maintained for the employee and the plan must maintain a record of the employee's investment in the contract (that is, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth account. * * * See A–13 of § 1.402A–1 for additional requirements for separate accounting.

(4) * * *

(ii) * * * Moreover, a participant's designated Roth account and the participant's other accounts under a plan are treated as accounts held under two separate plans (within the meaning of section 414(l)) for purposes of applying the automatic rollover rules for mandatory distributions under section 401(a)(31)(B)(i)(I) and the special rules in A–9 through A–11 of § 1.401(a)(31)–1.

* * * * *

(6) *Effective date.* Section 402A and the provisions of this section 1.401(k)–1(f) apply to taxable years beginning after December 31, 2005.

* * * * *

■ **Par. 4.** Section 1.402(g)–1 is amended as follows:

■ 1. Revise the second sentence and add a third sentence to paragraph (a).

■ 2. Add new paragraphs (b)(5) and (b)(6).

■ 3. Revise paragraph (d).

■ 4. Revise paragraph (e)(2) introductory text.

■ 5. Revise paragraph (e)(2)(i).

■ 6. Revise the second sentence and add a new third sentence in paragraph (e)(3)(i)(A).

■ 7. Revise paragraph (e)(5)(i).

■ 8. Add a sentence after the last sentence in paragraph (e)(5)(ii).

■ 9. Revise paragraph (e)(5)(iii).

■ 10. Add paragraph (e)(5)(v).

■ 11. Add paragraph (e)(8)(iv).

The additions and revisions to § 1.402(g)–1 read as follows:

§ 1.402(g)–1 Limitation on exclusion for elective deferrals.

(a) *In general.* * * * Thus, an individual's elective deferrals in excess of the applicable limit for a taxable year (that is, the individual's excess deferrals for the year) must be included in gross income for the year, except to the extent the excess deferrals are comprised of designated Roth contributions, and thus, are already includible in gross income. A designated Roth contribution is treated as an excess deferral only to the extent that the total amount of designated Roth contributions for an individual exceeds the applicable limit for the taxable year or the designated Roth contributions are identified as excess deferrals and the individual receives a distribution of the excess deferrals and allocable income under paragraph (e)(2) or (e)(3) of this section.

(b) * * *

(5) Any designated Roth contributions described in section 402A (before applying the limits of section 402(g) or this section).

(6) Any elective employer contributions to a SIMPLE retirement account, on behalf of an employee pursuant to a qualified salary reduction arrangement as described in section 408(p)(2) (before applying the limits of section 402(g) or this section).

* * * * *

(d) *Applicable limit*—(1) *In general.* Except as provided under paragraph (d)(2) of this section, the applicable limit for an individual's taxable year is the applicable dollar amount set forth in section 402(g)(1)(B). This applicable dollar amount is increased for the taxable year beginning in 2007 and later years in the same manner as the dollar amount under section 415(b)(1)(A) is adjusted pursuant to section 415(d). See § 1.402(g)–2 for the treatment of catch-up contributions described in section 414(v).

(2) *Special adjustment for elective deferrals with respect to section 403(b) annuity contracts for certain long-term employees.* The applicable limit for an individual who is a qualified employee (as defined in section 402(g)(7)(C)) and has elective deferrals described in paragraph (b)(3) or (5) of this section for a taxable year is adjusted by increasing the applicable limit otherwise determined under paragraph (d)(1) of this section in accordance with section 402(g)(7).

(e) * * *

(2) *Correction of excess deferrals after the taxable year.* A plan may provide that if any amount is an excess deferral under paragraph (a) of this section:

(i) Not later than the first April 15 (or such earlier date specified in the plan) following the close of the individual's taxable year, the individual may notify each plan under which elective deferrals were made of the amount of the excess deferrals received by the plan. If any designated Roth contributions were made to a plan, the notification must also identify the extent, if any, to which the excess deferrals are comprised of designated Roth contributions. A plan may provide that an individual is deemed to have notified the plan of excess deferrals (including the portion of excess deferrals that are comprised of designated Roth contributions) to the extent the individual has excess deferrals for the taxable year calculated by taking into account only elective deferrals under the plan and other plans of the same employer and the plan may provide the extent to which such excess deferrals are comprised of designated Roth contributions. A plan may instead provide that the employer may notify the plan on behalf of the individual under these circumstances.

* * * * *

(3) * * *

(i) * * *

(A) * * * If any designated Roth contributions were made to a plan, the notification must identify the extent to which, if any, the excess deferrals are comprised of designated Roth contributions. A plan may provide that an individual is deemed to have notified the plan of excess deferrals (including the portion of excess deferrals that are comprised of designated Roth contributions) for the taxable year calculated by taking into account only elective deferrals under the plan and other plans of the same employer and the plan may provide the extent to which such excess deferrals are comprised of designated Roth contributions. * * *

* * * * *

(5) *Income allocable to excess deferrals*—(i) *General rule.* The income allocable to excess deferrals for a taxable year that begins on or after January 1, 2007 is equal to the sum of the allocable gain or loss for the taxable year of the individual and, to the extent the excess deferrals are or will be credited with gain or loss for the period after the close of the taxable year and prior to the distribution (the gap period) if the total account were to be distributed, the allocable gain or loss during that period. The income allocable to excess deferrals for a taxable year that begins before 2007 is determined using the 1.402(g)–1(e)(5) (as it appeared in the April 1, 2006 edition of 26 CFR Part 1).

(ii) *Method of allocating income.* * * * A plan will not fail to use a reasonable method for computing the income allocable to excess deferrals merely because the income allocable to excess deferrals is determined on a date that is no more than 7 days before the distribution.

(iii) *Alternative method of allocating taxable year income.* A plan may determine the income allocable to excess deferrals for the taxable year by multiplying the income for the taxable year allocable to elective deferrals by a fraction. The numerator of the fraction is the excess deferrals by the employee for the taxable year. The denominator of the fraction is equal to the sum of:

(A) The total account balance of the employee attributable to elective deferrals as of the beginning of the taxable year, plus

(B) The employee's elective deferrals for the taxable year.

* * * * *

(v) *Alternative method for allocating taxable year and gap period income.* A plan may determine the allocable gain or loss for the aggregate of the taxable year and the gap period by applying the alternative method provided by paragraph (e)(5)(iii) of this section to this aggregate period. This is accomplished by substituting the income for the taxable year and the gap period for the income for the taxable year and by substituting the elective deferrals for the taxable year and the gap period for the elective deferrals for the taxable year in determining the fraction that is multiplied by that income.

* * * * *

(8) * * *

(iv) *Distributions of excess deferrals from a designated Roth account.* The rules of paragraph (e)(8)(iii) of this section generally apply to distributions of excess deferrals that are designated Roth contributions and the attributable income. Thus, if a designated Roth account described in section 402A includes any excess deferrals, any distribution of amounts attributable to those excess deferrals are includible in gross income (without adjustment for any return of investment in the contract under section 72(e)(8)). In addition, such distributions cannot be qualified distributions described in section 402A(d)(2) and are not eligible rollover distributions within the meaning of section 402(c)(4). For this purpose, if a designated Roth account includes any excess deferrals, any distributions from the account are treated as attributable to those excess deferrals until the total amount distributed from the designated Roth account equals the total of such deferrals and attributable income.

* * * * *

■ **Par. 5.** Sections 1.402A–1 and 1.402A–2 are added to read as follows:

§ 1.402A–1 Designated Roth Accounts.

Q–1. What is a designated Roth account?

A–1. A designated Roth account is a separate account under a qualified cash or deferred arrangement under a section 401(a) plan, or under a section 403(b) plan, to which designated Roth contributions are permitted to be made in lieu of elective contributions, that satisfies the requirements of § 1.401(k)–1(f) (in the case of a section 401(a) plan).

Q–2. How is a distribution from a designated Roth account taxed?

A–2. (a) The taxation of a distribution from a designated Roth account depends on whether or not the distribution is a qualified distribution. A qualified distribution from a designated Roth account is not includible in the distributee's gross income.

(b) Except as otherwise provided in paragraph (c) of this A–2, a qualified distribution is a distribution that is both—

(1) Made after the 5-taxable-year period of participation defined in A–4 of this section has been completed; and

(2) Made on or after the date the employee attains age 59½, made to a beneficiary or the estate of the employee on or after the employee's death, or attributable to the employee's being disabled within the meaning of section 72(m)(7).

(c) A distribution from a designated Roth account is not a qualified distribution to the extent it consists of a distribution of excess deferrals and attributable income described in § 1.402(g)–1(e). See A–11 of this section for other amounts that are not treated as qualified distributions, including excess contributions described in section 401(k)(8), and excess aggregate contributions described in section 401(m)(8), and income, on any of these excess amounts.

Q–3. How is a distribution from a designated Roth account taxed if it is not a qualified distribution?

A–3. Except as provided in A–11 of this section, a distribution from a designated Roth account that is not a qualified distribution is taxable to the distributee under section 402 in the case of a plan qualified under section 401(a) and under section 403(b)(1) in the case of a section 403(b) plan. For this purpose, a designated Roth account is treated as a separate contract under section 72. Thus, except as otherwise provided in A–5 of this section for a rollover, if a distribution is before the annuity starting date, the portion of any distribution that is includible in gross income as an amount allocable to income on the contract and the portion not includible in gross income as an amount allocable to investment in the contract is determined under section 72(e)(8), treating the designated Roth account as a separate contract. Similarly, in the case of any amount received as an annuity, if a distribution is on or after the annuity starting date, the portion of any annuity payment that is includible in gross income as an amount allocable to income on the contract and the portion not includible in gross income as an amount allocable to investment in the contract is determined under section 72(b) or (d), as applicable, treating the designated Roth account as a separate contract. For purposes of section 72, designated Roth contributions are described in section 72(f)(1) or 72(f)(2), to the extent applicable.

Q–4. What is the 5-taxable-year period of participation described in A–2 of this section?

A–4. (a) The 5-taxable-year period of participation described in A–2 of this section for a plan is the period of 5 consecutive taxable years that begins with the first day of the first taxable year in which the employee makes a designated Roth contribution to any designated Roth account established for the employee under the same plan and ends when 5 consecutive taxable years have been completed. For this purpose, the first taxable year in which an employee makes a designated Roth contribution is the year in which the amount is includible in the employee's gross income. Notwithstanding the preceding, however, a contribution that is returned as an excess deferral or excess contribution does not begin the 5 taxable-year period of participation. Similarly, a contribution returned as a permissible withdrawal under section

414(w) does not begin the 5 taxable-year period of participation.

(b) Generally, an employee's 5-taxable-year period of participation is determined separately for each plan (within the meaning of section 414(l)) in which the employee participates. Thus, if an employee has elective deferrals made to designated Roth accounts under two or more plans, the employee may have two or more different 5-taxable-year periods of participation, depending on when the employee first had contributions made to a designated Roth account under each plan. However, if a direct rollover contribution of a distribution from a designated Roth account under another plan is made by the employee to the plan, the 5-taxable-year period of participation begins on the first day of the employee's taxable year in which the employee first had designated Roth contributions made to such other designated Roth account, if earlier than the first taxable year in which a designated Roth contribution is made to the plan. See A–5(c) of this section for additional rules on determining the start of the 5-taxable-year of participation in the case of an indirect rollover.

(c) The beginning of the 5-taxable-year period of participation is not redetermined for any portion of an employee's designated Roth account. This is true even if the entire designated Roth account is distributed during the 5-taxable-year period of participation and the employee subsequently makes additional designated Roth contributions under the plan.

(d) The rule in paragraph (c) of this section applies if the employee dies or the account is divided pursuant to a qualified domestic relations order (QDRO), and thus, a portion of the account is not payable to the employee and is payable to the employee's beneficiary or an alternate payee. In the case of distribution to an alternate payee or beneficiary, generally, the age, death, or disability of the employee is used to determine whether the distribution to an alternate payee or beneficiary is qualified. However, if an alternate payee or a spousal beneficiary rolls the distribution into a designated Roth account in a plan maintained by his or her own employer, such individual's age, disability, or death is used to determine whether a distribution from the recipient plan is qualified. In addition, if the rollover is a direct rollover contribution to the alternate payee's or spousal beneficiary's own designated Roth account, the 5-taxable-year period of participation under the recipient plan begins on the earlier of the date the employee's 5-taxable-year period of participation began under the distributing plan or the date the 5-taxable-year period of participation applicable to the alternate payee's or spousal beneficiary's designated Roth account began under the recipient plan.

(e) If a designated Roth contribution is made by a reemployed veteran for a year of qualified military service pursuant to section 414(u) that is before the year in which the contribution is actually made, the contribution is treated as having been made in the year of qualified military service to which the contribution relates, as designated by the reemployed veteran. Reemployed veterans may identify the year of qualified military service for which a contribution is made for other purposes, such as for entitlement to a match, and the treatment for the 5-taxable-year period of participation rule follows that identification. In the absence of such designation, for purposes of determining the first year of the five years of participation under section 402A(d)(2)(B), the contribution is treated as relating to the first year of qualified military service for which the reemployed veteran could have made designated Roth contributions under the plan, or if later the first taxable year in which designated Roth contributions could be made under the plan.

Q–5. How do the taxation rules apply to a distribution from a designated Roth account that is rolled over?

A–5. (a) An eligible rollover distribution from a designated Roth account is permitted to be rolled over into another designated Roth account or a Roth IRA, and the amount rolled over is not currently includible in gross income. In accordance with section 402(c)(2), to the extent that a portion of a distribution from a designated Roth account is not includible in income (determined without regard to the rollover), if that portion of the distribution is to be rolled over into a designated Roth account, the rollover must be accomplished through a direct rollover (i.e., a 60-day rollover to another designated Roth account is not available for this portion of the distribution). For this purpose, any amount paid in a direct rollover is treated as a separate distribution from any amount paid directly to the employee. If a distribution from a designated Roth account is instead made to the employee, the employee would still be able to roll over the entire amount (or any portion thereof) into a Roth IRA within the 60-day period described in section 402(c)(3).

(b) In the case of an eligible rollover distribution from a designated Roth account that is not a qualified distribution and not paid as a direct rollover contribution, if less than the entire amount of the distribution is rolled over, the part that is rolled over is deemed to consist first of the portion of the distribution that is attributable to income under section 72(e)(8).

(c) If an employee receives a distribution from a designated Roth account, the portion of the distribution that would be includible in gross income is permitted to be rolled over into a designated Roth account under another plan. In such a case, § 1.402A–2, A–3, provides for additional reporting by the recipient plan. In addition, the employee's period of participation under the distributing plan is not carried over to the recipient plan for purposes of satisfying the 5-taxable-year period of participation requirement under the recipient plan. Generally, the taxable year in which the recipient plan accepts such rollover contribution is the taxable year that begins the participant's new 5-taxable-year period of participation. However, if the participant is rolling over to a plan in which the participant already has a pre-existing designated Roth account with a longer period of participation, the starting date of the recipient account is used to measure the participant's 5-taxable-year period of participation.

(d) The following example illustrates the application of this A–5:

Example. Employee B receives a $14,000 eligible rollover distribution that is not a qualified distribution from B's designated Roth account, consisting of $11,000 of investment in the contract and $3,000 of income. Within 60 days of receipt, Employee B rolls over $7,000 of the distribution into a Roth IRA. The $7,000 is deemed to consist of $3,000 of income and $4,000 of investment in the contract. Because the only portion of the distribution that could be includible in gross income (the income) is rolled over, none of the distribution is includible in Employee B's gross income.

(e) This A–5 applies for taxable years beginning on or after January 1, 2006.

Q–6. In the case of a rollover contribution to a designated Roth account, how is the amount that is treated as investment in the contract under section 72 determined?

A–6. (a) If a distribution from a designated Roth account is rolled over to another designated Roth account in a direct rollover, the amount of the rollover contribution allocated to investment in the contract in the recipient designated Roth account is the amount that would not have been includible in gross income (determined without regard to section 402(e)(4)) if the distribution had not been rolled over. Thus, if an amount that is a

qualified distribution is rolled over, the entire amount of the rollover contribution is allocated to investment in the contract.

(b) If the entire account balance of a designated Roth account is rolled over to another designated Roth account in a direct rollover, and, at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the investment in the contract in the distributing plan is included in the investment in the contract of the recipient plan.

Q–7. After a qualified distribution from a designated Roth account has been made, how is the remaining investment in the contract of the designated Roth account determined under section 72?

A–7. (a) The portion of any qualified distribution that is treated as a recovery of investment in the contract is determined in the same manner as if the distribution were not a qualified distribution. (See A–3 of this section) Thus, the remaining investment in the contract in a designated Roth account after a qualified distribution is determined in the same manner after a qualified distribution as it would be determined if the distribution were not a qualified distribution.

(b) The following example illustrates the application of this A–7:

Example. Employee C receives a $12,000 distribution, which is a qualified distribution that is attributable to the employee being disabled within the meaning of section 72(m)(7), from C's designated Roth account. Immediately prior to the distribution, the account consisted of $21,850 of investment in the contract (i.e., designated Roth contributions) and $1,150 of income. For purposes of determining recovery of investment in the contract under section 72, the distribution is deemed to consist of $11,400 of investment in the contract [$12,000 × 21,850/(1,150 + 21,850)], and $600 of income [$12,000 × 1,150/(1,150 + 21,850)]. Immediately after the distribution, C's designated Roth account consists of $10,450 of investment in the contract and $550 of income. This determination of the remaining investment in the contract will be needed if C subsequently is no longer disabled and takes a nonqualified distribution from the designated Roth account.

Q–8. What is the relationship between the accounting for designated Roth contributions as investment in the contract for purposes of section 72 and their treatment as elective deferrals available for a hardship distribution under section 401(k)(2)(B)?

A–8. (a) There is no relationship between the accounting for designated Roth contributions as investment in the contract for purposes of section 72 and their treatment as elective deferrals available for a hardship distribution under section 401(k)(2)(B). A plan that makes a hardship distribution under section 401(k)(2)(B) from elective deferrals that includes designated Roth contributions must separately determine the amount of elective deferrals available for hardship and the amount of investment in the contract attributable to designated Roth contributions for purposes of section 72. Thus, the entire amount of a hardship distribution is treated as reducing the otherwise maximum distributable amount for purposes of applying the rule in section 401(k)(2)(B) and § 1.401(k)–1(d)(3)(ii) that generally limits hardship distributions to the principal amount of elective deferrals made less the amount of elective deferrals previously distributed from the plan, even if a portion of the distribution is treated as income under section 72(e)(8).

(b) The following example illustrates the application of this A–8:

Example. The facts as in the *Example* in A–7 of this section, except that instead of being disabled, Employee C is receiving a hardship distribution. In addition, Employee C has made elective deferrals that are not designated Roth contributions totaling $20,000 and has received no previous distributions of elective deferrals from the plan. The adjustment to the investment in the contract is the same as in A–7 of this section, but for purposes of determining the amount of elective deferrals available for future hardship distribution, the entire amount of the distribution is subtracted from the maximum distributable amount. Thus, Employee C has only $29,850 ($41,850 − $12,000) available for hardship distribution from C's designated Roth account.

Q–9. Can an employee have more than one separate contract for designated Roth contributions under a plan qualified under section 401(a) or a section 403(b) plan?

A–9. (a) Except as otherwise provided in paragraph (b) of this A–9, for purposes of section 72, there is only one separate contract for an employee with respect to the designated Roth contributions under a plan. Thus, if a plan maintains one separate account for designated Roth contributions made under the plan and another separate account for rollover contributions received from a designated Roth account under another plan (so that the rollover account is not required to be subject to the distribution restrictions otherwise applicable to the account consisting of designated Roth contributions made under the plan), both separate accounts are considered to be one contract for purposes of applying section 72 to the distributions from either account.

(b) If a separate account with respect to an employee's accrued benefit consisting of designated Roth contributions is established and maintained for an alternate payee pursuant to a qualified domestic relations order and another designated Roth account is maintained for the employee, each account is treated as a separate contract for purposes of section 72. The alternate payee's designated Roth account is also a separate contract for purposes of section 72 with respect to any other account maintained for that alternate payee. Similarly, if separate accounts are established and maintained for different beneficiaries after the death of an employee, the separate account for each beneficiary is treated as a separate contract under section 72 and is also a separate contract with respect to any other account maintained for that beneficiary under the plan that is not a designated Roth account. When the separate account is established for an alternate payee or for a beneficiary (after an employee's death), each separate account must receive a proportionate amount attributable to investment in the contract.

Q–10. What is the tax treatment of employer securities distributed from a designated Roth account?

A–10. (a) If a distribution of employer securities from a designated Roth account is not a qualified distribution, section 402(e)(4)(B) applies. Thus, in the case of a lump-sum distribution that includes employer securities, unless the taxpayer elects otherwise, net unrealized appreciation attributable to the employer securities is not includible in gross income; and such net unrealized appreciation is not included in the basis of the distributed securities and is capital gain to the extent such appreciation is realized in a subsequent taxable transaction.

(b) In the case of a qualified distribution of employer securities from a designated Roth account, the distributee's basis in the distributed securities for purposes of subsequent disposition is their fair market value at the time of distribution.

Q–11. Can an amount described in A–4 of § 1.402(c)–2 with respect to a designated Roth account be a qualified distribution?

A–11. No. An amount described in A–4 of § 1.402(c)–2 with respect to a designated Roth account cannot be a qualified distribution. Such an amount is taxable under the rules of §§ 1.72–16(b), 1.72(p)–1, A–11 through A–13, 1.402(g)–1(e)(8), 1.401(k)–2(b)(2)(vi), 1.401(m)–2(b)(2)(vi), or 1.404(k)–1T. Thus, for example, loans that are treated as deemed distributions pursuant to

section 72(p), or dividends paid on employer securities as described in section 404(k) are not qualified distributions even if the deemed distributions occur or the dividends are paid after the employee attains age 59½ and the 5-taxable-year period of participation defined in A–4 of this section has been satisfied. However, if a dividend is reinvested in accordance with section 404(k)(2)(A)(iii)(II), the amount of such a dividend is not precluded from being a qualified distribution if later distributed. Further, an amount is not precluded from being a qualified distribution merely because it is described in section 402(c)(4) as an amount not eligible for rollover. Thus, a hardship distribution is not precluded from being a qualified distribution.

Q–12. If any amount from a designated Roth account is included in a loan to an employee, do the plan aggregation rules of section 72(p)(2)(D) apply for purposes of determining the total amount an employee is permitted to borrow from the plan, even though the designated Roth account generally is treated as a separate contract under section 72?

A–12. Yes. If any amount from a designated Roth account is included in a loan to an employee, notwithstanding the general rule that the designated Roth account is treated as a separate contract under section 72, the plan aggregation rules of section 72(p)(2)(D) apply for purposes of determining the maximum amount the employee is permitted to borrow from the plan and such amount is based on the total of the designated Roth contribution amounts and the other amounts under the plan. To the extent a loan is from a designated Roth account, the repayment requirement of section 72(p)(2)(C) must be satisfied separately with respect to that portion of the loan and with respect to the portion of the loan from other accounts under the plan.

Q–13. Does a transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of transferring value from the other accounts into the designated Roth account violate the separate accounting requirement of section 402A?

A–13. (a) Yes. Any transaction or accounting methodology involving an employee's designated Roth account and any other accounts under the plan or plans of an employer that has the effect of directly or indirectly transferring value from another account into the designated Roth account violates the separate accounting requirement under section 402A. However, any transaction that merely exchanges investments between accounts at fair market value will not violate the separate accounting requirement.

(b) In the case of an annuity contract which contains both a designated Roth account and any other accounts, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see 601.601(d)(2) of this chapter), to provide additional rules for allocation of income, expenses, gains and losses among the accounts under the contract.

(c) This A–13 applies to designated Roth accounts for taxable years beginning on or after January 1, 2006.

Q–14. How is an annuity contract that is distributed from a designated Roth account treated for purposes of section 402A?

A–14. A qualified plan distributed annuity contract within the meaning of § 1.402(c)–2, A–10(a) that is distributed from a designated Roth account is not treated as a distribution for purposes of section 402 or 402A. Instead, the amounts paid under the annuity contract are treated as distributions for purposes of sections 402 and 402A. Thus, the period after the annuity contract is distributed and before a payment from the annuity contract is made is included in determining whether the five-year period of participation is satisfied. Further, for purposes of determining if a distribution is a qualified distribution, the determination of whether a distribution is made on or after the date the employee attains age 59½, made to a beneficiary or the estate of the employee on or after the employee's death, or attributable to the employee's being disabled within the meaning of section 72(m)(7) is made based on the facts at the time the distribution is made from the annuity contract. Thus for example, if an employee first makes a designated Roth contribution to a designated Roth account in 2006 at age 56, receives a distributed annuity contract within the meaning of § 1.402(c)–2, A–10(a) in 2007 purchased only with assets from the designated Roth account, and then receives a distribution from the contract in 2011 at age 60, the distribution is a qualified distribution.

Q–15. When are section 402A and this § 1.402A–1 applicable?

A–15. Section 402A is applicable for taxable years beginning on or after January 1, 2006. Except as otherwise provided in A–5 and A–13 of this section, the rules of this § 1.402A–1 apply for taxable years beginning on or after January 1, 2007.

§ 1.402A–2 Reporting and recordkeeping requirements with respect to designated Roth accounts.

Q–1. Who is responsible for keeping track of the 5-taxable-year period of participation and the investment in the contract, i.e., the amount of unrecovered designated Roth contributions for the employee?

A–1. The plan administrator or other responsible party with respect to a plan with a designated Roth account is responsible for keeping track of the 5-taxable-year period of participation for each employee and the amount of investment in the contract (unrecovered designated Roth contributions) on behalf of such employee. For purposes of the preceding sentence, in the absence of actual knowledge to the contrary, the plan administrator or other responsible party is permitted to assume that an employee's taxable year is the calendar year. In the case of a direct rollover from another designated Roth account, the plan administrator or other responsible party of the recipient plan can rely on reasonable representations made by the plan administrator or responsible party with respect to the plan with the other designated Roth account. See A–2 of this section for statements required in the case of rollovers.

Q–2. In the case of an eligible rollover distribution from a designated Roth account, what additional information must be provided with respect to such distribution?

A–2. (a) Pursuant to section 6047(f), if an amount is distributed from a designated Roth account, the plan administrator or other responsible party with respect to the plan must provide a statement as described below in the following situations—

(1) In the case of a direct rollover of a distribution from a designated Roth account under a plan to a designated Roth account under another plan, the plan administrator or other responsible party must provide to the plan administrator or responsible party of the recipient plan either a statement indicating the first year of the 5-taxable-year period described in A–1 of this section and the portion of the distribution that is attributable to investment in the contract under section 72, or a statement that the distribution is a qualified distribution.

(2) If the distribution is not a direct rollover to a designated Roth account under another plan, the plan administrator or responsible party must provide to the employee, upon request, the same information described in paragraph (a)(1) of this A–2, except the statement need not indicate the first

year of the 5-taxable-year period described in A–1 of the section.

(b) The statement described in paragraph (a) of this A–2 must be provided within a reasonable period following the direct rollover or distributee request but in no event later than 30 days following the direct rollover or distributee request.

Q–3. If a plan qualified under section 401(a) or a section 403(b) plan accepts a 60-day rollover of earnings from a designated Roth account, what report to the IRS must be provided with respect to such rollover contribution?

A–3. To the extent required in Forms and Instructions, if a plan qualified under section 401(a), or a section 403(b) plan, accepts a rollover contribution (other than a direct rollover contribution) under section 402(c)(2), or section 403(b)(8)(B), of the portion of a distribution from a designated Roth account that would have been includable in gross income, the plan administrator or other responsible party for the recipient plan must notify the Commissioner of its acceptance of the rollover contribution no later than the due date for filing Form 1099–R, '' Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.,.'' The Forms and Instructions will specify the address to which the notification is required to be sent and will require inclusion of the employee's name and social security number, the amount rolled over, the year in which the rollover contribution was made, and such other information as the Commissioner may prescribe in order to determine that the amount rolled over is a valid rollover contribution.

Q–4. When is this § 1.402A–2 applicable?

A–4. The rules of this § 1.402A–2 are applicable for taxable years beginning on or after January 1, 2007.

■ **Par. 6.** Section 1.408A–10 is added to read as follows:

§ 1.408A–10 Coordination between designated Roth accounts and Roth IRAs.

Q–1. Can an eligible rollover distribution, within the meaning of section 402(c)(4), from a designated Roth account, as defined in A–1 of § 1.402A–1, be rolled over to a Roth IRA?

A–1. Yes. An eligible rollover distribution, within the meaning of section 402(c)(4), from a designated Roth account may be rolled over to a Roth IRA. For purposes of this section, a designated Roth account means a designated Roth account as defined in A–1 of § 1.402A–1.

Q–2. Can an eligible rollover distribution from a designated Roth account be rolled over to a Roth IRA even if the distributee is not otherwise eligible to make regular or conversion contributions to a Roth IRA?

A–2. Yes. An individual may establish a Roth IRA and roll over an eligible rollover distribution from a designated Roth account to that Roth IRA even if such individual is not eligible to make regular contributions or conversion contributions (as described in section 408A(c)(2) and (d)(3), respectively) because of the modified adjusted gross income limits in section 408A(b)(3).

Q–3. For purposes of the ordering rules on distributions from Roth IRAs, what portion of a distribution from a rollover contribution from a designated Roth account is treated as contributions?

A–3. (a) Under section 408A(d)(4), distributions from Roth IRAs are deemed to consist first of regular contributions, then of conversion contributions, and finally, of earnings. For purposes of section 408A(d)(4), the amount of a rollover contribution that is treated as a regular contribution is the portion of the distribution that is treated as investment in the contract under A–6 of § 1.402A–1, and the remainder of the rollover contribution is treated as earnings. Thus, the entire amount of any qualified distribution from a designated Roth account that is rolled over into a Roth IRA is treated as a regular contribution to the Roth IRA. Accordingly, a subsequent distribution from the Roth IRA in the amount of that rollover contribution is not includible in gross income under the rules of A–8 of § 1.408A–6.

(b) If the entire account balance of a designated Roth account is distributed to an employee and only a portion of the distribution is rolled over to a Roth IRA within the 60-day period described in section 402(c)(3), and at the time of the distribution, the investment in the contract exceeds the balance in the designated Roth account, the portion of investment in the contract that exceeds the amount used to determine the taxable amount of the distribution is treated as a regular contribution for purposes of section 408A(d)(4).

Q–4. In the case of a rollover from a designated Roth account to a Roth IRA, when does the 5-taxable-year period (described in section 408A(d)(2)(B) and A–1 of § 1.408A–6) for determining qualified distributions from a Roth IRA begin?

A–4. (a) The 5-taxable-year period for determining a qualified distribution from a Roth IRA (described in section 408A(d)(2)(B) and A–1 of § 1.408A–6) begins with the earlier of the taxable year described in A–2 of § 1.408A–6 or the taxable year in which a rollover contribution from a designated Roth account is made to a Roth IRA. The 5-taxable-year period described in this A–4 and the 5-taxable-year period of participation described in A–4 of § 1.402A–1 are determined independently.

(b) The following examples illustrate the application of this A–4:

Example 1. Employee D began making designated Roth contributions under his employer's 401(k) plan in 2006. Employee D, who is over age 59½, takes a distribution from D's designated Roth account in 2008, prior to the end of the 5-taxable-year period of participation used to determine qualified distributions from a designated Roth account. The distribution is an eligible rollover distribution and D rolls it over in accordance with sections 402(c) and 402A(c)(3) to D's Roth IRA, which was established in 2003. Any subsequent distribution from the Roth IRA of the amount rolled in, plus earnings thereon, would not be includible in gross income (because it would be a qualified distribution within the meaning of section 408A(d)(2)).

Example 2. The facts are the same as in *Example 1*, except that the Roth IRA is D's first Roth IRA and is established with the rollover in 2008, which is the only contribution made to the Roth IRA. If a distribution is made from the Roth IRA prior to the end of the 5-taxable-year period used to determine qualified distributions from a Roth IRA (which begins in 2008, the year of the rollover which established the Roth IRA) the distribution would not be a qualified distribution within the meaning of section 408A(d)(2), and any amount of the distribution that exceeded the portion of the rollover contribution that consisted of investment in the contract is includible in D's gross income.

Example 3. The facts are the same as in *Example 2*, except that the distribution from the designated Roth account and the rollover to the Roth IRA occur in 2011 (after the end of the 5-taxable-year period of participation used to determine qualified distributions from a designated Roth account). If a distribution is made from the Roth IRA prior to the expiration of the 5-taxable-year period used to determine qualified distributions from a Roth IRA, the distribution would not be a qualified distribution within the meaning of section 408A(d)(2), and any amount of the distribution that exceeded the amount rolled in is includible in D's gross income.

Q–5. Can amounts distributed from a Roth IRA be rolled over to a designated Roth account as defined in A–1 of § 1.402A–1?

A–5. No. Amounts distributed from a Roth IRA may be rolled over or transferred only to another Roth IRA and are not permitted to be rolled over to a designated Roth account under a section 401(a) or section 403(b) plan.

The same rule applies even if all the amounts in the Roth IRA are attributable to a rollover distribution from a designated Roth account in a plan.

Q–6. When is this § 1.408A–10 applicable?

A–6. The rules of this § 1.408A–10 apply for taxable years beginning on or after January 1, 2006.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 8.** In § 602.101, paragraph (b) is amended by adding an entry for 1.402A–1 in numerical order to the table to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.402A–1	1545–1992
* * * * *	

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: April 23, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–8125 Filed 4–27–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0138; FRL–8302–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the incorporation of revised air pollution permitting and emission standards rules into the Illinois State Implementation Plan (SIP). The State submitted this request for revision to its SIP to EPA on May 31, 2006. This approval makes the State's rules federally enforceable.

DATES: This rule is effective on June 29, 2007, unless EPA receives adverse comment by May 30, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0138, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: blakley.pamela@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits 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–2007–0138. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. 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 Constantine Blathras at (312) 886–0671 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air and Radiation Division, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'', or ''our'' are used to mean EPA. This supplementary information section is arranged as follows:

I. Questions and Answers
- A. What action is EPA taking?
- B. Why is EPA taking this action?
- C. How do these rule changes affect current Federal requirements?
- D. Why has the State made these regulatory changes?
- E. What types of emission units are affected by these changes?
- F. How will EPA's approval of revised permit exemptions affect air quality?
- G. Does this SIP revision contain any other changes?

II. Statutory and Executive Order Reviews

I. Questions and Answers

A. What action is EPA taking?

We are approving two revisions to the Illinois SIP which the State of Illinois requested. Specifically, we are approving the incorporation of revisions to Title 35 of the Illinois Administrative Code (35 IAC) 201.146, Exemptions from State Permit Requirements into the Illinois SIP. These revisions clarify, modify, and add to the list of emission units and activities which are exempt

from State permitting requirements. The revision adds some emission units and activities to the list of those that are exempt from certain State permitting requirements, and clarifies that other State permitting requirements may apply for the entire facility. For example, if a new emission unit is subject to Federal New Source Performance Standards, then it will need a State construction permit.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 29, 2007 without further notice unless we receive relevant adverse written comments by May 30, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective June 29, 2007.

B. Why is EPA taking this action?

We are acting on a May 31, 2006, request from the Illinois EPA to revise the Illinois SIP.

C. How do these rule changes affect current Federal requirements?

State construction or operating permits are no longer required for certain categories of emission units and activities listed in 35 IAC 201.146, Exemptions from State Permit Requirements. These rule changes do not affect permitting under major New Source Review or Federal operating permits under Title V of the Clean Air Act.

D. Why has the State made these regulatory changes?

The State made these changes primarily to remove the requirement to obtain a State construction and operating permit for emission units with very low emissions and where the permit would serve no real environmental or informational need.

Many of these emission units have been deemed insignificant under Illinois' Clean Air Act Permit Program (CAAPP) as specified in 35 IAC 201.210 and, therefore, warrant consideration for exemption from State permitting requirements. However, the emission units categories listed as insignificant in 35 IAC 201.210 are not automatically exempted in 201.146, because Illinois does not believe that all of the activities listed as insignificant under the CAAPP merit exemption from State permit requirements. Illinois' rationale is that Illinois EPA retains some discretion under the CAAPP, as it applies to sources that are required to submit an application for a State construction and operating permit. The CAAPP permit application process allows Illinois EPA the opportunity to evaluate proposed insignifcant emission units at a source. However, if an emission unit or activity qualifies for exemption from State permitting requirements under 35 IAC 210.146, no State construction and operating permit application is required and Illinois EPA therefore has no opportunity to evaluate the emission unit.

Certain amendments to section 201.146 clarify the types of activities or emission units that are covered by an exemption category. In several instances, the amendments modify an existing exemption category so that emission units subject to certain requirements to control emissions will require permits. Illinois believes that permitting for these activities is appropriate to assure compliance with these control requirements.

E. What types of emission units are affected by these changes?

This SIP revision affects all emission units and activities subject to State permitting requirements pursuant to section 39 of the Illinois Environmental Protection Act (Illinois Act) and 35 IAC 201.142, 201.143, and 201.144. For State operating permits, emission units only qualify for exemption if the units are located at a source that is not subject to the CAAPP pursuant to section 39.5 of the Illinois Act. For construction permits, the exemption also includes emission units at a source subject to the CAAPP.

Section (hhh): Replacement or addition of air pollution control equipment for existing emission units.

The exemption applies only to existing facilities that are permitted and have operated in compliance with their permit for the past year. The new pollution control equipment must maintain or improve air pollution control over the prior levels of target pollutants and not result in a net increase in emissions of any collateral pollutant. The exemption does not apply if the installation or operation of the new or replacement pollution controls would trigger or change applicability of different regulatory requirements. Finally, required monitoring equipment must be carried over to the replacement control device and must incorporate current technology.

Section (iii): Replacement, addition, or modification of emission units at facilities with federally enforceable State operating permits limiting their potential to emit in certain circumstances.

This provision affects some units or activities at FESOP sources that do not fit under any of the existing listed exemptions under Section 201.146 and that are still insignificant from a permitting standpoint. Under this exemption, permits are not necessary for units at minor FESOP sources with low potential to emit (less than 0.1 pound per hour or 0.44 tons per year) any regulated air pollutant absent air pollution equipment from the new or modified unit that have no outstanding compliance or enforcement issues. Also, raw materials and fuels that cause or contribute to emissions must not contain a hazardous air pollutant equal to or greater than 0.01 percent by weight. Further, this exemption is not available to a source that must meet New Source Performance Standards and New Source Review requirements under the Clean Air Act or if outstanding compliance or enforcement issues exist.

Section (jjj): Replacement, addition, or modification of emission units at permitted sources that are not major sources subject to Section 39.5 and that do not have a federally enforceable state operating permit limiting their potential to emit.

This exemption is limited to sources with the low potential to emit of any regulated air pollutant absent air pollution equipment from the new or modified unit that have no outstanding compliance or enforcement issues at the source. This exemption is available for minor sources that have a slightly greater potential to emit (up to 0.5 pounds per hour) so long as the facility notifies the IEPA of its intent to construct or install a new emissions unit or modification. This provision requires permitting if the additional emissions from the unit could change the sources' status with respect to its potential to emit. This exemption is also not available to a source that must meet New Source Performance Standards and New Source Review requirements under the Clean Air Act.

Section (kkk): The owner or operator of a CAAPP source is not required to

obtain an air pollution control construction permit for the construction or modification of an emission unit or activity that is an insignificant activity as addressed by Section 201.210 or 201.211. Section 201.212 must still be followed, as applicable. Other than excusing the owner or operator of a CAAPP source from the requirement to obtain an air pollution control construction permit for the emission units or activities, nothing in this subsection shall alter or affect the liability of the CAAPP source for compliance with emission standards and other requirements that apply to the emission units or activities, either individually or in conjunction with other emission units or activities constructed, modified, or located at the source.

This section creates a list of permit exempt insignificant activities similar to those for CAAPP sources. See 35 Ill. Adm. Code 201.210 through 210.211. Owners or operators must notify the Agency when they add insignificant activities. Facilities must still comply with otherwise applicable emission standards or other regulatory requirements.

Section (lll): Plastic injection molding operations. This section revises the Illinois' regulations regarding exemptions from air construction and operating permit requirements to add a category for plastic injection molding operations to the existing list of permit exemptions in Section 201.146.

Many of these emission units have been deemed insignificant under Illinois' CAAPP as specified in 35 IAC 201.210 and, therefore, warrant consideration for exemption from State permitting requirements. However, the emission units categories listed as insignificant in 35 IAC 201.210 are not automatically exempted in 201.146, because Illinois does not believe that all of the activities listed as insignificant under the CAAPP merit exemption from State permit requirements. Illinois' rationale is that Illinois EPA retains some discretion under the CAAPP, as it applies to sources that are required to submit an application for a State construction and operating permit. The CAAPP permit application process allows Illinois EPA the opportunity to evaluate proposed insignificant emission units at a source. However, if an emission unit or activity qualifies for exemption from State permitting requirements under 35 IAC 210.146, no State construction and operating permit application is required and Illinois EPA therefore has no opportunity to evaluate the emission unit.

F. How will EPA's approval of revised permit exemptions affect air quality?

Control requirements are independent of whether or not a source must have an operating permit. Other Federal and State regulations are not impeded by these revisions. EPA does not anticipate that this action will adversely affect air quality because the permit exemption emission thresholds are below major source construction significant emission rates. Sources below the major source construction significant emission rates are not generally required to perform an air quality analysis during minor source permitting because they are unlikely to adversely impact air quality. The purpose of this revision is to relieve the IEPA and owners and operators from the burden of state construction and operation permitting for these very low emitting emission units and activities. The existing language of Section 201.146, which will be applicable to this exemption, provides, ''* * * The permitting exemptions in this Section do not relieve the owner or operator of any source from the obligation to comply with any other applicable requirements, including the obligation to obtain a permit pursuant to Section 9.1(d) and 39.5 of the Act, Sections 165, 173, and 502 of the Clean Air Act or any other applicable permit or registration requirement.''

Although there are no specific emission limitations or emission controls prescribed by these regulatory revisions, the affected units and activities will remain subject to all regulations governing general applicability, such as the regulatory prohibition on emissions in excess of major source thresholds; the protection of the national ambient air quality standards, and the protection of the prevention of significant deterioration increments.

G. Does this SIP revision contain any other changes?

There are no additional changes being requested in this SIP revision.

II. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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 energy 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).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

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 approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 6, 2007.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(177) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(177) On May 31, 2006, the Illinois Environmental Protection Agency submitted a requested revision to the Illinois State Implementation Plan. This revision provides additional exemptions from State of Illinois permit requirements codified by the State at Part 201 of Title 35 of the Illinois Administrative Code (35 IAC Part 201).

(i) Incorporation by reference.

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter a: Permits and General Provisions, Part 201 Permits and General Provisions, Subpart C: Prohibitions, Section 201.146 Exemptions from State Permit Requirements paragraphs (hhh), (iii), (jjj), (kkk), and (lll). Amended at 30 Ill. Reg. 4901, effective March 3, 2006.

[FR Doc. E7–8104 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[EPA–HQ–OPPT–2005–0014 and EPA–HQ–OPPT–2005–0055; FRL–8124–9]

RIN 2070–AB08 and 2070–AB11

Removal of Two Chemical Substances from Preliminary Assessment Information Reporting and Health and Safety Data Reporting Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rule the removes chemical substances phosphorotrithious acid, tributyl ester, CAS No. 150–50–5, and phosphorodithioic acid, O,O–diethyl ester, sodium salt, CAS No. 3338–24–7, which were inadvertently added to the list of voluntary High Production Volume (HPV) Challenge Program orphan (unsponsored) chemical substances by EPA. As a result, these chemical substances were inadvertently added to two final rules: The Preliminary Assessment Information Reporting (PAIR) rule (Toxic Substances Control Act (TSCA) section 8(a)) and the Health and Safety Data Reporting rule (TSCA section 8(d)), both published in the **Federal Register** issue of August 16, 2006. With this removal action, persons who manufacture (including import) either of these two chemical substances are no longer subject to the reporting requirements imposed by these TSCA section 8(a) and 8(d) rules.

DATES: This rule is effective on June 29, 2007 without further notice, unless EPA receives adverse comment on or before May 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) numbers EPA–HQ–OPPT–2005–0014 and EPA–HQ–OPPT–2005–0055, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on–line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Numbers EPA–HQ–OPPT–2005–0014 and EPA–HQ–OPPT–2005–0055. The DCO is open from 8 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID numbers EPA–HQ–OPPT–2005–0014 and EPA–HQ–OPPT–2005–0055. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Joe Nash, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8886; fax number: (202) 564–4765; e-mail address: *ccd.citb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) either of the two chemical substances listed in this direct final rule. Entities potentially affected by this action may include, but are not limited to:

• Chemical manufacturers (including importers), (NAICS codes 325, 32411), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this ''**Federal Register**'' document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. Frequently updated electronic versions of 40 CFR parts 712 and 716 are available through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The chemical substances phosphorotrithious acid, tributyl ester, CAS No. 150–50–5, and phosphorodithioic acid, O,O–diethyl ester, sodium salt, CAS No. 3338–24–7, are being removed from the table in 40 CFR 712.30(e) of the TSCA section 8(a) PAIR rule published in the **Federal Register** of August 16, 2006 (Ref. 1), and the table in 40 CFR 716.120(d) of the TSCA section 8(d) Health and Safety Data Reporting rule published in the **Federal Register** of August 16, 2006 (Ref. 2). On August 16, 2006, EPA published a final PAIR rule under TSCA section 8(a) (40 CFR part 712), which requires manufacturers (including importers) of chemical substances in the category of voluntary HPV Challenge Program orphan (unsponsored) chemical substances on the ITC's TSCA section 4(e) *Priority Testing List* to submit a one–time report on general production/importation volume, end use, and exposure-related information to EPA. Also on August 16, 2006, EPA published a final Health and Safety Data Reporting rule under TSCA section 8(d) (40 CFR part 716), which requires manufacturers (including importers) of chemical substances in this category of voluntary HPV Challenge Program orphan (unsponsored) chemical substances to submit certain unpublished health and safety data to EPA. On September 15, 2006, EPA published a final rule (Ref. 3) that revised the effective date of the two rules published on August 16, 2006. The effect of this action is that persons who manufacture (including import) either of the two chemical substances are not subject to the reporting requirements imposed by the final TSCA section 8(a) and 8(d) rules published on August 16, 2006, and the rule published on September 15, 2006 (Ref. 3), that changed the effective date for these two rules.

B. What is the Agency's Authority for Taking This Action?

EPA promulgated the PAIR rule under TSCA section 8(a) (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model TSCA section 8(a) rule establishes standard reporting requirements for certain manufacturers (including importers) of the chemical substances listed in the rule at 40 CFR 712.30. The final rule published by EPA on August 16, 2006, amended the model TSCA section 8(a) rule by adding the ITC category of certain voluntary HPV Challenge Program orphan (unsponsored) chemical substances (Ref. 1).

EPA promulgated the model Health and Safety Data Reporting rule under TSCA section 8(d) (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The TSCA section 8(d) model rule requires past, current, and prospective manufacturers, importers, and (if specified by EPA in a particular notice or rule under TSCA section 8(d)) processors of listed chemical substances to submit to EPA copies and lists of unpublished health and safety studies on the listed chemical substances that they manufacture, import, or (if specified by EPA in a particular notice or rule under TSCA section 8(d)) process. The final rule published by EPA on August 16, 2006, amended the model TSCA section 8(d) rule by adding the ITC category of certain voluntary HPV Challenge Program orphan (unsponsored) chemical substances (Ref. 2).

C. Why is EPA Using a Direct Final Rule?

EPA is publishing this direct final rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. Any parties interested in commenting must do so on or before May 30, 2007.

D. Why are These Two Chemical Substances Being Removed?

The chemical substances phosphorotrithious acid, tributyl ester, CAS No. 150–50–5, and phosphorodithioic acid, O,O–diethyl ester, sodium salt, CAS No. 3338–24–7, were inadvertently added by EPA to the list of HPV orphan orphan (unsponsored) chemical substances. This list was the source of the category of ''Voluntary HPV Challenge Program orphan (unsponsored) chemicals'' that was the subject of the TSCA section 8(a) PAIR rule and TSCA section 8(d) Health and Safety Data Reporting rule published in the **Federal Register** of August 16, 2006 (Refs. 1 and 2). These two chemicals were originally sponsored in the HPV Challenge Program by Bayer CropScience on March 15, 1999 (Ref. 4). Subsequently, in a letter dated December 29, 2003, Bayer CropScience requested that EPA ''designate the two chemicals as 'no longer HPV' on the HPV Challenge Program Chemical List'' because Bayer CropScience considered the chemicals to be ''non–isolated intermediates'' (Ref. 5). In a letter dated December 3, 2004, EPA responded that, based on a review of the information submitted by Bayer CropScience, EPA had determined that the two substances were ''isolated intermediates'' and, consequently, did not meet the 'no longer HPV' criteria and that ''they will remain in the HPV Challenge Program and should continue to be reported'' (Ref. 6). In a letter dated December 15, 2005, Bayer CropScience clarified the status of the two chemicals (Ref. 7). In that letter, Bayer ''recommit[ed] to sponsoring'' both chemicals in the HPV Challenge Program and proposed to include the two chemicals into two categories. This record demonstrates that Bayer CropScience did not withdraw its commitment to sponsor these two chemicals in the HPV Challenge Program. Consequently, EPA is removing these two chemicals from the table in 40 CFR 712.30(e) of the TSCA section 8(a) PAIR rule published in the **Federal Register** of August 16, 2006 (Ref. 1), and the table in 40 CFR 716.120(d) of the TSCA section 8(d) Health and Safety Data Reporting rule published in the **Federal Register** of August 16, 2006 (Ref. 2).

This action does not preclude the future listing of these two chemical substances under the TSCA section 8(a) PAIR rule or the TSCA section 8(d) Health and Safety Data Reporting rule should the information be reasonably required.

III. Economic Analysis

In the economic analysis conducted for the final TSCA section 8(a) PAIR rule, the Agency estimated the total reporting cost to industry to be $644,000 for all 243 chemical substances, or approximately $2,650 per chemical substance (Ref. 1). The Agency is estimated to incur an additional $248,000 or $1,021 per chemical substance to provide public support for the TSCA section 8(a) PAIR rule and to process the data (Ref. 1). The total cost of the TSCA section 8(a) rule, per chemical substance, is estimated to be approximately $3,671. This direct final rule removes two chemical substances from the TSCA section 8(a) PAIR rule. Therefore, costs are estimated to be reduced by $7,342 (two chemical substances x $3,671 per chemical substance).

Furthermore, this direct final rule will also remove two chemical substances

from the TSCA section 8(d) Health and Safety Data Reporting rule. The economic analysis conducted for the TSCA section 8(d) Health and Safety Data Reporting rule estimates that the total cost to industry is $110,000 and to the Agency is $79,000, or $453 and $325 per chemical substance, respectively, for a total of $778 per chemical substance (Ref. 2). Because this direct final rule removes two chemical substances from the TSCA section 8(d) Health and Safety Data Reporting rule, the costs of the TSCA section 8(d) Health and Safety Data Reporting rule are estimated to be reduced by $1,556 (two chemical substances x $778).

Therefore, the removal of two chemical substances from the TSCA section 8(a) and TSCA section 8(d) rules is estimated to result in a total reduction in costs of $8,898.

IV. References

The dockets for this direct final rule are the dockets established for the TSCA section 8(a) PAIR rule (docket ID number EPA–HQ–OPPT–2005–0014) (Ref. 1) and the TSCA section 8(d) Health and Safety Data Reporting rule (docket ID number EPA–HQ–OPPT–2005–0055) (Ref. 2). These dockets are available for review as specified in **ADDRESSES**. The following is a listing of the materials referenced in this document that have been placed in the dockets:

1. EPA. Preliminary Assessment Information Reporting; Addition of Certain Chemicals. **Federal Register** (71 FR 47122, August 16, 2006) (FRL–7764–9). Available on-line at: *http://www.epa.gov/fedrgstr*.

2. EPA. Health and Safety Data Reporting; Addition of Certain Chemicals. **Federal Register** (71 FR 47130, August 16, 2006) (FRL–7764–7). Available on-line at: *http://www.epa.gov/fedrgstr*.

3. EPA. Preliminary Assessment Information Reporting Rule and Health and Safety Data Reporting Rule; Revision of Effective Dates. **Federal Register** (71 FR 54434, September 15, 2006) (FRL–8094–8). Available on-line at: *http://www.epa.gov/fedrgstr*.

4. Bayer Corporation. Letter from Ron Fuchs (Bayer Corporation) to Carol Browner (EPA) RE: Sponsorship of chemicals in the HPV Challenge Program. March 15, 1999.

5. Bayer Corporation. Letter from Janet M. Mostowy (Bayer Corporation) to Michael Leavitt (EPA) RE: Request to designate chemicals as 'no longer HPV.' December 29, 2003.

6. EPA. Letter from Diane Sheridan (EPA/OPPT) to Janet M. Mostowy (Bayer Corporation) RE: EPA response to December 29, 2003 letter from Bayer Corporation. December 3, 2004.

7. Bayer CropScience. Letter from George S. Goodridge to Oscar Hernandez (EPA/OPPT) RE: Clarification of status of chemicals appearing on EPA's 9/16/05 orphan list. December 15, 2005.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted actions under TSCA sections 8(a) and 8(d) related to the PAIR and Health and Safety Data Reporting rules from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this direct final rule does not impose any new requirements and will result in a burden and cost reduction; therefore, it is not subject to OMB review under the Executive order.

B. Paperwork Reduction Act

The information collection requirements contained in TSCA sections 8(a) PAIR and 8(d) Health and Safety Data Reporting rules have already been approved by OMB under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and OMB control numbers 2070–0054 (EPA ICR No. 0586) and 2070–0004 (EPA ICR No. 0575). The collection activities in this direct final rule are captured by the existing approval and do not require additional review and/or approval by OMB.

C. Regulatory Flexibility Act

Because this direct final rule eliminates reporting requirements, the Agency certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, that this action will not have a significant adverse economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this direct final rule will not significantly or uniquely affect small governments. Accordingly, the direct final rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132: Federalism

This direct final rule has no Federalism implications because it will not have substantial direct effects 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

This direct final rule has no tribal implications because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, nor on the distribution of power and responsibilities between the Federal Government and Indian tribes as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 6, 2000).

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

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23,1997), does not apply to this direct final rule because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not concern an environmental health or safety risk that may have a disproportionate effect on children.

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

This rule is not subject to Executive Order 13211, entitled *Actions that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

Because this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

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

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: April 23, 2007.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

■ 2. In § 712.30, in the table under the heading ''Voluntary HPV Challenge Program orphan (unsponsored) chemicals'' in paragraph (e), remove the entries CAS No. 150–50–5, Phosphorotrithious acid, tributyl ester and CAS No. 3338–24–7, Phosphorodithioic acid, O,O–diethyl ester, sodium salt.

PART 716—[AMENDED]

■ 3. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

§ 716.120 [Amended]

■ 4. In § 716.120, in the table under the heading ''Voluntary HPV Challenge Program orphan (unsponsored) chemicals in paragraph (d), remove the entries Phosphorotrithious acid, tributyl ester, CAS No. 150–50–5 and Phosphorodithioic acid, O,O-diethyl ester, sodium salt, CAS No. 3338–24–7.

[FR Doc. 07–2104 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 04011–2010–4114–02; I.D. 042407B]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Eastern U.S./Canada Area to limited access NE multispecies days-at-sea (DAS) vessels for the remainder of the 2006 fishing year (i.e., through April 30, 2007). Based upon Vessel Monitoring System (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has determined that 100 percent of the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area will be harvested by April 25, 2007. This action is being taken to prevent the 2006 TAC for GB cod in the Eastern U.S./Canada Area from being exceeded during the 2006 fishing year in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr local time, April 25, 2007, through 2400 hr local time, April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The final GB cod TAC allocation for the 2006 fishing year was specified at 374 mt (April 28, 2006; 71 FR 25095). Once 100 percent of the GB cod TAC allocation specified for the U.S./Canada Management Area is projected to have been harvested, the regulations at § 648.85(a)(3)(iv)(E) require the Regional Administrator to close access to the Eastern U.S./Canada Area for all limited access NE multispecies DAS vessels to prevent over-harvesting the TAC allocations for the U.S./Canada Management Area.

Based upon VMS daily catch reports, dealer reports, and other available information, the Regional Administrator has determined that 100 percent of the 2006 GB cod TAC of 374 mt will have been harvested on April 25, 2007. Therefore, based on the available information described above, to ensure that the TAC for GB cod will not be exceeded, the Eastern U.S./Canada Area is closed to all limited access NE multispecies DAS vessels for the remainder of the 2006 fishing year, effective April 25, 2007, pursuant to § 648.85(a)(3)(iv)(E). Vessels that have made a correct VMS declaration indicating the intention to fish in the Eastern U.S./Canada Area (VMS U.S./Canada Area Code 2), and crossed the demarcation line prior to 0001 hours on April 25, 2007, may continue their trip and fish in the Eastern U.S./Canada Area. Vessels that are currently declared into the Eastern U.S./Canada Area, and have already ''flexed out'' or ''flexed west'', may not reenter the Eastern U.S./Canada Area after 0001 hours on April 25, 2007. Any vessel that leaves the Eastern U.S./Canada Area after 0001 hours on April 25, 2007, is prohibited from reentering the Eastern U.S./Canada Area for the remainder of the fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this

action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. This action will close the Eastern U.S./Canada Area to groundfish DAS vessels. This action is required by the regulations at § 648.85(a)(3)(iv)(E) and is non-discretionary. In addition, since 100 percent of the GB cod is projected to be harvested by April 25, 2007, there is insufficient time to allow for public notice, comment, and delayed effectiveness before 100 percent of the TAC will be harvested.

Given the increasing harvest rate and the small GB cod TAC specified for 2006, the time necessary to provide for prior notice, opportunity for public comment, or delayed effectiveness would prevent the agency from ensuring that the 2006 TAC for GB cod is not exceeded during the 2006 fishing year. It was not possible to take this action earlier to provide more time for public comment because of the increasing GB cod harvest rate, the small GB cod TAC, and the ability of NMFS to monitor the harvest (the projection that 100 percent of the GB cod TAC would be harvested by April 25, 2007, was not available until April 23, 2007). Exceeding the 2006 TAC for GB cod would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, resulting in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the Eastern U.S./Canada Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

The public has been able to obtain information on the rate of harvest of the GB cod TAC via the Northeast Regional Office website (*http://www.nero.noaa.gov*) to provide at least some advanced notice of the harvest totals and potential action to prevent the TAC for GB cod from being exceeded during the 2006 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: April 24, 2007.

James P. Burgess,

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

[FR Doc. 07–2083 Filed 4–24–07; 2:49 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 82
Monday, April 30, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. AMS–FV–07–0037; FV07–956–1]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon, to determine whether they favor continuance of the marketing order regulating the handling of sweet onions produced in the production area.

DATES: The referendum will be conducted from May 19 to June 8, 2007. Only current producers of Walla Walla sweet onions who also produced Walla Walla sweet onions within the designated production area in Washington and Oregon during the period January 1 to December 31, 2006, are eligible to vote in this referendum.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agents at 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204, or the Office of 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.*

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted from May 19 to June 8, 2007, among Walla Walla sweet onion producers in the production area. Only current Walla Walla sweet onion producers that were engaged in the production of Walla Walla sweet onions in Washington and Oregon, during the period of January 1 to December 31, 2006, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether producers favor continuation of marketing order programs. USDA would consider termination of the order if a majority of the producers voting in the referendum and producers of a majority of the volume of Walla Walla sweet onions represented in the referendum do not favor continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referendum herein ordered are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178. It has been estimated that it will take an average of 20 minutes for each of the approximately 35 producers of Walla Walla sweet onions in Washington and Oregon to cast a ballot. Participation is voluntary. Ballots postmarked after June 8, 2007, will not be included in the vote tabulation.

Barry Broadbent and Gary Olson of the Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400 *et seq*).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: April 25, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–2111 Filed 4–25–07; 4:52 pm]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1281]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the *Code of Federal Regulations* would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend

Regulation B to provide that when an application is accessed by an applicant in electronic form, certain disclosures must be provided to the applicant in electronic form on or with the application, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply. Similar rules are being proposed under other consumer financial services regulations administered by the Board.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1281, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the ECOA. The ECOA and Regulation B require certain disclosures to be provided to applicants, and some of those disclosures must be provided in writing.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19,696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and similar proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings)(63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49,688, 49,699, 49,713, 49,722 and 49,740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49,846, September 14, 1999). While these rulemakings were pending, federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulations B, E, M, Z and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

On April 4, 2001, the Board published interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation B (66 FR 17,779). Similar interim final rules for Regulations E, M, Z, and DD were published on March 30, 2001 (66 FR 17,322 (M) and 17,329 (Z)), and April 4, 2001 (66 FR 17,786 (E) and 17,795 (DD)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Creditors and other persons, as applicable, generally were required to obtain applicants' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation B established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the applicant, or could be made available at another location, such as an Internet web site. If the disclosures were not sent by e-mail, creditors would have to provide a notice to applicants alerting them to the availability of the disclosures. Disclosures posted on a web site would have to be available for at least 90 days to allow applicants adequate time to access and retain the information. Creditors also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations E, M, Z, and DD.

Commenters on the interim final rules identified significant operational and security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For

example, commenters stated that some consumers do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41,439, August 8, 2001.) Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation B and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the **Federal Register**, under Regulations E, M, Z, and DD.)

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the *Code of Federal Regulations*, while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. Certain provisions in the interim final rules, including provisions addressing foreign language disclosures, were not affected by the lifting of the mandatory compliance date and accordingly are now in final form; these provisions would not be deleted. The Board is also proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final rules in order to enhance the ability of consumers to apply for credit online and provide guidance or eliminate a substantial burden on electronic commerce, as discussed further below.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, there has been no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of increased concerns about data security, identity theft, and ''phishing'' (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is proposing to eliminate certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

Pursuant to the Board's authority under section 703(a)(1) of the ECOA, as well as under section 104(d) of the E-Sign Act,[1] the Board is also proposing to specify the circumstances under which certain disclosures may be provided to an applicant in electronic form, rather than in writing as required by Regulation B, without obtaining the applicant's consent under section 101(c) of the E-Sign Act. The proposed rule would also amend § 202.4(d) of Regulation B to clarify that certain disclosures must be provided to the applicant in electronic form on or with an application that is provided to and accessed by the applicant in electronic form.

The interim final rule allowed creditors to provide certain disclosures to applicants in electronic form without obtaining E-Sign consent if the disclosures were provided on or with an application. The Board continues to believe that creditors should not be required to obtain the consumer's consent in order to provide application-related disclosures if the applicant accesses the application containing these disclosures in electronic form, such as at an Internet Web site. The Board believes consumers would not be harmed, and in fact would benefit, by having timely access to these application-related disclosures in electronic form. Consumers who choose to apply for credit online would be unduly burdened if they had to consent in accordance with the E-Sign Act in order to access application forms that are accompanied by disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to apply for credit.

At the same time, the Board recognizes that consumers who apply for credit online may not want to receive other disclosures electronically. Therefore, with respect to, for example, adverse action notices or copies of appraisal reports, creditors would be required to provide written disclosures or obtain the consumer's consent in accordance with the E-Sign Act to provide such disclosures in electronic form.

Finally, the Board is proposing to delete, as unnecessary, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures because the E-Sign Act is a self-effectuating statute. The proposed revisions to Regulation B and the official staff commentary are described more fully below in the Section-by-Section Analysis.

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

[1] Section 703(a)(1) of ECOA provides that regulations prescribed by the Board under ECOA ''may provide for such adjustments and exceptions * * * as in the judgment of the Board are necessary or proper to effectuate the purposes of [ECOA], * * * or to facilitate or substantiate compliance [with the requirements of ECOA].'' Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, ''if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.'' For the reasons stated in this **Federal Register** notice, the Board believes that these criteria are met in the case of the application disclosures. In addition, the Board believes ECOA section 703(a)(1) authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

III. Section-by-Section Analysis

12 CFR Part 202 (Regulation B)

Section 202.4 General rules

Introduction

Section 202.4(d) prescribes the form of disclosures, and specifically provides that a creditor that provides in writing any disclosures or information required by the regulation must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 202.5 and 202.13, in a form that the applicant may keep. The Board proposes to redesignate this provision as the general rule in § 202.4(d)(1).

The Board also proposes to add a new § 202.4(d)(2) to clarify that, with regard to disclosures that the regulation requires to be given in writing, creditors may provide such disclosures in electronic form, subject to compliance with the consumer consent and other applicable sections of the E-Sign Act. Some creditors may provide disclosures to applicants both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the disclosures may be provided to applicants without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 202.4(d)(2) would also provide that certain disclosures, when included on or with an application, must be provided to the applicant in electronic form if the applicant accesses the application electronically. Under those circumstances, these disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The Board believes that, for an application accessed by the consumer in electronic form, permitting creditors to provide application-related disclosures in electronic form without regard to the consumer consent and other provisions of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate applications for credit by enabling consumers to receive important disclosures at the same time they access an application without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to complete an online application is potentially burdensome and could discourage consumers from shopping for credit online. Moreover, because these consumers are viewing the application online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

The following disclosures would be provided electronically without obtaining the consumer's consent under E-Sign, as set forth in § 202.4(d)(2):

Section 202.5(b)(1). Section 202.5(b)(1) provides that if a creditor inquires about an applicant's race, color, religion, national origin, or sex for the purpose of conducting a self-test, the creditor must disclose that providing the information is optional for the applicant, that the information is requested to monitor compliance with the ECOA, and that the creditor may not discriminate either on the basis of the information or whether the applicant chooses to furnish it.

Section 202.5(b)(2). Section 202.5(b)(2) provides that when a creditor requests an applicant to designate a title on an application form, the application form must disclose that the designation of a title is optional.

Section 202.5(d)(1). Section 202.5(d)(1) provides that if an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but must use only the terms *married, unmarried,* and *separated.* The creditor may also explain that the *unmarried* category includes single, divorced, and widowed persons.

Section 202.5(d)(2). Section 202.5(d)(2) prohibits a creditor from inquiring whether income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

Section 202.13. Section 202.13(a) requires a creditor to request information regarding an applicant's ethnicity, race, sex, marital status, and age as part of an application for dwelling-secured credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence. Section 202.13(b) provides that questions about ethnicity, race, sex, marital status and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application.

Section 202.13(c) requires the creditor to disclose to the applicant that the information about ethnicity, race, sex, marital, status and age is being requested by the federal government to monitor compliance with federal statutes that prohibit creditors from discriminating against applicants. The creditor must also disclose that if the applicant chooses not to provide the information, the creditor is required to note the ethnicity, race, and sex on the basis of visual observation or surname.

Section 202.14(a)(2)(i). Section 202.14(a)(2)(i) requires a creditor that provides copies of appraisal reports only upon request (rather than routinely) to notify the applicant of the right to obtain a copy of the report.

Discussion

Under Regulation B, an application generally is not required to be in writing.[2] Section 202.2(f) of the regulation defines the term ''application'' to include ''an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested.'' Since an application does not have to be in writing, the disclosures that are provided on or with an application in certain circumstances do not have to be provided in writing. These disclosures include those required under §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), and 202.13. (Section 202.14(a)(2)(i) specifies that the notice of the right to a copy of the appraisal report must be provided in writing.) As a practical matter, however, most creditors use written or electronic application forms and typically make these disclosures, where applicable, on the written or electronic application form or a separate accompanying form. The Board's Model Application Forms in Appendix B to the regulation include some of these disclosures on the application forms.

Therefore, the Board proposes to amend § 202.4(d) to provide that each of the disclosures noted above, where given on or with the application and where the application is accessed by the applicant in electronic form, must be provided to the applicant in electronic form on or with the application. The proposed revision would also clarify that under those circumstances, those disclosures may be provided in electronic form without regard to the

[2] Under § 202.4(c), a creditor must take written applications for dwelling-related credit for which monitoring information (under § 202.13) must be collected. However, use of a printed form is not required. A creditor may accept telephone or other oral applications and either write down or enter into a computer the pertinent information provided orally by the applicant. *See* Comments 202.4(c)–1 and 2.

consumer consent or other provisions of the E-Sign Act.

The Board also proposes to add new comment 4(d)(2)–1 to clarify that if an applicant accesses an application in electronic form, the disclosures required to accompany the application must be provided to the applicant in electronic form on or with the application. An applicant accesses an application in electronic form when, for example, the applicant views the application on his or her home computer. On the other hand, if an applicant receives an application in the mail, the creditor would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the application to the web site where the disclosures are located.

Section 202.9 Notifications

Section 202.9(g) provides that when an application for credit is submitted through a third party to more than one creditor and no credit is offered (or the applicant does not expressly accept or use any credit offered), each creditor taking adverse action must provide the notice required by § 202.9(a), but may do so through a third party. The 2001 interim final rule added a new § 202.9(h) to clarify that such third parties may use electronic disclosures to provide the required adverse action notice. The Board is proposing to remove this provision as unnecessary because the E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions set forth in the Act.

Section 202.16 Requirements for electronic communication

Section 202.16 was added by the 2001 interim final rule to address the general requirements for electronic communications.[3] The Board proposes to remove § 202.16 from Regulation B and the accompanying sections of the staff commentary.

In the interim rule, § 202.16(a) defines the term ''electronic communication'' to mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 202.16(a) would not change applicable legal requirements under the E-Sign Act.

Sections 202.16(b), (c) and (f) incorporate by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form, the requirement to obtain the applicant's affirmative consent before providing disclosures in electronic form, and the provision allowing electronic signatures. The deletion of these provisions will have no impact on the general applicability of the E-Sign Act to Regulation B disclosures.

The special rule in § 202.16(c) exempting from the disclosures relating to adverse action in connection with business credit, appraisal reports, and the collection of monitoring information has been eliminated. The special rule for disclosures relating to adverse action notices provided in connection with business credit has been removed because the E-Sign Act's consumer consent requirements do not apply to business credit. The special rules for disclosures relating to appraisal reports and the collection of monitoring information are addressed in § 202.4(d)(2) of the proposed rule.

Sections 202.16(d) and (e) of the interim final rule address specific timing and delivery requirements for electronic disclosures under Regulation B, such as the requirement to send disclosures to an applicant's e-mail address (or post the disclosures on a Web site and send a notice alerting the applicant to the disclosures). The Board no longer believes that these additional provisions are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers in connection with online services, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices in all cases. In addition, the Board has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, creditors would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require creditors to maintain disclosures posted on a Web site for at least 90 days as provided in the 2001 interim final rule for several reasons. The Board believes that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of disclosure, and is reluctant to establish specific time periods depending on the disclosures. Nevertheless, while the Board is not proposing to require disclosures to be maintained on an Internet Web site for any specific time period, the general requirements of Regulation B continue to apply to electronic disclosures, such as the requirement to provide certain disclosures to consumers at specified times and in a form that the consumer may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 202.16(d) of the 2001 interim final rule is needed to ensure that creditors satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor creditors' electronic disclosure practices with regard to the ability of applicants to retain certain Regulation B disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 202.16 of the interim final rule provides guidance on the provisions set forth in § 202.16 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a Web site for 90 days. As noted above, because the Board is proposing to delete § 202.16 of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

Section 202.17 Enforcement, penalties, and liabilities

The Board proposes to redesignate § 202.17 as § 202.16 concurrent with the deletion of current § 202.16, as discussed above. No changes would be made to the substance of the provision. The Board is also proposing to redesignate the provisions of § 202.17 of the official staff commentary as § 202.16, with a conforming, non-substantive revision.

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on

[3] The requirements for electronic communication were initially adopted in § 202.17. In the Board's comprehensive review of Regulation B, this provision was renumbered as § 202.16. (68 FR 13144, March 18, 2003.)

whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing revisions to Regulation B to withdraw the 2001 interim final rule on electronic communication and to allow creditors to provide certain disclosures to applicants in electronic form on or with an application that is accessed by the applicant in electronic form without regard to the consumer consent and other provisions of the E-Sign Act. The Board is also proposing to clarify that other Regulation B disclosures may be provided to applicants in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

ECOA was enacted to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, age, the fact that all or part of the applicant's income derives form a public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The primary objective of ECOA is to prohibit creditors from discriminating against any applicant on any of these grounds with respect to any aspect of a credit transaction. 15 U.S.C. 1691(a). ECOA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1691b(a)(1). The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to carry out the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act].'' 15 U.S.C. 1691b(a)(1). The Board believes that the proposed revisions to Regulation B discussed above are within the Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Small entities affected by the proposal.* The ability to provide application-related disclosures in electronic form on or with an application that is accessed by the applicant in electronic form applies to all creditors, regardless of their size. Accordingly, the proposed revisions would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this proposal is unknown.

3. *Other federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation B.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR 202. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0201.

Section 703(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691b(a)(1)) authorizes the Board to issue regulations to carry out the provisions of the Act. This information collection is mandatory. The purpose of the Act is to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance income, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)).

Regulation B applies to all types of creditors, not just State member banks. However, under the Paperwork Reduction Act, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. Appendix A of Regulation B defines these creditors as State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden for the institutions they supervise. Creditors are required to retain records for 12 to 25 months as evidence of compliance. The annual burden is estimated to be 165,630 hours for the 1,172 Federal Reserve-regulated creditors that are respondents for purposes of the PRA.

As mentioned in the Preamble, new § 202.4(d)(2) would be added to clarify the disclosure requirements in §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), 202.13, and 202.14. The Federal Reserve estimates that 200 respondents would take approximately 1 minute per transaction to comply with the existing disclosures requirements in §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), and estimates the annual burden to be 8,350 hours; 1,172 respondents would take approximately .50 minutes per transaction to comply with the existing disclosures requirements in § 202.13 and estimates the annual burden to be 3,502 hours. 1,172 respondents would take approximately 5.25 minutes per transaction to comply with the existing disclosures requirements in § 202.14 and estimates the annual burden to be 26,613 hours. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: a. whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has

practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation B. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation B, 12 CFR part 202, as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.4 would be amended by revising paragraph (d) to read as follows:

§ 202.4 General rules.

* * * * *

(d) *Form of disclosures*[.]►—(1) *General rule.*◄ A creditor that provides in writing any disclosures or information required by this regulation must provide the disclosures in a clear and conspicuous manner and, except for the disclosures required by §§ 202.5 and 202.13, in a form the applicant may retain.

►(2) *Disclosures in electronic form.* The disclosures required by this part that are required to be given in writing may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Where the disclosures under §§ 202.5(b)(1), 202.5(b)(2), 202.5(d)(1), 202.5(d)(2), 202.13, and 202.14(a)(2)(i) accompany an application accessed by the applicant in electronic form, these disclosures must be provided to the applicant in electronic form on or with the application form. These disclosures may be made in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.◄

* * * * *

3. Section 202.9 would be amended by removing paragraph (h), to read as follows:

§ 202.9 Notifications.

* * * * *

[(h) *Duties of third parties.* A third party may use electronic communication in accordance with the requirements of § 202.16, as applicable, to comply with the requirements of paragraph (g) of this section on behalf of a creditor.]

4. Section 202.16 would be removed.

5. Section 202.17 would be redesignated as § 202.16.

6. In Supplement I to Part 202, the following amendments would be made:

a. In *Section 202.4—General Rules*, under *(4)(d) Form of Disclosures*, new paragraph 2. would be added.

b. Section 202.16 would be removed;

c. Section 202.17 would be redesignated as § 202.16.

The amendments to read as follows:

* * * * *

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.4—General Rules

* * * * *

(4)(d) Form of Disclosures

* * * * *

►2. *Electronic form of disclosures.* If a consumer accesses an application in electronic form, the disclosures required to accompany the application must be provided to the consumer in electronic form on or with the application; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application, the disclosures must be provided in paper form on or with the application. For example, if a consumer receives an application in the mail, the creditor would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the application to the web site where the disclosures are located.◄

* * * * *

Section 202.[17]►16◄—Enforcement, Penalties, and Liabilities

[17]►16◄(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively.

By order of the Board of Governors of the Federal Reserve System.

Dated: April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7875 Filed 4–27–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1282]

Electronic Fund Transfer

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act, to withdraw the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act. Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the *Code of Federal Regulations* would reduce confusion about the status of the provisions and simplify the regulation. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1282, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems, and to provide individual consumer rights. The Board's Regulation E (12 CFR part 205) implements the EFTA. Examples of types of transfers covered by the EFTA and Regulation E include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The EFTA and Regulation E require financial institutions to provide certain disclosures to consumers in writing, including but not limited to initial disclosures of terms and conditions of an EFT service, documentation of EFTs by means of terminal receipts and periodic account activity statements, and change in terms notices. Certain persons other than financial institutions are also required to comply with specific disclosure provisions of Regulation E.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528, March 25, 1998) and similar proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14552, 14538, 14548, and 14533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49846, September 14, 1999). While these rulemakings were pending, Federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulations B, E, M, Z and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

On April 4, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation E (66 FR 17,786). Similar interim final rules for Regulations B, M, Z, and DD were published on March 30, 2001 (66 FR 17322 (M) and 17329 (Z)), and April 4, 2001 (66 FR 17779 (B) and 17795 (DD)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Financial institutions and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation E established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the consumer, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, financial institutions would have to provide a notice to consumers alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Financial institutions also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations B, M, Z, and DD.

Commenters on the interim final rules identified significant operational and security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers do not have e-mail addresses or may not want personal financial information sent to them by e-mail. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41439, August 8, 2001.) Thus, institutions are

not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation E and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) adding certain provisions to provide guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the **Federal Register**, under Regulations B, M, Z, and DD.)

Because compliance with the 2001 interim final rules is not mandatory, removing this material from the *Code of Federal Regulations* would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. Certain provisions in the interim final rules, including provisions addressing foreign language disclosures, were not affected by the lifting of the mandatory compliance date and accordingly are now in final form; these provisions would not be deleted.

Since 2001, industry and consumers have gained experience with electronic disclosures. During that period, the Board has received no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board has also reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and ''phishing'' (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. The Board is proposing to eliminate certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

Finally, the Board is proposing to delete, as unnecessary, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures because the E-Sign Act is a self-effectuating statute. The Board is issuing the proposed rules pursuant to its authority under section 904 of the EFTA to prescribe rules to carry out the purposes of the Act. The proposed revisions to Regulation E and the official staff commentary are described more fully below in the Section-by-Section Analysis.

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions contained in the 2001 interim final rule.

III. Section-by-Section Analysis

12 CFR Part 205 (Regulation E)

Section 205.4 General Disclosure Requirements; Jointly Offered Services

Section 205.4 contains the general disclosure requirements under Regulation E, including provisions relating to the form of disclosure. Section 205.4(a)(1) generally requires financial institutions to provide disclosures in writing and in a form that the consumer may keep. The Board proposes to revise § 205.4(a)(1) to clarify that institutions may provide disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some institutions may provide disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those institutions, the duplicate electronic form of the disclosures may be provided to consumers without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 205.4(c) in the 2001 interim final rule refers to § 205.17, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is proposing to delete § 205.17, as discussed further below, the Board also proposes to delete § 205.4(c). Sections 205.4(d) (multiple accounts and account holders) and (e) (services offered jointly) would be renumbered as §§ 205.4(c) and (d) respectively.

Section 205.17 Requirements for Electronic Communication

Section 205.17 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board proposes to delete § 205.17 from Regulation E and the accompanying sections of the staff commentary, reserving that section for future use.

In the interim rule, § 205.17(a) defines the term ''electronic communication'' to mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 205.17(a) would not change applicable legal requirements under the E-Sign Act.

Section 205.17(b) incorporates by reference the provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form. The deletion of this provision would have no impact on the general applicability of the E-Sign Act to Regulation E disclosures. Section 205.17(e) was added in the 2001 interim final rule to clarify that persons, other than financial institutions, that are required to comply with the regulation may use electronic disclosures. The Board is proposing to delete this provision as unnecessary because the E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions set forth in the Act.

Sections 205.17(c) and (d) address specific timing and delivery requirements for electronic disclosures under Regulation E, such as the requirement to send disclosures to a consumer's e-mail address (or post the disclosures on a website and send a notice alerting the consumer to the disclosures). The Board no longer believes that these additional provisions are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers in connection with online services, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices in all cases. In addition, the Board has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted,

institutions would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require institutions to maintain disclosures posted on a web site for at least 90 days as provided in the 2001 interim final rule for several reasons. First, based on a review of industry practices, it appears that many institutions maintain disclosures posted on an Internet Web site for several months, and, in a number of cases, for more than a year. For example, it appears that institutions that offer online periodic statements to consumers typically make those statements available without charge for six months or longer in electronic form. This practice has developed even though Regulation E does not currently require institutions to maintain disclosures for any specific period of time. Second, the Board believes that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of disclosure, and is reluctant to establish specific time periods depending on the disclosures. Nevertheless, while the Board is not proposing to require disclosures to be maintained on an Internet Web site for any specific time period, the general requirements of Regulation E continue to apply to electronic disclosures, such as the requirement to provide disclosures to consumers at certain specified times and in a form that the consumer may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 205.17(c) of the 2001 interim final rule is needed to ensure that institutions satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor institutions' electronic disclosure practices with regard to the ability of consumers to retain Regulation E disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 205.17 of the interim final rule provides guidance on the provisions set forth in § 205.17 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a Web site for 90 days. As noted above, because the Board is proposing to delete § 205.17 of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing revisions to Regulation E to withdraw the 2001 interim final rule on electronic communication. The Board is also proposing to clarify that Regulation E disclosures may be provided to consumers in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The primary purpose of the act is the provision of individual consumer rights. 15 U.S.C. 1593. The EFTA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1693b. The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to carry out the purposes of [the Act], to prevent circumvention or evasion [of the act], or to facilitate compliance [with the Act].'' 15 U.S.C. 1693b(c). The Board believes that the revisions to Regulation E discussed above are within the Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Small entities affected by the proposal.* The proposed revisions would delete provisions of Regulation E that are not in effect on a mandatory basis and, accordingly, the proposed revisions would not change the legal requirements applicable to any financial institutions, regardless of their size. Therefore, the proposed revisions would not have a significant economic impact on small entities. The number of small entities affected by this proposal is unknown.

3. *Other federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation E.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 205. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0200.

Section 904 of the Electronic Fund Transfer Act (EFTA) (15 U.S.C. § 1693b) authorizes the Board to issue regulations to carry out the purposes of the Act. This information collection is mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 552 (b)(4), (6), and (8)). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer.

The EFTA and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. These disclosures are triggered by certain events specified in the EFTA and Regulation E. Institutions are required to retain evidence of compliance for not less than two years from the date that disclosures are required to be made or action is required to be taken; however, the regulation does not specify the types of records that must be retained. To ease institutions' burden and cost of complying with the disclosure requirements of Regulation E (particularly for small entities), the Federal Reserve publishes model forms and disclosure clauses. Regulation E applies to all financial institutions and merchants and payees that engage in ECK transactions. The Board has determined that no new requirements or revisions to existing requirements are contained in this proposed rule.

Comments are invited on: a. Whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation E. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

2. Section 205.4 would be amended by revising paragraph (a)(1), removing paragraph (c), and redesignating paragraph (d) as paragraph (c), and paragraph (e) as paragraph (d), respectively, as follows:

§ 205.4 General disclosure requirements; jointly offered services.

(a)(1) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep. ►The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act)(15 U.S.C. 7001 *et seq.*).◄ A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

* * * * *

[(c) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 205.17.**]**

[(d)**]** ►(c)◄ *Multiple accounts and account holders*—(1) *Multiple accounts.* A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, a financial institution need provide only one set of required disclosures and may provide them to any of the account holders.

[(e)**]** ►(d)◄ *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by §§ 205.7 and 205.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.

§ 205.17 [Removed and Reserved]

3. Section 205.17 would be removed and reserved.

4. In Supplement I to Part 205, Section 205.17 would be removed and reserved.

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. E7–7876 Filed 4–27–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1283]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation M, which implements the Consumer Leasing Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the *Code of Federal Regulations* would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation M to provide that when an advertisement is accessed by a consumer in electronic form, certain disclosures must be provided to the consumer in electronic form on or with the advertisement, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1283, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide lessees with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act. The Board's Regulation M (12 CFR part 213) implements the act. The CLA and Regulation M require disclosures to be provided in writing.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528, March 25, 1998) and proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14552, 14538, 14548, and 14533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49846, September 14, 1999). While these rulemakings were pending, federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulations B, E, M, Z, and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation M (66 FR 17322). Similar interim final rules for Regulations B, E, Z, and DD were published on March 30, 2001 (66 FR 17329 (Z)) and April 4, 2001 (66 FR 17779 (B), 66 FR 17786 (E), and 66 FR 17795 (DD)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Lessors, financial institutions, creditors, and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation M established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the lessee, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, lessors would have to provide a notice to lessees alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow lessees adequate time to access and retain the information. Lessors also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations B, E, Z, and DD.

Commenters on the interim final rules identified significant operational and information security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41439,

August 8, 2001.) Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation M and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the **Federal Register**, under Regulations B, E, Z, and DD.)

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the *Code of Federal Regulations,* while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. The Board is proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final rules in order to enhance the ability of consumers to shop for leases online, minimize the information-gathering burdens on consumers, and provide guidance or eliminate a substantial burden on the use of electronic disclosures, as discussed further below.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, the Board has received no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and ''phishing'' (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is proposing to eliminate certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

The 2001 interim final rule allowed lessors to provide certain disclosures to lessees electronically, without regard to the consumer consent or other provisions of the E-Sign Act, for disclosures provided on or with an electronic advertisement. The Board reasoned that these disclosures, which would be available to the general public while shopping for a lease, did not ''relate to a transaction,'' which is a prerequisite for triggering the E-Sign consumer consent provisions, and thus were not subject to those provisions. Some commenters on the interim final rules did not agree with the Board's rationale. Upon further consideration, the Board does not believe it is necessary to determine whether or not these disclosures are related to a transaction. This proposal does not make such determinations.

Instead, pursuant to the Board's authority under section 187 of the CLA, as well as under section 104(d) of the E-Sign Act,[1] the Board is proposing to specify the circumstances under which certain disclosures may be provided to a lessee in electronic form, rather than in writing as generally required by Regulation M, without obtaining the lessee's consent under section 101(c) of the E-Sign Act. The proposed rule would also amend Regulation M, as discussed in detail below, to provide that certain disclosures must be provided to a consumer in electronic form on or with an advertisement that is accessed by the consumer in electronic form.

The Board continues to believe that lessors should not be required to obtain the consumer's consent in order to provide advertising disclosures to the consumer in electronic form if the consumer accesses the advertisement containing those disclosures in electronic form, such as at an Internet Web site. The Board believes consumers would not be harmed, and in fact would benefit, by having timely access to advertising disclosures in electronic form when they are viewing online lease advertising. The Board also believes that consumers' ability to shop for leases online and compare the terms of various lease offers could be substantially diminished if consumers had to consent in accordance with the E-Sign Act in order to access advertisements that must be accompanied by disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to gather information and shop for leases.

At the same time, the Board recognizes that consumers who shop or apply for leases online may not want to receive other disclosures electronically. Therefore, with respect to the disclosures required prior to the consummation of a lease, lessors would be required to provide written disclosures or obtain the lessee's consent in accordance with the E-Sign Act to provide the disclosures in electronic form.

Finally, the Board is proposing to delete, as unnecessary, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures because the E-Sign Act is a self-effectuating statute. The proposed revisions to Regulation M and the official staff commentary are described more fully below in the Section-by-Section Analysis.

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

III. Section-by-Section Analysis

12 CFR Part 213 (Regulation M)

Section 213.3 General Disclosure Requirements

Section 213.3(a) generally requires lessors to provide disclosures in writing and in a form that the lessee may keep. The Board proposes to revise § 213.3(a) to clarify that lessors may provide disclosures to lessees in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some lessors may provide disclosures to

[1] Section 187 of CLA provides that regulations prescribed by the Board under CLA ''may provide for adjustments and exceptions * * * as the Board considers appropriate.'' Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, ''if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.'' For the reasons stated in this **Federal Register** notice, the Board believes that these criteria are met in the case of the advertising disclosures. In addition, the Board believes CLA section 187 authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

lessees both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those lessors, the duplicate electronic form of the disclosures may be provided to lessees without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 213.3(a) would also be revised to provide that the advertising disclosures required by § 213.7 must be provided to the consumer in electronic form if the consumer accesses the advertisement electronically. Under those circumstances, those disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The Board believes that, for an advertisement accessed by the consumer in electronic form, permitting lessors to provide lease advertising disclosures in electronic form without regard to the consumer consent and other provisions of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate shopping for leases by enabling consumers to receive important disclosures at the same time they access an advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online advertisement is potentially burdensome and could discourage consumers from shopping for leases online. Moreover, because these consumers are viewing the advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Section 213.3(a)(5) in the 2001 interim final rule refers to § 213.6, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is proposing to delete § 213.6, as discussed further below, the Board also proposes to delete § 213.3(a)(5).

Section 213.6 Electronic Communication

Section 213.6 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board proposes to delete § 213.6 from Regulation M and the accompanying sections of the staff commentary, reserving that section for future use.

In the interim rule, § 213.6(a) defines the term ''electronic communication'' to mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 213.6(a) would not change applicable legal requirements under the E-Sign Act.

Sections 213.6(b) and (c) incorporate by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form and the requirement to obtain the lessee's affirmative consent before providing such disclosures. The deletion of these provisions will have no impact on the general applicability of the E-Sign Act to Regulation M disclosures.

Sections 213.6(d) and (e) address specific timing and delivery requirements for electronic disclosures under Regulation M, such as the requirement to send disclosures to a lessee's e-mail address (or post the disclosures on a Web site and send a notice alerting the lessee to the disclosures). The Board no longer believes that these additional provisions are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices. In addition, the Board has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, lessors would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require lessors to maintain disclosures posted on a Web site for at least 90 days as provided in the 2001 interim final rule. While the Board is not proposing to require disclosures to be maintained on an Internet Web site for any specific time period, the general requirements of Regulation M continue to apply to electronic disclosures, such as the requirement to provide disclosures to lessees at a specified time and in a form that the lessee may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 213.6(d) of the 2001 interim final rule is needed to ensure that lessors satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor lessors' electronic disclosure practices with regard to the ability of lessees to retain Regulation M disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 213.6 of the interim final rule provides guidance on the provisions set forth in § 213.6 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a Web site for 90 days. As noted above, because the Board is proposing to delete § 213.6 of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

Section 213.7 Advertising

Section 213.7 contains requirements for lease advertisements and requires that if an advertisement includes certain ''trigger terms'' (such as the payment amount), the advertisement must also include certain required disclosures (such as the total amount due prior to or at consummation and a statement that an extra charge may be imposed at the end of the lease term).

Section 213.7(c) relates to catalogs and other multipage advertisements and (under this proposal) to electronic advertisements. The Board is proposing to add a new comment 7(c)–3 to clarify that if a consumer accesses a lease advertisement in electronic form, the disclosures required on or with the advertisement must be provided to the consumer in electronic form on or with the advertisement. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the lessor would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.

Section 213.7(c) provides that in a catalog or other multipage

advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. The 2001 interim final rule clarified, in comment 7(c)–2, that the multipage rule for lease advertising also applies to advertisements in electronic form. For example, if a ''trigger term'' appears on a particular web page, the additional disclosures may appear in a table or schedule on another web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). The Board proposes to retain the rule allowing the use of links or other cross-references in electronic credit advertisements to provide guidance on how the advertising rules apply to Web sites, by amending § 213.7(c), as well as by retaining comment 7(c)–2 with minor wording changes.

Section 213.7(b)(1) requires that any affirmative or negative reference to a charge that constitutes part of the total amount due prior to or at consummation of the lease not be more prominent in the advertisement than the disclosure of the total amount due. In the 2001 interim final rule, comment 7(b)(1)–3 was added to state that in an advertisement using electronic communication, both the reference to the charge and the disclosure of the total amount due must appear in the same location so that they can be viewed simultaneously. Section 213.7(b)(2) requires that a percentage rate in an advertisement not be more prominent than any of the required disclosures, except for a notice required to accompany the rate under § 213.4(s). The interim final rule revised comment 7(b)(2)–1 to state that in an advertisement using electronic communication, both the rate and the accompanying notice must appear in the same location so that they can be viewed simultaneously, and that this requirement is not satisfied by the use of a link that connects the consumer to information appearing at another location.

The Board proposes to delete comment 7(b)(1)–3, and to delete the language added to comment 7(b)(2)–1 by the interim final rule, as unnecessary. The prominence requirements of § 213.7(b) continue to apply to electronic advertisements no less than to advertisements in other media. Requiring the consumer to scroll to another part of the page, or access a link, in order to view the required disclosures would likely not satisfy this requirement.

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing revisions to Regulation M to withdraw the 2001 interim final rule on electronic communication and to allow lessors to provide certain disclosures to lessees in electronic form on or with an advertisement that is accessed by the lessee in electronic form without regard to the consumer consent and other provisions of the E-Sign Act. The Board is also proposing to clarify that other Regulation M disclosures may be provided to lessees in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

The purpose of CLA is to assure a meaningful disclosure of the terms of consumer leases, so that the lessee can compare more readily the various lease terms available, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and assure meaningful and accurate disclosures of lease terms in advertisements. 15 U.S.C. 1601. CLA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a), 1667f. The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * *, as in the judgment of the Board are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion of [the Act], or to facilitate compliance with [the Act].'' 15 U.S.C. 1604(a). The Board believes that the revisions to Regulation M discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate the informed use of leases by consumers in circumstances where a consumer accesses a lease advertisement in electronic form.

2. *Small entities affected by the proposal.* The ability to provide advertising disclosures in electronic form on or with an advertisement that is accessed by the consumer in electronic form applies to all lessors, regardless of their size. Accordingly, the proposed revisions would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this proposal is unknown.

3. *Other federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation M.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 213. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0202.

Sections 105(a) and 187 of TILA (15 U.S.C. 1604(a) and 1667f) authorize the Board to issue regulations to carry out the provisions of the Consumer Leasing Act (CLA). The CLA and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal

property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised. This information collection is mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event the Board were to retain records regarding consumer leases during the course of an examination, the information regarding the consumer and the lease would be kept confidential pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 522(b)(8)).

Regulation M applies to all types of lessors of personal property. The Federal Reserve accounts for the paperwork burden associated with the regulation only for Federal Reserve-supervised institutions. Appendix B of Regulation M defines the Federal Reserve-supervised institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden on other lessors for which they have administrative enforcement authority. To ease the compliance cost (particularly for small entities) model forms are appended to the regulation. Lessors are required to retain evidence of compliance for twenty-four months, but the regulation does not specify types of records that must be retained.

The estimated annual burden for the entities supervised by the Federal Reserve is approximately 3,534 hours for the 270 State member banks that engage in consumer leasing. As mentioned in the Preamble, § 213.3 would be revised to clarify the disclosure requirements in §§ 213.4 and 213.7. The Federal Reserve estimates that 270 respondents would take approximately 6.5minutes per transaction to comply with the existing disclosure requirements in § 213.4 and estimates the annual burden to be 3,509 hours. The Federal Reserve estimates that 15 respondents would take approximately 2.5 minutes per transaction to comply with the existing disclosure requirements in § 213.7 and estimates the annual burden to be 25 hours. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: a. Whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation M. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f.

2. Section 213.3 would be amended by revising paragraph (a) introductory text and removing paragraph (a)(5), to read as follows:

§ 213.3 General disclosure requirements.

(a) *General requirements.* A lessor shall make the disclosures required by § 213.4, as applicable. The disclosures shall be made clearly and conspicuously in writing in a form the consumer may keep, in accordance with this section. ►The disclosures required by this part may be provided to the lessee in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*). For an advertisement accessed by the consumer in electronic form, the disclosures required by § 213.7 must be provided to the consumer in electronic form on or with the advertisement. The § 213.7 disclosures may be made in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.◄

* * * * *

[(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 213.6.**]**

§ 213.6 [Removed and Reserved]

3. Section 213.6 would be removed and reserved.

4. Section 213.7 would be amended by revising paragraph (c), to read as follows:

§ 213.7 Advertising.

* * * * *

(c) *Catalogs or other multipage advertisements* ►*; electronic advertisements*◄*. A catalog or other multipage advertisement* ►*, or an electronic advertisement (such as an advertisement appearing on an Internet Web site),*◄ *that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.*

5. In Supplement I to Part 213, the following amendments would be made:

a. Section 213.6 would be removed and reserved.

b. In *Section 213.7—Advertising*, under *7(b)(1) Amount Due at Lease Signing or Delivery*, paragraph 3. would be removed.

c. In *Section 213.7—Advertising*, under *7(b)(2) Advertisement of a Lease Rate*, paragraph 1., the last two sentences would be removed.

d. In *Section 213.7—Advertising*, under *7(c) Catalogs or Other Multipage Advertisements; Electronic Advertisements*, paragraph 2. would be revised and new paragraph 3. would be added.

The amendments read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

Section 226.7—Advertising

* * * * *

7(b)(1) Amount Due at Lease Signing or Delivery

* * * * *

[3. *Electronic advertisements.* For advertisements using electronic communication, to satisfy the prominence rule in § 213.7(b)(1), both the triggering terms and the required disclosures must appear in the same location so that they can be viewed simultaneously.]

7(b)(2) Advertisement of a Lease Rate

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any other § 213.4 disclosure stated in the advertisement. [For advertisements using electronic communication, to comply with proximity rule in, both the rate and the accompanying notice must appear in the same location so that they can be viewed simultaneously. The prominent rule in § 213.7(b)(2) is not met if the disclosures can be viewed only by use of a link that connects the consumer to the information appearing at another location.]

7(c) Catalogs or Other Multipage Advertisements; Electronic Advertisements

* * * * *

2. *Cross references.* A catalog or other multiple-page advertisement or an electronic advertisement ►(such as an advertisement appearing on an Internet web site)◄ is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2)(i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information [(but see comments under § 213.7(b) about rules regarding the prominence of disclosures)].

►3. *Electronic form of disclosures.* For an advertisement that is accessed by the consumer in electronic form (such as an advertisement appearing on an Internet web site), the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement. Providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located.◄

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7877 Filed 4–27–07; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1284]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation Z, which implements the Truth in Lending Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the *Code of Federal Regulations* would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation Z to provide that when an application, solicitation, or advertisement is accessed by a consumer in electronic form, certain disclosures must be provided to the consumer in electronic form on or with the application, solicitation, or advertisement, and that in these circumstances the consumer consent and other provisions of the E-Sign Act do not apply. The proposal would also implement certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1284, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to promote the informed use of credit and assist in shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings. TILA and Regulation Z require a number of disclosures to be provided in writing.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19,696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and proposals under Regulations B (Equal

Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49,688, 49,699, 49,713, 49,722 and 49,740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49,846, September 14, 1999). While these rulemakings were pending, Federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulations B, E, M, Z, and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation Z (66 FR 17,329). Similar interim final rules for Regulations B, E, M, and DD were published on March 30, 2001 (66 FR 17,322 (M)) and April 4, 2001 (66 FR 17,779 (B), 66 FR 17,786 (E), and 66 FR 17,795 (DD)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Creditors and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation Z established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the consumer, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, creditors would have to provide a notice to consumers alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Creditors also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations B, E, M, and DD.

Commenters on the interim final rules identified significant operational and information security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41,439, August 8, 2001). Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation Z and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the **Federal Register**, under Regulations B, E, M, and DD). In addition, the proposal would amend the regulation to implement certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act.

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the *Code of Federal Regulations*, while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. Certain provisions in the interim final rules, including provisions addressing foreign language disclosures, were not affected by the lifting of the mandatory compliance date and accordingly are now in final form; these provisions would not be deleted. The Board is also proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final rules in order to enhance the ability of consumers to shop for credit online, minimize the information-gathering burdens on consumers, and provide guidance or eliminate a substantial burden on the use of electronic disclosures, as discussed further below. Finally, the Board is proposing to implement certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109–8, 119 Stat. 23 (the ''Bankruptcy Act''), that amend TILA and relate to electronic disclosures.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, the Board has received no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and ''phishing'' (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is proposing to eliminate certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

The 2001 interim final rule allowed creditors to provide certain disclosures to consumers electronically, without regard to the consumer consent or other provisions of the E-Sign Act, for disclosures provided on or with an application or solicitation (the ''shopping disclosures'') or an advertisement. The Board reasoned that these disclosures, which would be available to the general public while shopping for credit, did not ''relate to a transaction,'' which is a prerequisite for triggering the E-Sign consumer consent provisions, and thus were not subject to those provisions. Some commenters on the interim final rules did not agree with the Board's rationale. Upon further consideration, the Board does not believe it is necessary to determine whether or not these disclosures are related to a transaction. This proposal does not make such determinations.

Instead, pursuant to the Board's authority under section 105(a) of TILA, as well as under section 104(d) of the E-Sign Act,[1] the Board is proposing to specify the circumstances under which certain disclosures may be provided to a consumer in electronic form, rather than in writing as generally required by Regulation Z, without obtaining the consumer's consent under section 101(c) of the E-Sign Act. The proposed rule would also amend various sections of Regulation Z, discussed in detail below, to clarify that certain disclosures must be provided to the consumer in electronic form on or with an application, solicitation, or advertisement that is accessed by the consumer in electronic form.

The Board continues to believe that creditors should not be required to obtain the consumer's consent in order to provide shopping or advertising disclosures to the consumer in electronic form if the consumer accesses an application, solicitation, or advertisement containing those disclosures in electronic form, such as at an Internet Web site. The Board believes consumers would not be harmed, and in fact would benefit, by having timely access to shopping and advertising disclosures in electronic form when they are shopping for credit online or viewing online credit advertising. Conversely, consumers who choose to apply for credit online would be unduly burdened if they had to consent in accordance with the E-Sign Act in order to access application forms that must be accompanied by disclosures. The Board also believes that consumers' ability to shop for credit online and compare the terms of various credit offers could be substantially diminished if consumers had to consent in accordance with the E-Sign Act in order to access solicitations and advertisements that must be accompanied by disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to gather information and shop for credit.

At the same time, the Board recognizes that consumers who shop or apply for credit online may not want to receive other disclosures electronically. Therefore, with respect to, for example, account-opening disclosures, periodic statements, and change-in-terms notices, creditors would be required to provide written disclosures or obtain the consumer's consent in accordance with the E-Sign Act to provide such disclosures in electronic form.

Finally, the Board is proposing to delete, as unnecessary, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures because the E-Sign Act is a self-effectuating statute. The proposed revisions to Regulation Z and the official staff commentary are described more fully below in the Section-by-Section Analysis.

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

III. Section-by-Section Analysis

12 CFR Part 226 (Regulation Z)

Subpart B Open-End Credit

Section 226.5 General Disclosure Requirements

Section 226.5(a) prescribes the form of disclosures required for open-end credit plans. Section 226.5(a)(1) generally requires creditors to provide open-end credit disclosures in writing and in a form that the consumer may keep. The Board proposes to revise § 226.5(a)(1) to clarify that creditors may provide open-end credit disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some creditors may provide open-end credit disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the open-end credit disclosures may be provided to consumers without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's open-end credit disclosure requirements.

Section 226.5(a)(1) would also be revised to provide that the open-end credit disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act. The Board believes that, for an application, solicitation, or advertisement accessed by the consumer in electronic form, permitting creditors to provide credit and charge card application and solicitation disclosures, application disclosures for home equity lines of credit (HELOCs), and open-end credit advertising disclosures in electronic form without regard to the consumer consent and other provisions

[1] Section 105(a) of TILA provides that regulations prescribed by the Board under TILA ''may provide for such adjustments and exceptions * * * as in the judgment of the Board, are necessary or proper to effectuate the purposes of [TILA], * * * or to facilitate compliance [with the requirements of TILA].'' Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, ''if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.'' For the reasons stated in this **Federal Register** notice, the Board believes that these criteria are met in the case of the application, solicitation, and advertising disclosures. In addition, the Board believes TILA section 105(a) authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate shopping for credit by enabling consumers to receive important disclosures at the same time they access an application, solicitation, or advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online application, solicitation, or advertisement, or complete an online application is potentially burdensome and could discourage consumers from shopping for credit online. Moreover, because these consumers are viewing the application, solicitation, or advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Section 226.5(a)(5) in the 2001 interim final rule refers to § 226.36, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is proposing to delete § 226.36, as discussed further below, the Board also proposes to delete § 226.5(a)(5).

The 2001 interim final rule revised comment 5(b)(2)(ii)–3 to reference the E-Sign Act's consumer consent requirements. The Board proposes to delete this language as unnecessary because the E-Sign Act is a self-effectuating statute.

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(a) General Rules

Section 226.5a(a)(2) prescribes the form of disclosures required with credit and charge card applications and solicitations. The Board proposes to amend § 226.5a(a)(2) by adding a new paragraph (v) to provide that if a consumer accesses an application or solicitation for a credit or charge card in electronic form, the disclosures required on or with an application or solicitation for a credit or charge card must be provided to the consumer in electronic form on or with the application or solicitation. A consumer accesses an application or solicitation in electronic form when, for example, the consumer views the application or solicitation on his or her home computer. On the other hand, if a consumer receives an application or solicitation in the mail, the creditor would not satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the Web site where the disclosures are located. Comment 5a(a)(2)–9 would be added to clarify this point.

Comment 5a(a)(2)–8 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. The Board proposes to revise this comment to describe alternative methods for presenting electronic disclosures, which are examples rather than an exhaustive list. Comment 5a(a)(2)–2.ii., which was added in 2000, specifies how the tabular disclosures required by § 226.5a can be ''prominently located'' if provided on or with electronic applications and solicitations, and is similar to revised comment 5a(a)(2)–8. Revised comment 5a(a)(2)–8 reminds creditors that for disclosures required to be provided in tabular form, the electronic form of the table must satisfy the requirements of comment 5a(a)(2)–2.ii.

Section 1304 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109–8, 119 Stat. 23 (the ''Bankruptcy Act''), amends Section 127(c) of TILA to require that credit card application and solicitation disclosures provided ''using the Internet or other interactive computer service'' must be ''readily accessible to consumers in close proximity'' to the solicitation. 15 U.S.C. 1637(c)(7). In connection with the Board's ongoing review of Regulation Z, the Board issued an Advance Notice of Proposed Rulemaking (70 FR 60235, October 17, 2005) (October 2005 ANPR), soliciting comments on how these Bankruptcy Act amendments should be implemented.

The Bankruptcy Act provision applies to solicitations to open a card account ''using the Internet or other interactive computer service.'' The term ''Internet'' is defined as the international computer network of both Federal and non-Federal interoperable packet switched data networks. The term ''interactive computer service'' is defined as any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions. 15 U.S.C. 1637(c)(7). Based on the definitions of ''Internet'' and ''interactive computer service,'' the Board believes that Congress intended to cover all card offers that are provided to consumers in electronic form. In the October 2005 ANPR, the Board solicited comment on what guidance the Board should provide regarding when disclosures are ''readily accessible to consumers in close proximity'' to an application or solicitation that is made in electronic form. In particular, the Board asked whether additional or different guidance is needed from the guidance previously issued by the Board.

Most commenters stated that the Board should retain the existing guidance in comment 5a(a)(2)–2.ii on ''prominent location'' to interpret the ''close proximity'' standard. A few commenters stated that the 2000 guidance should not apply, and that, for example, it should suffice to provide a link to the disclosures that the consumer could choose to access or not. Some commenters urged the Board generally to allow maximum flexibility to creditors regarding the display of electronic disclosures, and stated that no guidance or specific rules were necessary.

The Board intends to interpret the Bankruptcy Act's ''close proximity'' standard in its ongoing review of the credit card provisions of Regulation Z. Based on comments received on the October 2005 ANPR, the Board is considering how to apply the ''close proximity'' standard to electronic applications and solicitations, including whether to retain the existing guidance in comment 5a(a)(2)–2.ii. The Board anticipates issuing a proposal addressing these and other Regulation Z issues within the next few months.

5a(b) Required Disclosures

5a(c) Direct-Mail and Electronic Applications and Solicitations

Section 226.5a(b)(1) sets forth rules for accuracy of the annual percentage rate (APR) disclosure in an application or solicitation for a variable-rate credit card plan. Section 226.5a(b)(1)(ii) provides, in part, that direct mail APR disclosures are accurate if the rate was in effect within 60 days before mailing the disclosures. The 2001 interim final rule added a new § 226.5a(b)(1)(iii) to provide that, in the case of electronic disclosures, the variable APR disclosure is considered accurate if the disclosed rate was in effect within 30 days before the disclosure was sent by electronic mail to a consumer or made available at another location, such as the card issuer's Internet Web site, and amended § 226.5a(b)(1)(ii) to reference the new section. Preparing revised electronic disclosures when the index rate for a variable APR changes should require less time than revising printed materials in preparation for a direct mail

campaign. Thus, specifying a shorter time frame for accuracy of electronic disclosures than for printed disclosures appeared reasonable. The 2001 interim final rule did not contain specific guidance on accuracy requirements for other disclosures provided electronically, such as fee disclosures.

Section 226.5a(c) requires that certain disclosures be included on or with a credit card application or solicitation that is sent to consumers by direct mail. The 2001 interim final rule revised § 226.5a(c) to apply the direct mail rules to applications and solicitations provided to consumers electronically.

More recently, section 1304 of the Bankruptcy Act amended Section 127(c) of TILA to require that solicitations to open a card account using the Internet or other interactive computer service must contain the same disclosures as those made for applications or solicitations sent by direct mail. Although this Bankruptcy Act provision refers to credit card solicitations (where no application is required), the Board requested comment in the October 2005 ANPR on whether the provision should be interpreted also to include applications provided electronically. Almost all commenters on this issue stated that there is no reason to treat electronic applications differently from electronic solicitations in applying the Bankruptcy Act provision. The Board concurs. With respect to both electronic applications and solicitations, it is important for consumers who are shopping for a card to receive accurate cost information about the card before submitting an electronic application or responding to an electronic solicitation. Thus, the Board proposes to use its authority in section 105(a) of TILA to apply the Bankruptcy Act provision relating to electronic offers to both electronic solicitations and applications, as necessary to effectuate the informed use of credit, a primary purpose of TILA. 15 U.S.C. 1601(a), 1604(a).

The Bankruptcy Act also provides that the disclosures for electronic credit card offers must be ''updated regularly to reflect the current policies, terms, and fee amounts.'' In the October 2005 ANPR, the Board solicited comment on how that standard should be implemented.

The majority of commenters to the October 2005 ANPR who addressed the accuracy of variable rates agreed that a 30-day standard would be appropriate to implement the ''updated regularly'' standard in the Bankruptcy Act. Some commenters advocated longer periods such as 60 days, or shorter periods such as daily or weekly updating, or suggested that the Board should not provide specific guidance or rules, instead allowing maximum flexibility in this area.

The Board proposes to revise §§ 226.5a(b)(1) and 226.5a(c) to make the direct-mail provision of § 226.5a applicable to electronic applications and solicitations and to implement the ''updated regularly'' standard in the Bankruptcy Act with regard to the accuracy of variable APRs. Current § 226.5a(c) would be revised and renumbered as new § 226.5a(c)(1). A new § 226.5a(c)(2) would be added to address the accuracy of a variable APR in direct mail solicitations. This new section would require issuers to update variable APRs disclosed on mailed applications and solicitations every 60 days and variable APRs disclosed on applications and solicitations provided in electronic form every 30 days, and to update other terms when they change. The Board believes the 30-day and 60-day accuracy requirements for variable APRs strike an appropriate balance between seeking to ensure consumers receive updated information and avoiding imposing undue burdens on creditors. The Board does not believe it is necessary for creditors to disclose to consumers the exact variable APR in effect on the date the application or solicitation is accessed by the consumer because consumers should understand that variable APRs are subject to change. Moreover, it could be costly and operationally burdensome for creditors to comply with a requirement to disclose the exact variable APR in effect at the time the application or solicitation is accessed. The obligation to update the other terms when they change ensures that consumers receive information that is reasonably accurate and current, and should not impose significant burdens on issuers. Based on discussions with industry concerning operational issues, the Board understands that issuers typically change other terms infrequently, perhaps once or twice a year.

Section 226.5a(c)(2) consists of two subsections. Section 226.5a(c)(2)(i) would provide that § 226.5a disclosures mailed to a consumer must be accurate as of the time the disclosures are mailed. This section would also provide that an accurate variable APR is one that is in effect within 60 days before mailing. Section 226.5a(c)(2)(ii) would provide that § 226.5a disclosures provided in electronic form (except for a variable APR) must be accurate as of the time they are sent to a consumer's e-mail address, or as of the time they are viewed by the public on a web site. For the reasons discussed above, this section would provide that a variable APR is accurate if it is in effect within 30 days before it is sent, or viewed by the public, as applicable. Presently, variable APRs on most credit cards may change on a monthly basis, so the Board believes the 30-day accuracy requirement for variable APRs is appropriate.

Many of the provisions included in proposed § 226.5a(c)(2) have been incorporated from § 226.5a(b)(1). To eliminate redundancy, the Board proposes to revise § 226.5a(b)(1) by deleting § 226.5a(b)(1)(ii) and (iii) and comment 5a(c)–1. The portion of § 226.5a(b)(1)(ii) that relates to the accuracy of APRs provided in ''take-ones'' would be incorporated in new § 226.5a(e)(5).

Section 226.5b Requirements for Home-Equity Plans

Section 226.5b(a) sets forth requirements for the form of disclosures required to be made on or with applications for HELOCs. The Board proposes to amend § 226.5b(a) by adding a new paragraph (3) to provide that if a consumer accesses a HELOC application in electronic form, the disclosures required on or with an application for a HELOC must be provided to the consumer in electronic form on or with the application. A consumer accesses a HELOC application in electronic form when, for example, the consumer views the application on his or her home computer. On the other hand, if a consumer receives a HELOC application in the mail, the creditor would *not* satisfy its obligation to provide § 226.5b disclosures at that time by including a reference in the application to the web site where the disclosures are located. Comment 5b(a)(3)–1 would be added to clarify this point.

Section 226.5b(c) states that persons other than the creditor that provide HELOC applications to consumers must provide the required home equity disclosures in certain cases. The 2001 interim final rule added a new § 226.5b(c)(2) to clarify that such third parties may use electronic disclosures. The Board is proposing to delete this provision as unnecessary because the E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions set forth in the Act.

Comment 5b(b)–7 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the application form or solicitation reply form is made available by electronic communication. This comment is substantially similar to

comment 5a(a)(2)–8 of the 2001 interim final rule, discussed above.

The Board proposes to delete comment 5b(b)–7 and substitute a new comment 5b(a)(1)–5 in its place, which generally parallels the content of the revised comment 5a(a)(2)–8. The new comment would describe alternative methods for presenting electronic disclosures, which are examples rather than an exhaustive list. Comment 5b(a)(1)–5 would omit all references to reply forms to recognize that the HELOC disclosures are application disclosures. The renumbering of the comment reflects the Board's belief that the focus of this comment is the form of electronic disclosures, rather than the timing of those disclosures.

Section 226.15 Right of Rescission

Section 226.15 gives consumers the right to rescind certain open-end credit plans secured by their principal dwelling. Under § 226.15(b), creditors must provide two copies of a notice of this right to each consumer entitled to rescind. For written (paper) disclosures, this allows consumers to return one copy to the creditor if they exercise the right of rescission and retain the second copy. For rescission notices provided in electronic form, the 2001 interim final rule added language permitting creditors to provide only one copy of the electronic notice to each consumer when the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act. The Board proposes to retain this provision. It does not appear that consumers would benefit by receiving two electronic copies of rescission notices because a second electronic ''copy'' is unnecessary for purposes of consumer retention.

In the 2001 interim final rule, comment 15(b)–1 was revised to state that if there is more than one property owner, a single rescission notice may be sent to each consumer if electronic communication is used, that each co-owner must consent to electronic disclosures, and that each must designate an electronic (e-mail) address to be used for this purpose. The Board believes, as discussed above, that provisions requiring the use of e-mail are no longer appropriate; comment 15(b)–1 would be revised accordingly. The Board also proposes to delete the statement that each co-owner must consent to electronic disclosures.

Section 226.16 Advertising

Section 226.16 contains requirements for advertisements for open-end credit, and in particular requires that if an advertisement includes certain ''trigger terms'' (such as an APR), the advertisement must also include certain required disclosures (such as minimum finance charge and transaction charges and annual fees).

Section 226.16(c) relates to catalogs and other multiple-page advertisements and to electronic advertisements. The Board proposes to add a new paragraph (3) to § 226.16(c) to clarify that if a consumer accesses an advertisement for open-end credit in electronic form, the disclosures required on or with the open-end credit advertisement must be provided to the consumer in electronic form on or with the advertisement. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the creditor would *not* satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located. Comment 16(c)(3)–1 would be added to clarify this point.

Section 226.16(c) provides that in a catalog or other multiple-page advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. The 2001 interim final rule clarified that this multiple-page rule also applies to credit advertisements in electronic form. For example, if a ''trigger term'' appears on a particular web page, the additional disclosures may appear in a table or schedule on another web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). The Board proposes to retain the rule (in § 226.16(c)(1) and (2)) allowing the use of links or other cross-references in electronic credit advertisements to provide guidance on how the advertising rules apply to Web sites.

The 2001 interim final rule revised comment 16(c)(1)–1 and added comment 16(c)(1)–2 to provide guidance on multiple-page advertisements in electronic form. Because the Board is proposing to retain the changes to § 226.16(c)(1) with minor wording changes, the Board is also proposing to retain comments 16(c)(1)–1 and 2 as revised by the 2001 interim final rule with corresponding wording changes.

Subpart C Closed-end Credit

Section 226.17 General Disclosure Requirements

Section 226.17(a) prescribes the form of disclosures required for closed-end credit. Section 226.17(a)(1) requires creditors to provide closed-end credit disclosures in writing and in a form that the consumer may keep. The Board proposes to revise § 226.17(a)(1) to clarify that creditors may provide the closed-end credit disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some creditors may provide closed-end credit disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the closed-end credit disclosures may be provided to consumers without regard to the consumer consent and other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's closed-end credit disclosure requirements.

Section 226.17(a)(1) would also be revised to provide that the closed-end credit disclosures required by §§ 226.19(b) and 226.24 may be provided to the consumer in electronic form, and that the disclosures required by § 226.17(g) may be made available to the consumer or to the public in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act. The Board believes that, for an application or advertisement accessed by the consumer in electronic form, permitting creditors to provide disclosures relating to applications for adjustable-rate mortgage (ARM) loans secured by the consumer's principal dwelling (§ 226.19(b)) and closed-end credit advertising (§ 226.24) in electronic form, without regard to the consumer consent and other provisions of the E-Sign Act, will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will assist consumers in shopping for credit by enabling them to receive important disclosures at the same time they access an application or advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online application or advertisement, or complete an online application is

potentially burdensome and could discourage consumers from shopping for credit online. Moreover, because these consumers are viewing the application or advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Section 227.17(g) applies where a creditor receives a request for credit by mail, telephone, or electronic communication without face-to-face or direct telephone solicitation. In these circumstances, the creditor may delay making the TILA disclosures for the credit transaction until the due date of the first payment, provided certain disclosures (specified in § 226.17(g)(1)–(5)) have been made available to the consumer or to the public generally (such as in a catalog or advertisement). For example, a retailer may mail catalogs to consumers, or provides advertising inserts in newspapers, containing information for ordering merchandise by telephone or mail. If a consumer calls the retailer, orders an item, and agrees to pay for the item by obtaining a closed-end extension of credit from the retailer, the TILA closed-end disclosures would normally be required to be provided to the consumer before the consummation of the transaction. Since this is impracticable where the transaction is consummated by telephone, however, § 226.17(g) permits the retailer to delay providing the specific disclosures for the transaction, as long as the disclosures in § 226.17(g)(1)–(5), for representative amounts or ranges of credit, are included in the catalog or newspaper insert.

In the 2001 interim final rule, the Board replaced the term ''electronic communication'' in § 226.17(g) with ''facsimile machine.'' The Board explained that the rule in § 226.17(g) predated Internet commerce, and the term ''electronic communication'' was intended to cover credit requests by facsimile or telegram. The rationale underlying the rule was that creditors are unable to provide written transaction-specific disclosures at the time of the consumer's credit request where the request is made by facsimile or telegram, no less than in the case of requests made by telephone or mail. That practical problem does not exist, however, where a consumer requests credit at a web site. Therefore, the Board believes it would be inappropriate to extend the application of § 226.17(g) to electronic requests for credit made at an Internet Web site. Accordingly, the Board proposes to retain the amendment to § 226.17(g) from the 2001 interim final rule.

Where § 226.17(g) does apply, *i.e.*, where the consumer requests credit by telephone, mail, or facsimile machine, the regulation requires the creditor to make available in written form to the consumer or the public the disclosures set forth in § 226.17(g)(1)–(5) before the actual purchase order or request. The Board believes that these disclosures can appropriately be made available to the consumer or to the public either in electronic form (for example, on the creditor's web site) or in paper form. Accordingly, the Board proposes to amend § 226.17(g) to provide that the requirement to make available the § 226.17(g)(1)–(5) disclosures in written form to the consumer or to the public may be satisfied by making the disclosures available in electronic form, such as at a creditor's Web site. Thus, for example, a consumer might see information about a product on a retailer's web site and order the product by telephone using closed-end credit; the transaction-specific disclosures could be delayed, provided the § 226.17(g)(1)–(5) disclosures are set forth on the Web site. In this situation, the E-Sign consent procedures would not have to be followed in order for the § 226.17(g)(1)–(5) disclosures to be provided in electronic form. On the other hand, if the consumer ordered the product via the web site itself, the transaction-specific disclosures could not be delayed and would be required to be provided before consummation of the transaction. For the disclosures to be provided in electronic form in this situation, the E-Sign consent procedures would have to be followed.

Section 226.17(a)(3) in the interim final rule cross-references § 226.36, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is proposing to delete § 226.36, as discussed further below, the Board also proposes to delete § 226.17(a)(3).

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

Section 226.19(b) requires creditors to provide certain disclosures relating to ARM loans secured by the consumer's principal dwelling when an application form is provided to the consumer or before the consumer pays a nonrefundable fee, whichever is earlier. The Board proposes to amend § 226.19 by adding a new paragraph (c) to provide that if a consumer accesses a ARM application in electronic form, the disclosures required on or with an application for an ARM must be provided to the consumer in electronic form on or with the application. A consumer accesses an ARM application in electronic form when, for example, the consumer views the ARM application on his or her home computer. On the other hand, if a consumer receives an ARM application in the mail, the creditor would *not* satisfy its obligation to provide § 226.19 disclosures at that time by including a reference in the application to the web site where the disclosures are located. Comment 19(c)–1 would be added to clarify this point.

Comment 19(b)–2 of the 2001 interim final rule states that a consumer must be able to access the electronic disclosures at the time the blank application form for ARMs is made available by electronic communication. The Board proposes to revise comment 19(b)–2 in a manner substantially similar to proposed comment 5b(a)(1)–5, discussed above. The revised comment would describe alternative methods for presenting electronic disclosures, which are examples rather than an exhaustive list.

Section 226.23 Right of Rescission

Section 226.23 gives consumers the right to rescind certain closed-end mortgage loans secured by their principal dwelling. Under § 226.23(b), creditors must provide two copies of a notice of this right to each consumer entitled to rescind. For written (paper) disclosures, this allows consumers to return one copy to the creditor if they exercise the right of rescission and retain the second copy. For rescission notices provided in electronic form, the 2001 interim final rule added language permitting creditors to provide only one copy of the electronic notice to each consumer when the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act. The Board proposes to retain this provision. It does not appear that consumers would benefit by receiving two electronic copies of rescission notices because a second electronic ''copy'' is unnecessary for purposes of consumer retention.

In the 2001 interim final rule, comment 23(b)–1 was revised to state that if there is more than one property owner, a single rescission notice may be sent to each consumer if electronic communication is used, that each co-owner must consent to electronic disclosures, and that each must designate an electronic (e-mail) address to be used for this purpose. The Board believes, as discussed above, that provisions requiring the use of e-mail are no longer appropriate; comment 23(b)–1 would be revised accordingly.

The Board also proposes to delete the statement that each co-owner must consent to electronic disclosures. The proposed revisions are consistent with the proposed revisions to comment 15(b)–1, discussed above, which relates to rescission in the context of open-end credit.

Section 226.24 Advertising

Section 226.24 contains requirements for advertisements for closed-end credit and requires that if an advertisement includes certain ''trigger terms'' (such as the payment amount), the advertisement must also include certain required disclosures (such as the APR, the amount or percentage of any downpayment, and the terms of repayment, as applicable).

Section 226.24(d) relates to catalogs and other multiple-page advertisements and to electronic advertisements. The Board is proposing to add a new paragraph (3) to § 226.24(d) (comparable to proposed new paragraph (3) to § 226.16(c) for open-end credit advertising) to clarify that if a consumer accesses an advertisement for closed-end credit in electronic form, the disclosures required on or with the closed-end credit advertisement must be provided to the consumer in electronic form on or with the advertisement. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the creditor would *not* satisfy its obligation to provide § 226.24 disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located. Comment 24(d)–5 would be added to clarify this point.

Section 226.24(d) provides that in a catalog or other multiple-page advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. As it did for open-end credit advertising, the 2001 interim final rule clarified that the multiple-page rule for closed-end credit advertising also applies to credit advertisements in electronic form. For example, if a ''trigger term'' appears on a particular Web page, the additional disclosures may appear in a table or schedule on another Web page and still be considered part of a single advertisement if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). The Board proposes to retain the rule (in § 226.24(d)(1) and (2)) allowing the use of links or other cross-references in electronic credit advertisements to provide guidance on how the advertising rules apply to Web sites.

The 2001 interim final rule revised comment 24(d)–2 and added comment 24(d)–4 to provide guidance on multiple-page advertisements in electronic form. Because the Board is proposing to retain the changes to § 226.24(d) with minor wording changes, the Board is also proposing to retain comments 24(d)–2 and 24(d)–4 as revised by the 2001 interim final rule with corresponding wording changes.

Section 226.24(b) permits creditors to state a simple annual rate of interest or periodic rate in addition to the APR, as long as the rate is stated in conjunction with, but not more conspicuously than, the APR. In the 2001 interim final rule, comment 24(b)–6 was added to state that in an advertisement using electronic communication, the consumer must be able to view both rates simultaneously, and that this requirement is not satisfied if the consumer can view the APR only by use of a link that takes the consumer to another Web location. The Board proposes to delete comment 24(b)–6 as unnecessary. The requirement to state the simple annual rate or periodic rate in conjunction with, and not more conspicuously than, the APR, applies to electronic advertisements no less than to advertisements in other media. Requiring the consumer to scroll to another part of the page, or access a link, in order to view the APR would likely not satisfy this requirement.

Subpart E Special Rules for Certain Home Mortgage Transactions

Section 226.31 General Rules

Subpart E implements the Home Ownership and Equity Protection Act (HOEPA) and sets forth special rules, including disclosure requirements, for certain mortgage loans with rates or fees above specified thresholds (HOEPA loans) and for reverse mortgage loans. Section 226.31(b) prescribes the form of disclosures required under subpart E. Section 226.31(b)(1) requires creditors to provide the HOEPA and reverse mortgage disclosures in writing and in a form that the consumer may keep. Section 226.31(b)(1) would be renumbered as § 226.31(b) and revised to clarify that the HOEPA and reverse mortgage disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some creditors may provide the HOEPA and reverse mortgage disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those creditors, the duplicate electronic form of the HOEPA and reverse mortgage disclosures may be provided to consumers without regard to the consumer consent and other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's HOEPA and reverse mortgage disclosure requirements.

Section 226.31(b)(2) in the interim final rule cross-references § 226.36, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is proposing to delete § 226.36, as discussed further below, the Board also proposes to delete § 226.31(b)(2).

Subpart F Electronic Communication

Section 226.36 Requirements for Electronic Communication

Section 226.36 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board proposes to delete § 226.36 (which constitutes all of subpart F) from Regulation Z and the accompanying sections of the staff commentary.

In the interim rule, § 226.36(a) defines the term ''electronic communication'' to mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 226.36(a) would not change applicable legal requirements under the E-Sign Act.

Sections 226.36(b), (c) and (f) incorporate by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form, the requirement to obtain the consumer's affirmative consent before providing disclosures in electronic form, and the provision allowing electronic signatures. The deletion of these provisions will have no impact on the general applicability of the E-Sign Act to Regulation Z disclosures.

Sections 226.36(d) and (e) address specific timing and delivery requirements for electronic disclosures under Regulation Z, such as the requirement to send disclosures to a consumer's e-mail address (or post the disclosures on a Web site and send a notice alerting the consumer to the disclosures). The Board no longer believes that these additional provisions

are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers in connection with online services, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices in all cases. In addition, the Board has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, creditors would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require creditors to maintain disclosures posted on a Web site for at least 90 days as provided in the 2001 interim final rule for several reasons. First, based on a review of industry practices, it appears that many institutions maintain disclosures posted on an Internet web site for several months, and, in a number of cases, for more than a year. For example, it appears that credit card issuers that offer online periodic statements to consumers typically make those statements available without charge for six months or longer in electronic form. This practice has developed even though Regulation Z does not currently require institutions to maintain disclosures for any specific period of time. Second, the Board believes that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of disclosure, and is reluctant to establish specific time periods depending on the disclosures. Nevertheless, while the Board is not proposing to require disclosures to be maintained on an Internet web site for any specific time period, the general requirements of Regulation Z continue to apply to electronic disclosures, such as the requirement to provide disclosures to consumers at certain specified times and in a form that the consumer may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 226.36(d) of the 2001 interim final rule is needed to ensure that creditors satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor creditors' electronic disclosure practices with regard to the ability of consumer to retain Regulation Z disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 226.36 of the interim final rule provides guidance on the provisions set forth in § 226.36 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a Web site for 90 days. As noted above, because the Board is proposing to delete § 226.36 (which constitutes all of subpart F) of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing revisions to Regulation Z to withdraw the 2001 interim final rule on electronic communication and to allow creditors to provide certain disclosures to consumers in electronic form on or with an application, solicitation, or advertisement that is accessed by the consumer in electronic form without regard to the consumer consent and other provisions of the E-Sign Act. The Board is also proposing to clarify that other Regulation Z disclosures may be provided to consumers in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

TILA was enacted to enhance economic stabilization and competition for credit by strengthening the informed use of credit, including an awareness of the cost of credit by consumers. The purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer can compare the various credit terms available and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. 1601. TILA authorized the Board to prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a). The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * *, as in the judgment of the Board are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion of [the Act], or to facilitate compliance with [the Act].'' 15 U.S.C. 1604(a). The Board believes that the revisions to Regulation Z discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate the informed use of credit by consumers in circumstances where a consumer accesses a credit application, solicitation, or advertisement in electronic form.

2. *Small entities affected by the proposal.* The ability to provide shopping and advertising disclosures in electronic form on or with an application, solicitation, or advertisement that is accessed by the consumer in electronic form applies to all creditors, regardless of their size. Accordingly, the proposed revisions would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this proposal is unknown.

3. *Other Federal rules.* The Board believes no Federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation Z.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

Title I of the Consumer Credit Protection Act authorizes the Federal Reserve to issue regulations to carry out the provisions of that Act. 15 U.S.C. 1601, 1604(a). This information collection is mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). Transaction- or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take-one applications are available to the public.

TILA and Regulation Z ensure adequate disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. The regulation also requires specific types of disclosures for credit and charge card accounts, and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation. Creditors are required to retain evidence of compliance for twenty-four months (subpart D, section 226.25), but the regulation does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the State member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden on other creditors. The annual burden is estimated to be 552,398 hours for the 1,172 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA.

As mentioned in the Preamble, § 226.5 would be revised to clarify the disclosure requirements in §§ 226.5a and 226.5b. The Federal Reserve estimates that 279 respondents would take approximately 8 hours per month to comply with the existing disclosure requirements in § 226.5a and estimates the annual burden to be 26,784 hours; and 632 respondents would take approximately 4.5 minutes per transaction to comply with the existing disclosure requirements in § 226.5b and estimates the annual burden to be 12,798 hours. Sections 226.17 and 226.19 would be revised to clarify the existing disclosure requirements in §§ 226.17(g) and 226.19(b). The Federal Reserve estimates that 1,172 respondents would take approximately 6.5 minutes per transaction to comply with the existing disclosure requirements in §§ 226.17(g) and 226.19(b), and estimates the annual burden to be 313,765 hours. Sections 226.5 and 226.17 would also be revised to clarify the disclosure requirements in §§ 226.16 and 226.24 respectively. The Federal Reserve estimates that 1,172 respondents would take approximately 25 minutes per transaction to comply with the existing disclosure requirements in § 226.16 and 226.24, and estimates the annual burden to be 2,442 hours, collectively. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in Lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation Z. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart B—Open-End Credit

2. Section 226.5 would be amended by revising paragraph (a)(1) and removing paragraph (a)(5), to read as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing,[7] in a form

[7] The disclosure required by section 226.9(d) when a finance charge is imposed at the time of a transaction need not be written.

that the consumer may keep.[8] ►The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.5a, 226.5b, and 226.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.◄

* * * * *

[(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 226.36.]

* * * * *

3. Section 226.5a would be amended by adding a new paragraph (a)(2)(v), removing paragraphs (b)(1)(ii) and (b)(1)(iii), revising paragraph (c), and adding new paragraph (e)(5), to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(a) *General rules.* * * *

(2) *Form of disclosures.* * * *

►(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the application or solicitation.◄

(b) *Required disclosures.* * * *

(1) *Annual percentage rate.* * * *

[(ii) When variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(iii) of this section.]

[(iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the card issuer's Internet Web site, the annual percentage rate must be one in effect within the last 30 days.]

* * * * *

(c) *Direct-mail and electronic applications and solicitations.* ►(1) *General.*◄ The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers [or provided by electronic communication] ►or provided to consumers in electronic form◄.

►(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's electronic mail address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Internet Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's electronic mail address, or viewed by the public, as applicable.◄

* * * * *

(e) *Applications and solicitations made available to general public.* * * *

►(5) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. An accurate annual percentage rate is one in effect within 30 days before printing.◄

* * * * *

4. Section 226.5b would be amended by adding a new paragraph (a)(3), removing the heading for paragraph (c)(1), redesignating paragraph (c)(1) as paragraph (c), and removing paragraph (c)(2), to read as follows:

§ 226.5b Requirements for home equity plans.

* * * * *

(a) *Form of disclosures.* * * *

►(3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the application.◄

* * * * *

(c) *Duties of third parties.* [(1) *General.*] * * *

[(2) *Electronic communication.* Persons other than the creditor that are required to comply with paragraphs (d) and (e) of this section may use electronic communication in accordance with the requirements of § 226.36, as applicable.]

* * * * *

5. Section 226.15 would be amended by revising the first sentence of the introductory text of paragraph (b), to read as follows:

§ 226.15 Right of rescission.

* * * * *

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered ►in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act◄ [by electronic communication as provided in § 226.36(b)]). * * *

* * * * *

6. Section 226.16 would be amended by revising paragraph (c) to read as follows:

§ 226.16 Advertising.

* * * * *

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet web site)◄ [using electronic communication], gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ [using electronic communication] complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

[8] The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

►(3) For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement.◄

* * * * *

Subpart C—Closed-End Credit

7. Section 226.17 would be amended by revising paragraph (a)(1), removing paragraph (a)(3), and revising paragraph (g) introductory text, to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. ►The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.17(g), 226.19(b), and 226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.◄ The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related [37] to the disclosures required under § 226.18.[38] The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section.

* * * * *

[(3) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 226.36.]

* * * * *

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form ►or in electronic form◄ to the consumer or to the public before the actual purchase order or request:

* * * * *

8. Section 226.19 would be amended by adding a new paragraph (c), to read as follows:

§ 226.19 Certain residential mortgage and variable-rate transactions.

* * * * *

►(c) *Electronic disclosures.* For an application that is accessed by the consumer in electronic form, the disclosures required by paragraph (b) of this section must be provided to the consumer in electronic form on or with the application.◄

9. Section 226.23 would be amended by revising the first sentence of paragraph (b)(1), to read as follows:

§ 226.23 Right of rescission.

* * * * *

(b)(1) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered ►in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act◄ [by electronic communication as provided in § 226.36(b)]). * * *

* * * * *

10. Section 226.24 would be amended by revising paragraphs (d)(1) and (d)(2) and adding a new paragraph (d)(3), to read as follows:

§ 226.24 Advertising.

* * * * *

(d) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ [using electronic communication], gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an ►electronic◄ advertisement ►(such as an advertisement appearing on an Internet Web site)◄ [using electronic communication] complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

►(3) For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement.◄

Subpart E—Special Rules for Certain Home Mortgage Transactions

11. Section 226.31 would be amended by revising paragraph (b) to read as follows:

§ 226.31 General rules.

* * * * *

(b) *Form of disclosures.* [(1) *General.*] The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. ►The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).◄

[(2) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 226.36.]

* * * * *

12. Subpart F to part 226 would be removed.

13. In Supplement I to part 226, the following amendments would be made:

a. In *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(b)(2)(ii)*, paragraph 3. would be revised.

b. In *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(a)(2) Form of Disclosures*, paragraph 8. would be revised and new paragraph 9. would be added.

c. In *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(c) Direct Mail Applications or Solicitations*, the heading would be revised to read *5a(c) Direct Mail and Electronic Applications or Solicitations*, paragraph 1. would be removed, and paragraph 2. would be redesignated as paragraph 1.

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[37] The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

[38] The following disclosures may be made together with or separately from other required disclosures: The creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(1)(iv), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

d. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(a) Form of Disclosures*, under *Paragraph 5b(a)(1)*, new paragraph 5. would be added.

e. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(a) Form of Disclosures*, new heading *Paragraph 5b(a)(3)* and new paragraph 1. would be added.

f. In *Section 226.5b—Requirements for Home Equity Plans*, under *5b(b) Time of Disclosures*, paragraph 7. would be removed.

g. In *Section 226.15—Right of Rescission*, under *15(b) Notice of Right to Rescind.*, paragraph 1. would be revised.

h. In *Section 226.16—Advertising*, under *Paragraph 16(c)(1)*, paragraphs 1. and 2. would be revised.

i. In *Section 226.16—Advertising*, new heading *Paragraph 16(c)(3)* and new paragraph 1. would be added.

j. In *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions.*, paragraph 2.v. would be revised.

k. In *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, new heading *19(c) Electronic disclosures* and new paragraph 1. would be added.

l. In *Section 226.23—Right of Rescission*, under *23(b) Notice of Right to Rescind.*, paragraph 1. would be revised.

m. In *Section 226.24—Advertising*, under *24(b) Advertisement of Rate of Finance Charge*, paragraph 6. would be removed.

n. In *Section 226.24—Advertising*, under *24(d)*, paragraphs 2. and 4. would be revised, and new paragraph 5. would be added.

o. Subpart F would be removed.

The amendments read as follows:

Supplement I To Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

* * * * *

5(b)(2) Periodic statements.

* * * * *

Paragraph 5(b)(2)(ii).

* * * * *

3. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule. [If the consumer wishes to receive the statement by electronic communication, the creditor must comply with the consumer consent requirements as provided in § 226.36(b).]

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General rules.

5a(a)(2) Form of disclosures.

* * * * *

8. [*Timing of disclosures for*]► *Form of electronic disclosures provided on or with electronic applications or solicitations.* ►Card issuers must provide the disclosures required by this section on or with a blank application or reply form that is made available to the consumer in electronic form, such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application or reply form appears. Alternatively, the disclosures could be located on the same web ''page'' as the application or reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable. Or, card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Whatever method is used, a card issuer need not confirm that the consumer has read the disclosures. For disclosures required to be provided in tabular form, card issuers must satisfy the requirements with respect to electronic disclosures set forth in comment 5a(a)(2)–2(ii).◄ [In all cases, a consumer must be able to access the disclosures at the time the blank application or reply form is made available by electronic communication such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures.]

►9. *Form of disclosures.* If a consumer accesses an application or solicitation in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application or solicitation; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application or solicitation, the required disclosures must be provided in paper form on or with the application or solicitation. For example, if a consumer receives an application or solicitation in the mail, the creditor would *not* satisfy its obligation to provide § 226.5a disclosures at that time by including a reference in the application or solicitation to the web site where the disclosures are located.◄

* * * * *

5a(c) Direct-Mail ►*and Electronic*◄ *Applications and Solicitations*

[1. *Accuracy.* In general, disclosures in direct mail applications and solicitations must be accurate as of the time of mailing. (An accurate variable annual percentage rate is one in effect within 60 days before mailing.)]

[2.] ►1.◄ *Mailed publications.* Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to ''take-ones'' in § 226.5a(e), rather than the direct mail requirements of § 226.5a(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer ''prescreens'' a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a ''take-one'' (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a ''take-one''—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the § 226.5a(e)(1) (ii) and (iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the § 226.5a(e)(1) (ii) and (iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date)

* * * * *

Section 226.5b—Requirements for Home Equity Plans

* * * * *

5b(a) Form of disclosures.

5b(a)(1) General.

* * * * *

►5. *Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application appears. Alternatively, the disclosures could be located on the same Web ''page'' as the application without necessarily appearing on the initial screen, if the application contains a clear and conspicuous reference to the

location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable. Or, creditors could instead provide a link to the electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application. Whatever method is used, a creditor need not confirm that the consumer has read the disclosures or brochure.◄

* * * * *

►*Paragraph 5b(a)(3).*

1. *Form of disclosures.* If a consumer accesses an application in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper application, the required disclosures must be provided in paper form on or with the application. For example, if a consumer receives an application in the mail, the creditor would not satisfy its obligation to provide § 226.5b disclosures at that time by including a reference in the application to the Web site where the disclosures are located.◄

5b(b) Time of disclosures.

* * * * *

[7. *Applications available by electronic communication.* In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application or reply form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.]

* * * * *

Section 226.15—Right of Rescission

* * * * *

15(b) Notice of right to rescind.

1. *Who receives notice.* Each consumer entitled to rescind must be given:

- Two copies of the rescission notice.
- The material disclosures.

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice ►(one copy if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act)◄ and one copy of the disclosures. [If e-mail is used, the creditor complies with § 226.15(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.]

* * * * *

Section 226.16—Advertising

* * * * *

16(c) Catalogs or other multiple-page advertisements; electronic advertisements.

* * * * *

Paragraph 16(c)(1).

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement ►(such as an advertisement appearing on an Internet Web site)◄. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. *Electronic* ►*advertisement*◄ [*communication*]. If an ►electronic advertisement (such as an advertisement appearing on an Internet Web site)◄ [advertisement using electronic communication] contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

* * * * *

►*Paragraph 16(c)(3).*

1. *Form of disclosures.* If a consumer accesses an advertisement in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the advertisement; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would *not* satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.◄

* * * * *

Subpart C—Closed-End Credit

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

2. *Timing.* * * *

v. [*Electronic applications.*] ►*Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. For example, the disclosures could automatically appear on the screen when the application appears. Alternatively, the disclosures could be located on the same Web ''page'' as the application without necessarily appearing on the initial screen, if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable. Or, creditors could instead provide a link to the electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application. Whatever method is used, a creditor need not confirm that the consumer has read the disclosures or brochure.◄

[In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application form is made available by electronic communication, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application form. Or the disclosures could automatically appear on the screen when the application form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.]

* * * * *

►*19(c) Electronic disclosures.*

1. *Form of disclosures.* If a consumer accesses an ARM application in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the application; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer is provided with a paper ARM application, the required disclosures must be provided in paper form on or with the application. For example, if a consumer receives an application in the mail, the creditor would *not* satisfy its obligation to provide the ARM disclosures at that time by including a reference in the application to the Web site where the disclosures are located.◄

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(b) Notice of right to rescind.

1. *Who receives notice.* Each consumer entitled to rescind must be given:

- Two copies of the rescission notice.
- The material disclosures.

In a transaction involving joint owners, both of whom are entitled to rescind, both must receive the notice of the right to rescind and disclosures. For example, if both spouses are entitled to rescind a transaction, each must receive two copies of the rescission notice ►(one copy if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act)◄ and one copy of the disclosures. [If e-mail is used, the creditor complies with § 226.23(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic

disclosures and each must designate an electronic address for receiving the disclosure.]

* * * * *

Section 226.24—Advertising

* * * * *

24(b) Advertisement of rate of finance charge.

* * * * *

[6. *Electronic communication.* A simple annual rate or periodic rate that is applied to an unpaid balance may be stated only if it is provided in conjunction with an annual percentage rate. In an advertisement using electronic communication, the consumer must be able to view both rates simultaneously. This requirement is not satisfied if the consumer can view annual percentage rate only by use of a link that takes the consumer to information appearing at another location.]

* * * * *

24(d) Catalogs or other multiple-page advertisements; electronic advertisements.

* * * * *

2. *General.* Section 226.24(d) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement, or in an electronic advertisement ►(such as an advertisement appearing on an Internet Web site)◄. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24(c)(2) and so is not covered by § 226.24(d).

* * * * *

4. *Electronic* ► *advertisement*◄ [*communication*]. If an ►electronic advertisement (such as an advertisement appearing on an Internet Web site)◄ [advertisement using electronic communication] contains the table or schedule permitted under § 226.24(d)(1), any statement of terms set forth in § 226.24(c)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information [(but see comment 24(b)–6)].

►5. *Form of disclosures.* If a consumer accesses an advertisement in electronic form, the required disclosures must be provided to the consumer in electronic form on or with the advertisement; providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would not satisfy its obligation to provide § 226.16 disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.◄

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7878 Filed 4–27–07; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1285]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation DD, which implements the Truth in Savings Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the *Code of Federal Regulations* would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation DD to provide that certain disclosures may be provided to a consumer in electronic form without regard to the consumer consent and other provisions of the E-Sign Act; and that, when an advertisement is accessed by the consumer in electronic form, the disclosures must be provided in electronic form on or with the advertisement. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before June 29, 2007.

ADDRESSES: You may submit comments, identified by Docket No. R–1285, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to enable consumers to make informed decisions about accounts at depository institutions. The act requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration. TISA and Regulation DD require a number of disclosures to be provided in writing.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528, March 25, 1998) and proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14552, 14538, 14548, and 14533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49846, September 14, 1999). While these rulemakings were pending, Federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulations B, E, M, Z, and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation DD (66 FR 17795). Similar interim final rules for Regulations B, E, M, and Z were published on March 30, 2001 (66 FR 17322 (M)) and April 4, 2001 (66 FR 17779 (B), 66 FR 17786 (E), and 66 FR 17329 (Z)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Depository institutions, creditors, and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation DD established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the consumer, or could be made available at another location, such as an Internet Web site. If the disclosures were not sent by e-mail, institutions would have to provide a notice to consumers alerting them to the availability of the disclosures. Disclosures posted on a Web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Institutions also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations B, E, M, and Z.

Commenters on the interim final rules identified significant operational and information security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41439, August 8, 2001.) Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation DD and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the **Federal Register**, under Regulations B, E, M, and Z.)

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the *Code of Federal Regulations*, while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. The Board is proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final rules in order to enhance the ability of consumers to shop for deposit account products online, minimize the information-gathering burdens on consumers, and provide guidance or eliminate a substantial burden on the use of electronic disclosures, as discussed further below.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, the Board has received no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and ''phishing'' (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is proposing to eliminate certain aspects of the 2001

interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

The 2001 interim final rule allowed depository institutions to provide certain disclosures to consumers electronically without regard to the consumer consent or other provisions of the E-Sign Act. These included disclosures in connection with advertisements and disclosures about deposit accounts that are provided upon request. The Board reasoned that these disclosures, which would be available to the general public while shopping for deposit products, did not ''relate to a transaction,'' which is a prerequisite for triggering the E-Sign consumer consent provisions, and thus were not subject to those provisions. Some commenters on the interim final rules did not agree with the Board's rationale. Upon further consideration, the Board does not believe it is necessary to determine whether or not these disclosures are related to a transaction. This proposal does not make such determinations.

Instead, pursuant to the Board's authority under section 269 of TISA, as well as under section 104(d) of the E-Sign Act,[1] the Board is proposing to specify the circumstances under which certain disclosures may be provided to a consumer in electronic form, rather than in writing as generally required by Regulation DD, without obtaining the consumer's consent under section 101(c) of the E-Sign Act. The proposed rule would also clarify, as discussed in detail below, that certain disclosures must be provided to the consumer in electronic form on or with an advertisement that is accessed by the consumer in electronic form.

The Board continues to believe that depository institutions should not be required to obtain the consumer's consent in order to provide advertising disclosures to the consumer in electronic form if the consumer accesses the advertisement containing those disclosures in electronic form, such as at an Internet Web site. Similarly, the Board continues to believe that institutions should not be required to follow the E-Sign consent requirements in order to provide account disclosures upon request to consumers electronically (although under the proposal, the institution could provide the disclosures in electronic form only if the consumer agrees).

The Board believes that consumers would not be harmed, and in fact would benefit, by having timely access to disclosures in electronic form when they are shopping for deposit account products online or viewing online deposit account advertising. The Board also believes that consumers' ability to shop for deposit accounts online and compare the terms of various offers could be substantially diminished if consumers had to consent in accordance with the E-Sign Act in order to access advertisements or obtain account disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to gather information and shop for deposit accounts.

At the same time, the Board recognizes that consumers who shop or apply for deposit accounts online may not want to receive other disclosures electronically. Therefore, with respect to, for example, account-opening disclosures, periodic statements, and change-in-terms notices, depository institutions would be required to provide written disclosures or obtain the consumer's consent in accordance with the E-Sign Act to provide such disclosures in electronic form.

Finally, the Board is proposing to delete, as unnecessary, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures because the E-Sign Act is a self-effectuating statute. The proposed revisions to Regulation DD and the official staff commentary are described more fully below in the Section-by-Section Analysis.

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

III. Section-by-Section Analysis

12 CFR Part 230 (Regulation DD)

Section 230.3 General Disclosure Requirements

Section 230.3(a) prescribes the form of disclosures required for deposit accounts, and generally requires depository institutions to provide the disclosures in writing and in a form that the consumer may keep. The Board proposes to revise § 230.3(a) to clarify that institutions may provide disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some institutions may provide disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those institutions, the duplicate electronic form of the disclosures may be provided to consumers without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 230.3(a) would also be revised to provide that the disclosures required by §§ 230.4(a)(2) (disclosures provided upon request) and 230.8 (advertising) may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act.

Section 230.8 requires that if certain information is stated in a deposit account advertisement, or if an advertisement promotes the payment of overdrafts, the advertisement must also include specified disclosures. The Board believes that, for a deposit account advertisement accessed by the consumer in electronic form, permitting institutions to provide the required disclosures in electronic form without regard to the consumer consent and other provisions of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate shopping for deposit products by enabling consumers to receive important disclosures at the same time they access an advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online advertisement is potentially burdensome and could discourage

[1] Section 269 of TISA provides that regulations prescribed by the Board under TISA ''may provide for such adjustments and exceptions * * * as, in the judgment of the Board, are necessary or proper to carry out the purposes of [TISA], * * * or to facilitate compliance with the requirements of [TISA].'' Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, ''if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.'' For the reasons stated in this **Federal Register** notice, the Board believes that these criteria are met in the case of the advertising disclosures and the disclosures provided to a consumer upon request. In addition, the Board believes TISA section 269 authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

consumers from shopping for deposit products online. Moreover, because these consumers are viewing the advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Similarly, § 230.4(a)(2) requires that depository institutions provide account disclosures, containing account terms, to consumers upon request. If a consumer is not present at the depository institution and requests the account disclosures, it would appear unnecessary and burdensome to require the consumer to go through the E-Sign consent procedures before the request could be satisfied, as long as the consumer requests that the disclosures be provided electronically. Applying the E-Sign consent procedures in this context could discourage consumers from requesting account disclosures.

Section 230.3(g) in the 2001 interim final rule refers to § 230.10, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is proposing to delete § 230.10, as discussed further below, the Board also proposes to delete § 230.3(g).

Section 230.4 Account Disclosures

Depository institutions generally must provide account-opening disclosures to consumers before an account is opened or a service is provided. Depository institutions may delay delivering the disclosures if the consumer is not present at the institution when the account is opened (or service is provided). Section 230.4(a)(1) provides that in such cases, account-opening disclosures must be mailed or delivered within ten business days. The rationale underlying the ten-day delay is that the institution cannot provide written disclosures when, for example, an account is opened by telephone. The 2001 interim final rule provided that depository institutions opening accounts by electronic communication (for example, on the Internet) may not delay providing disclosures under § 230.4(a)(1). The difficulties in providing disclosures for accounts opened by mail or telephone are not present for requests to open accounts received by electronic communication using visual text. Thus, specific disclosures must be provided before accounts are opened using electronic communication. The interim final rule added new paragraph (ii) to § 230.4(a)(1) to effectuate this requirement. The Board continues to believe that the rationale underlying § 230.4(a)(1)(ii) is valid; accordingly, the Board proposes to retain the provision as added by the interim final rule, with minor wording changes.

Depository institutions must also provide account disclosures to a consumer upon request. Section 230.4(a)(2)(i) provides that if a consumer is not present at the institution when a request for account disclosures is made, the institution must mail or deliver the disclosures within a reasonable time after the institution receives the request; ten days is deemed to be a reasonable time. The 2001 interim final rule extended these provisions to requests for disclosures made by electronic communication. Specifically, the interim final rule revised § 230.4(a)(2)(i) to allow institutions to mail or deliver disclosures in either paper form or electronically to consumers who are not present at the institution when they make their request. Under the interim final rule, to provide the requested disclosures electronically, the institution must send the disclosures to the consumer's e-mail address, or send a notice alerting the consumer to the location of the disclosures, such as on the institution's Internet web site. Comment 4(a)(2)(i)–3 was revised and comment 4(a)(2)(i)–4 was added to provide guidance.

The Board continues to believe that it is appropriate to allow institutions to respond by paper mail, or by electronic means provided the consumer agrees, if the consumer is not present at the institution when the request is made, without following the E-Sign consent provisions. Accordingly, the Board proposes to retain the changes made to § 230.4(a)(2)(i) and the accompanying commentary by the interim final rule, with some revisions for clarification and to provide greater flexibility for both institutions and consumers.

Section 230.8 Advertising

Section 230.8 contains requirements for advertisements for deposit accounts, including the requirement that if an advertisement includes certain ''trigger terms'' (such as a bonus or the annual percentage yield), the advertisement must also include certain disclosures. The Board proposes to add new comment 8(a)–11, to clarify that if a consumer accesses an advertisement for deposit accounts in electronic form, the disclosures required on or with the advertisement must be provided to the consumer in electronic form on or with the advertisement. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the institution would *not* satisfy its obligation to provide § 230.8 disclosures at that time by including a reference in the advertisement to the Web site where the disclosures are located.

Comment 8(a)–9, as added by the interim final rule, provides that in an electronic advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. For example, if a ''trigger term'' appears on a particular web page, the additional disclosures may appear in a table or schedule on another web page if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). The Board proposes to retain comment 8(a)–9, allowing the use of links or other cross-references in electronic deposit account advertisements, with minor wording changes.

The Board proposes to add new comment 8(a)–12 to clarify that the rules regarding advertising disclosures provided in electronic form also apply to the disclosures described in § 230.11(b), which are incorporated by reference in § 230.8(f).

Section 230.8(b) permits institutions to state an interest rate in addition to the APY, as long as the rate is stated in conjunction with, but not more conspicuously than, the APY. In the 2001 interim final rule, comment 8(b)–4 was added to state that in an advertisement using electronic communication, the consumer must be able to view both rates simultaneously, and that this requirement is not satisfied if the consumer can view the APY only by use of a link that takes the consumer to another web location. The Board proposes to delete comment 8(b)–4 as unnecessary. The requirement to state the simple annual rate or periodic rate in conjunction with, and not more conspicuously than, the APY, continues to apply to electronic advertisements no less than to advertisements in other media. Requiring the consumer to scroll to another part of the page, or access a link, in order to view the APY would likely not satisfy this requirement.

Section 230.8(e) exempts from some disclosure requirements advertisements made through broadcast or electronic media, such as television and radio or outdoor billboards. The interim final rule added comment 8(e)(1)(i)–1 to provide that this exemption would not apply to advertisements using electronic communication, such as Internet advertisements, which do not have the

same time and space constraints as radio or television advertisements. The Board continues to believe that space constraints for advertisements on Internet web sites are not significantly different than those for a print advertisement (a newspaper, for example). Thus, requiring advertisements provided by electronic means to comply with the regulation's advertising requirements is not overly burdensome. Accordingly, the Board proposes to retain comment 8(e)(1)(i)–1 with minor wording changes.

Section 230.10 Electronic Communication

Section 230.10 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board proposes to delete § 230.10 from Regulation DD and the accompanying sections of the staff commentary.

In the interim rule, § 230.10(a) defines the term ''electronic communication'' to mean a message transmitted electronically that can be displayed on equipment as visual text, such as a message displayed on a personal computer monitor screen. The deletion of § 230.10(a) would not change applicable legal requirements under the E-Sign Act.

Sections 230.10(b) and (c) incorporate by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form and the requirement to obtain the consumer's affirmative consent before providing disclosures in electronic form. The deletion of these provisions will have no impact on the general applicability of the E-Sign Act to Regulation DD disclosures. Section 230.10(f) was added in the interim final rule to clarify that persons, other than depository institutions, that are required to comply with Regulation DD may use electronic disclosures. This provision is unnecessary because the E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions set forth in the Act.

Sections 230.10(d) and (e) address specific timing and delivery requirements for electronic disclosures under Regulation DD, such as the requirement to send disclosures to a consumer's e-mail address (or post the disclosures on a Web site and send a notice alerting the consumer to the disclosures), and to make a good faith attempt to redeliver an e-mailed disclosure or notice returned undelivered. The Board no longer believes that these additional provisions are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers in connection with online services, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices in all cases. In addition, the Board has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, institutions would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require depository institutions to maintain disclosures posted on a Web site for at least 90 days as provided in the 2001 interim final rule for several reasons. First, based on a review of industry practices, it appears that many institutions maintain disclosures posted on an Internet Web site for several months, and, in a number of cases, for more than a year. For example, it appears that institutions that offer online periodic statements to consumers typically make those statements available without charge for six months or longer in electronic form. This practice has developed even though Regulation DD does not currently require institutions to maintain disclosures for any specific period of time. Second, the Board believes that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of disclosure, and is reluctant to establish specific time periods depending on the disclosures. Nevertheless, while the Board is not proposing to require disclosures to be maintained on an Internet Web site for any specific time period, the general requirements of Regulation DD continue to apply to electronic disclosures, such as the requirement to provide disclosures to consumers at certain specified times and in a form that the consumer may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 230.10(d) of the 2001 interim final rule is needed to ensure that institutions satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor institutions' electronic disclosure practices with regard to the ability of consumer to retain Regulation DD disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 230.10 of the interim final rule provides guidance on the provisions set forth in § 230.10 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a web site for 90 days. As noted above, because the Board is proposing to delete § 230.10 of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

IV. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing revisions to Regulation DD to withdraw the 2001 interim final rule on electronic communication and to allow depository institutions to provide certain

disclosures to consumers in electronic form on or with an advertisement that is accessed by the consumer in electronic form, or if the consumer requests the disclosure, without regard to the consumer consent and other provisions of the E-Sign Act. The Board is also proposing to clarify that other Regulation DD disclosures may be provided to consumers in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

TISA was enacted to enhance economic stabilization, improve competition between depository institutions, and strengthen the ability of consumers to make informed decisions regarding deposit accounts. 12 U.S.C. 4301. It is the purpose of TISA to require the clear and uniform disclosure of rates of interest payable on deposit accounts and the fees that are assessable against deposit accounts, so that consumers can make a meaningful comparison between the competing claims of institutions. TISA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 12 U.S.C. 4308. The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * *, as in the judgment of the Board, are necessary or proper to carry out the purposes of [the Act], to prevent circumvention or evasion of [the Act], or to facilitate compliance with [the Act].'' 12 U.S.C. 4308(a). The Board believes that the revisions to Regulation DD discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate informed decisions about deposit accounts by consumers in circumstances where a consumer accesses a deposit account advertisement, or requests deposit account disclosures, in electronic form.

2. *Small entities affected by the proposal.* The ability to provide advertising disclosures in electronic form on or with an advertisement that is accessed by the consumer in electronic form, or to provide disclosures in electronic form if requested to do so by the consumer, applies to all depository institutions, regardless of their size. Accordingly, the proposed revisions would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this proposal is unknown.

3. *Other Federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation DD.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 230. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0271.

Section 269 of the Truth in Savings Act (TISA)(12 U.S.C. 4308) authorizes the Board to issue regulations to carry out the provisions of TISA. TISA and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts. To ease the compliance cost (particularly for small entities), model clauses and sample forms are appended to the regulation. Depository institutions are required to retain evidence of compliance for twenty-four months, but the regulation does not specify types of records that must be retained. This information collection is mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises.

Regulation DD applies to all depository institutions except credit unions. Credit unions are covered by a substantially similar rule issued by the National Credit Union Administration. The Federal Reserve accounts for the paperwork burden associated with Regulation DD only for Federal Reserve-regulated institutions. Federal Reserve-regulated institutions are defined by Regulation DD as: State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden imposed on the depository institutions for which they have administrative enforcement authority. The annual burden is estimated to be 232,443 hours for 1,172 Federal Reserve-regulated institutions that are deemed respondents for purposes of the PRA.

As mentioned in the Preamble, §§ 230.4 and 230.8 would be revised to clarify the disclosure requirements. The Federal Reserve estimates that 1,172 respondents would take approximately 1.5 minutes per transaction to comply with the existing disclosure requirements in § 230.4 and estimates the annual burden to be 14,650 hours. The Federal Reserve estimates that 1,172 respondents would take approximately 30 minutes per month to comply with the existing disclosure requirements in § 230.8 and estimates the annual burden to be 7,032 hours. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: a. Whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Savings.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to

Regulation DD. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.3 would be amended by revising paragraph (a) and removing paragraph (g), to read as follows:

§ 230.3 General disclosure requirements.

(a) *Form.* Depository institutions shall make the disclosures required by §§ 230.4 through 230.6 and § 230.10 of this part, as applicable, clearly and conspicuously, in writing, and in a form the consumer may keep. ►The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 230.4(a)(2) and 230.8 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.◄ Disclosures for each account offered by an institution may be presented separately or combined with disclosures for the institution's other accounts, as long as it is clear which disclosures are applicable to the consumer's account.

* * * * *

[(g) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 230.10.]

3. Section 230.4 would be amended by revising paragraphs (a)(1)(ii) and (a)(2)(i), to read as follows:

§ 230.4 Account disclosures.

(a) * * *

(1) * * *

(ii) ►*Timing of disclosures where electronic means are used*◄*[Electronic communication].* If a consumer who is not present at the institution uses ►electronic means (for example, an Internet Web site)◄[electronic communication (as defined in § 230.10)] to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before ►the◄ [an] account is opened or ►the◄ [a] service is provided.

(2) *Requests.* (i) A depository institution shall provide account disclosures to a consumer upon request. If a consumer who is not present at the institution makes a request, the institution shall mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form, or electronically if the consumer ►agrees◄ [provides an electronic mail address].

* * * * *

§ 230.10 [Removed and Reserved]

4. Section 230.10 would be removed and reserved.

5. In Supplement I to Part 230, the following amendments would be made:

a. In *Section 230.4—Account disclosures*, under *(a)(2)(i)*, paragraphs 3. and 4. would be revised.

b. In *Section 230.8—Advertising*, under *(a) Misleading or inaccurate advertisements*, paragraph 9. would be revised and new paragraphs 11. and 12. would be added.

c. In *Section 230.8—Advertising*, under *(b) Permissible rates*, paragraph 4. would be removed.

d. In *Section 230.8—Advertising*, under *(e)(1)(i)*, paragraph 1. would be revised.

e. Section 230.10 would be removed and reserved.

The amendments read as follows:

Supplement I to Part 230—Official Staff Interpretations

* * * * *

Section 230.4—Account Disclosures

(a) Delivery of Account Disclosures

* * * * *

(a)(2) Requests

(a)(2)(i)

* * * * *

3. *Timing for response.* Ten business days is a reasonable time for responding to requests for account information that consumers do not make in person, including requests made by electronic [communication]►means (such as by electronic mail)◄.

4. [*Requests by electronic communication*] ►*Use of electronic means*◄.

[Posting disclosures on a depository institution's Web site generally does not relieve the institution's duty to provide disclosures upon request. If the consumer provides an e-mail address, the institution may provide the disclosures electronically, but the institution must either send the disclosures by e-mail or send a notice to the consumer's e-mail address pursuant to § 230.10(d)(2)(i) to inform the consumer where the disclosures are posted.]

►If a consumer who is not present at the institution makes a request for account disclosures, including a request made by telephone, e-mail, or via the institution's web site, the institution may send the disclosures in paper form or, if the consumer agrees, may provide the disclosures electronically, such as to an e-mail address that the consumer provides for that purpose, or on the institution's Web site, without regard to the consumer consent or other provisions of the E-Sign Act. The regulation does not require an institution to provide, nor a consumer to agree to receive, disclosures in electronic form.◄

* * * * *

Section 230.8—Advertising

(a) Misleading or Inaccurate Advertisements

* * * * *

9. *Electronic advertising.* If an ►electronic advertisement (such as an advertisement appearing on an Internet Web site)◄ [advertisement using electronic communication] displays a triggering term (such as a bonus or annual percentage yield) the advertisement must clearly refer the consumer to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the consumer to the additional information.

* * * * *

►11. *Electronic form of disclosures.* For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement. Providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would *not* satisfy its obligation to provide the disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located.

12. *Additional disclosures in connection with the payment of overdrafts.* The rule in § 230.3(a), providing that disclosures required by § 230.8 may be provided to the consumer in electronic form without regard to E-Sign Act requirements, applies to the disclosures described in § 230.11(b), which are incorporated by reference in § 230.8(f).◄

(b) Permissible rates

* * * * *

[4. *Electronic communication.* An interest rate may be stated only if it is provided in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. In an advertisement using electronic communication, the consumer must be able to view both rates simultaneously. This requirement is not satisfied if the consumer can view the annual percentage yield only by use of a link that connects the consumer to information appearing at another location.]

* * * * *

(e)(1) Certain Media

(e)(1)(i)

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to [advertisements made by electronic communication, such as] advertisements posted on the Internet or sent by e-mail.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–7873 Filed 4–27–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM375 Special Conditions No. 25–07–10–SC]

Special Conditions: Boeing Model 787–8 Airplane; Lithium Ion Battery Installation

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. The Boeing Model 787–8 airplanes will use high capacity lithium ion battery technology in on-board systems. For this design feature, the applicable airworthiness regulations do not contain adequate or appropriate safety standards. 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 June 14, 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. NM375, 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. NM375. 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: Nazih Khaouly, FAA, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2432; facsimile (425) 227–1149.

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 Public Law 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 design includes planned use of lithium ion batteries for the following applications:

- Main and Auxiliary Power Unit (APU) Battery/Battery Charger System
- Flight Control Electronics
- Emergency Lighting System
- Recorder Independent Power Supply

Large, high capacity, rechargeable lithium ion batteries are a novel or unusual design feature in transport category airplanes. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for

installation on large transport category airplanes. The FAA is proposing this special condition to require that (1) All characteristics of the lithium ion battery and its installation that could affect safe operation of the 787 are addressed, and (2) appropriate maintenance requirements are established to ensure the availability of electrical power from the batteries when needed.

Background

The current regulations governing installation of batteries in large transport category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February, 1965. The new battery requirements, 14 CFR 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures. This led to additional rulemaking affecting large transport category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, respectively the FAA issued 14 CFR 25.1353c(5) and c(6), governing nickel-cadmium battery installations on large transport category airplanes.

The proposed use of lithium ion batteries for the emergency lighting system on the 787 has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium ion batteries that could affect the safety and reliability of the 787's lithium ion battery installation.

At present, there is limited experience with use of rechargeable lithium ion batteries in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturing to the electric vehicle industry, have noted safety problems with lithium ion batteries. These problems include overcharging, over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium ion batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway from overcharging increases with increasing battery capacity, because of the higher amount of electrolytes in large batteries.

2. Over-Discharging

Discharge of some types of lithium ion batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flightcrews as a means of checking battery status. This is a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of lithium ion batteries use liquid electrolytes that are flammable. The electrolytes can serve as a source of fuel for an external fire, if there is a breach of the battery container.

These problems experienced by users of lithium ion batteries raise concern about use of these batteries in commercial aviation. The intent of these proposed special conditions is to establish appropriate airworthiness standards for lithium ion battery installations in the 787 and to ensure, as required by 14 CFR 25.601, that these battery installations are not hazardous or unreliable. To address these concerns, these proposed special conditions adopt the following requirements:

- Those sections of 14 CFR 25.1353 that are applicable to lithium ion batteries.
- The flammable fluid fire protection requirements of 14 CFR 25.863. In the past, this rule was not applied to batteries of transport category airplanes, since the electrolytes used in lead-acid and nickel-cadmium batteries are not flammable.
- New requirements to address the hazards of overcharging and over-discharging that are unique to lithium ion batteries.
- New maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge.

These proposed special conditions are similar to special conditions adopted for the Airbus A380 (71 FR 74755); December 13, 2006).

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 would affect only certain novel or unusual design features of the 787. It is not a rule of general applicability, and it would affect 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 lieu of the requirements of 14 CFR 25.1353(c)(1) through (c)(4), the following special conditions apply. Lithium ion batteries on the Boeing Model 787–8 airplane must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The lithium ion battery installation must preclude explosion in the event of those failures.

(2) Design of the lithium ion batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any lithium ion battery in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of lithium ion batteries must meet the requirements of 14 CFR 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any lithium ion battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with 14 CFR 25.1309(b) and applicable regulatory guidance.

(6) Each lithium ion battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Lithium ion battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and,

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any lithium ion battery installation whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness required by 14 CFR 25.1529 must contain maintenance requirements for measurements of battery capacity at appropriate intervals to ensure that batteries whose function is required for safe operation of the airplane will perform their intended function as long as the battery is installed in the airplane. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of lithium ion batteries in spares storage to prevent the replacement of batteries whose function is required for safe operation of the airplane with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge.

Note: These special conditions are not intended to replace 14 CFR 25.1353(c) in the certification basis of the Boeing 787–8 airplane. These special conditions apply only to lithium ion batteries and their installations. The requirements of 14 CFR 25.1353(c) remain in effect for batteries and battery installations of the Boeing 787–8 airplane that do not use lithium ion batteries.

Issued in Renton, Washington, on April 23, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8186 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28036; Directorate Identifier 2006–NM–278–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of an evacuation slide raft to inflate, which could delay the evacuation of passengers in case of an emergency. 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 30, 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 Rulemaking 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: Tim Backman, Aerospace Engineer, ANM–116, International Branch, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; 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–2007–28036; Directorate Identifier 2006–NM–278–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0354, dated November 28, 2006 (referred to after this as ''the MCAI''), to correct an

unsafe condition for the specified products. The MCAI states that several operators have reported non-automatic deployment of slide rafts during ground operational testing. In all cases, the slide raft released correctly from the door but did not inflate automatically. Pulling the manual backup handle correctly inflated the slide raft. Investigation conducted by the slide raft manufacturer showed that non-automatic deployments have two potential root causes:

- Non-opening of the lacing; and
- Stiffness and stiction (static friction) on the painted inflatable material.

This situation, if not corrected, could delay the evacuation of passengers in case of an emergency.

A new design solution has been developed to ensure the automatic slide raft deployment, which consists of:

- Continuous ''speed lacing'' cord and new soft covers with rounded grommets (this modification ensures that the lacing opens);
- A new shorter firing cable, a new anchor block for the slide raft packboard and a new folding procedure (this modification ensures automatic deployment regardless of the inflatable paint condition).

Both modifications together ensure the automatic deployment function. The MCAI requires accomplishment of the set of modifications. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A330–25–3173, A340–25–4191, and A340–25–5004, all Revision 01, all dated August 2, 2006; and Service Bulletins A330–25–3301, A340–25–4273, and A340–25–5110, all dated March 24, 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, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by the State of Design Authority and determined the 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 described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 28 products of U.S. registry. We also estimate that it would take about 66 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $3,860 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $255,920, or $9,140 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:

Airbus: Docket No. FAA–2007–28036; Directorate Identifier 2006–NM–278–AD.

Comments Due Date

(a) We must receive comments by May 30, 2007.

Affected ADs

(b) The requirements of this AD relate to those specified in AD 2006–04–03, amendment 39–14484.

Applicability

(c) This AD applies to Airbus Model A330 and A340 airplanes, certificated in any category; except those with the European Aviation Safety Agency (EASA) specified modifications installed in production, or the equivalent service bulletins installed in service (as specified in Tables 1 and 2 of this AD), provided no slide has been replaced since either airplane delivery or service bulletin installation, as applicable.

TABLE 1.—EXCEPTIONS TO APPLICABILITY

Airplane model	Configuration	Airbus modifications installed in production
A330, A340–200, –300	With Modification 40161 (optional Type A door 3).	50806, 50807, 55071, and 55072.
A330, A340–200, –300	Without Modification 40161 (Type 1 door 3)	50806 and 55071.
A340–500		Either 50806, 50807, and 55071, or 50806 and 55071.
A340–600		50806, 50808, 55071, and 55073.

TABLE 2.—EXCEPTIONS TO APPLICABILITY

Airplane model	Airbus Service Bulletins installed in service
A330	A330–25–3173, Revision 01, dated August 2, 2006; and A330–25–3301, dated March 24, 2006.
A340–200, –300	A340–25–4191, Revision 01, dated August 2, 2006; and A340–25–4273, dated March 24, 2006.
A340–500, –600	A340–25–5004, Revision 01, dated August 2, 2006; and A340–25–5110, dated March 24, 2006.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that several operators have reported non-automatic deployment of slide rafts during ground operational testing. In all cases, the slide raft released correctly from the door but did not inflate automatically. Pulling the manual backup handle correctly inflated the slide raft. Investigation conducted by the slide raft manufacturer showed that non-automatic deployments have two potential root causes: Non-opening of the lacing; and stiffness and stiction (static friction) on the painted inflatable material. This situation, if not corrected, could delay the evacuation of passengers in case of an emergency. A new design solution has been developed to ensure the automatic slide raft deployment, which consists of: continuous ''speed lacing'' cord and new soft covers with rounded grommets (this modification ensures that the lacing opens); and a new shorter firing cable, a new anchor block for the slide raft packboard and a new folding procedure (this modification ensures automatic deployment regardless of the inflatable paint condition). Both modifications together ensure the automatic deployment function. The MCAI requires accomplishment of the set of modifications.

Actions and Compliance

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

(1) For slide raft P/Ns 7A1508–003/–005/–007/–023/–025/–027/–029/–115; P/Ns 7A1539–003/–004/–005/–006/–007/–008/–023/–024/–025/–026/–027/–028/–029/–030/–115/ –116; P/Ns 7A1510–003/–004/–005/–006/–007/–008/–023/–024/–025/–026/–027/–028/–029/ –030/–115/–116; and P/Ns 4A3934–1/–2/–001/–002: No later than 36 months after the effective date of this AD, modify the slide raft in accordance with the instructions given in Airbus Service Bulletin A330–25–3173, A340–25–4191, or A340–25–5004, all Revision 01, all dated August 2, 2006; as applicable; and modify the slide raft assembly of each door in accordance with the instructions given in Airbus Service Bulletin A330–25–3301, A340–25–4273, or A340–25–5110, all dated March 24, 2006; as applicable.

(2) For slide raft P/Ns 7A1508–033/–035/–037/–119/–121; P/Ns 7A1539–033/–034/–035/–036/–037/–038/–119/–120/–121/–122; P/Ns 7A1510–033/–034/–035/–036/–037/–038/ –119/–120/–121/–122; and P/Ns 4A3934–5/–6/–7/–8: No later than 36 months after the effective date of this AD, modify the slide raft assembly of each door in accordance with the instructions given in Airbus Service Bulletin A330–25–3301, A340–25–4273, or A340–25–5110, all dated March 24, 2006; as applicable.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, ATTN: Tim Backman, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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

(g) Refer to MCAI EASA Airworthiness Directive 2006–0354, dated November 28, 2006; and the Airbus Service Bulletins specified in Table 3 of this AD for related information.

TABLE 3.—AIRBUS SERVICE BULLETINS

Service Bulletin	Revision level	Date
A330–25–3173	01	August 2, 2006.
A340–25–4191	01	August 2, 2006.
A340–25–5004	01	August 2, 2006.
A330–25–3301	Original	March 24, 2006.
A340–25–4273	Original	March 24, 2006.
A340–25–5110	Original	March 24, 2006.

Issued in Renton, Washington, on April 23, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8172 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28035; Directorate Identifier 2006–NM–293–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767 airplanes. This proposed AD would require sealing certain fasteners and stiffeners in the fuel tank, and changing certain wire bundle clamp configurations on the fuel

tank walls. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent possible ignition sources in the auxiliary fuel tank, main fuel tanks, and surge tanks caused by a wiring short or lightning strike, which could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by June 14, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28035; Directorate Identifier 2006–NM–293–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

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

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

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

A safety assessment by Boeing identified a certain fastener type in the fuel tank walls that has an insufficient bond to the structure. These fasteners can be a path for electrical energy to enter the fuel tank if a wiring short occurs in a wire bundle installed along the fuel tank boundary structure, or if lightning strikes a wing surface. If energy from a wiring short or lightning strike goes through these fasteners, arcing can occur at the ends of the fasteners in the fuel tank. The ends of the fasteners in the fuel tank do not have sufficient electrical insulation to contain the energy from the arcs. This condition, if not corrected, could result in a potential ignition source inside a fuel tank.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–57A0100, dated August 21, 2006. The service bulletin describes procedures for sealing the ends of the fasteners on the brackets that hold the vortex generators, and, for certain airplanes, sealing the ends of fasteners on certain stiffeners on the rear spar.

We have also reviewed Boeing Alert Service Bulletin 767–57A0102, dated October 25, 2006. The service bulletin describes procedures for changing the wire bundle clamp configurations at specified locations on the fuel tank walls, and sealing the fasteners and certain stiffeners at specified locations in the fuel tank.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 925 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. There are no U.S.-registered airplanes in Group 3 of Service Bulletin 767–57A0102. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Service bulletin	Group	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
767–57A0100	1	6	(1)	$480	341	$163,680
	2	114	(1)	9,120	21	191,520
767–57A0102	1	246	$1,632	21,312	341	7,267,392
	2	874	1,304	71,224	21	1,495,704
	3	24	338	2,258	0	0

(1) Minimal.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–28035; Directorate Identifier 2006–NM–293–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 14, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 767–57A0100, dated August 21, 2006; and Boeing Alert Service Bulletin 767–57A0102, dated October 25, 2006.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent possible ignition sources in the auxiliary fuel tank, main fuel tanks, and surge tanks caused by a wiring short or lightning strike, which could result in fuel tank explosions and consequent loss 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.

Fastener Sealant Application

(f) For airplanes identified in Boeing Alert Service Bulletin 767–57A0100, dated August 21, 2006: Within 60 months after the effective date of this AD, seal the ends of the fasteners on the brackets that hold the vortex generators, and seal the ends of the fasteners on certain stiffeners on the rear spar, as applicable. Do the actions in accordance with the Accomplishment Instructions of the service bulletin.

Wire Bundle Sleeve and Clamp Installation and Fastener Sealant Application

(g) For airplanes identified in Boeing Alert Service Bulletin 767–57A0102, dated October 25, 2006: Within 60 months after the effective date of this AD, change the wire bundle clamp configurations at specified locations on the fuel tank walls, and seal the fasteners and certain stiffeners at specified locations on the fuel tank. Do the actions in accordance with the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on April 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8175 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24978; Directorate Identifier 2006–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. The original NPRM would have required modifying the fuel boost pump container of the center tank. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by adding airplanes to the applicability. We are proposing this supplemental NPRM to prevent exposing the fuel pump container vapor area to electrical arcing during a fuel pump motor case or connector burn through, which could result in a fuel tank explosion.

DATES: We must receive comments on this supplemental NPRM by May 25, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA 2006–24978; Directorate Identifier 2006–NM–108–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain McDonnell Douglas Model 717–200 airplanes. The original NPRM was published in the **Federal Register** on June 8, 2006 (71 FR 33262). The original NPRM proposed to require modifying the fuel boost pump container of the center tank.

Comments

We have considered the following comments on the original NPRM.

Support for the NPRM

AirTran Airways supports the proposed actions specified in the NPRM.

Request To Refer to Latest Revision of Service Bulletin

AirTran Airways and Boeing request that we reference Boeing Service Bulletin 717–28–0013, Revision 1, dated April 7, 2006, in the NPRM (we referred to Boeing Service Bulletin 717–28–0013, dated July 28, 2004, as the appropriate source of service information for doing the actions specified in the NPRM). AirTran Airways also requests that we give credit for actions done in accordance with the original issue.

Boeing commented that there was additional work required by Revision 1, but in a subsequent comment Boeing states that this was in error and that no additional work was needed. Boeing also notes that Revision 2 of the service bulletin is being drafted.

We agree to revise this AD to refer to the latest revision of the service bulletin as the appropriate source of service information. We have reviewed Boeing Service Bulletin 717–28–0013, Revision 1, dated April 7, 2006; and Boeing Service Bulletin 717–28–0013, Revision 2, dated September 13, 2006. The service bulletins contain essentially the same actions as described in the original issue of the service bulletin.

However, Revision 1 of the service bulletin adds new airplanes to the effectivity (fuselages number 5136 through 5146), clarifies the configuration table, and clarifies the installation of the hat and cover assembles. Revision 2 of the service bulletin revises the parts pricing and clarifies the notes in the figures. We have revised this AD to refer to Revision 2 of the service bulletin.

We have also revised the parts cost from $1,145 to $1,180 in the ''Costs of Compliance'' paragraph of this AD. We have also added paragraph (g) to this AD to allow the original issue and Revision 1 of the service bulletin to be considered acceptable for compliance with the modification specified in this supplemental NPRM.

Operators should note that we have not revised the 78-month compliance time specified in this supplemental NPRM to match the ''10 years after release date of the service bulletin'' compliance time specified in Revision 2 of the service bulletin. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the manufacturer's recommendation, the availability of required parts, and the practical aspect of accomplishing the proposed modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. Boeing concurs with the 78-month compliance time. However, according to the provisions of paragraph (h) of the supplemental NPRM, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 145 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	2	$80	$1,180	$1,340	114	$152,760

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA 2006–24978; Directorate Identifier 2006–NM–108–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 25, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Service Bulletin 717–28–0013, Revision 2, dated September 13, 2006.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent exposing the fuel pump container vapor area to electrical arcing during a fuel pump motor case or connector burn through, which could result in a fuel tank explosion.

Compliance

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

Modification

(f) Within 78 months after the effective date of this AD, modify the fuel boost pump container of the center tank by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 717–28–0013, Revision 2, dated September 13, 2006.

Actions Accomplished According to Previous Issue of Service Bulletin

(g) Modifications accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 717–28–0013, dated July 28, 2004; or Boeing Service Bulletin 717–28–0013, Revision 1, dated April 7,

2006; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on April 23, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8176 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25927; Directorate Identifier 2006–CE–52–AD]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LP SA226 and SA227 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 98–19–15 R1 and AD 2000–03–17, which apply to M7 Aerospace LP SA226 and SA227 series airplanes equipped with certain pitch trim actuators. AD 98–19–15 R1 currently requires you to incorporate changes into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) if certain part number (P/N) pitch trim actuators are installed. AD 2000–03–17 requires repetitive inspections and repetitive replacements of the pitch trim actuator. The repetitive inspection and repetitive replacement times vary depending on the combination of airplane model and pitch trim actuator P/N installed. We are proposing this AD because we have determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. Consequently, this proposed AD would retain all of the actions of the previously referenced ADs, place life limits on certain P/N pitch trim actuators, and require the replacement of certain P/N pitch trim actuators with one of an improved design. Once installed, the improved design pitch trim actuator would terminate the AFM limitations in this proposed AD and reduce the repetitive inspection and repetitive replacement requirements. We are proposing this AD to detect excessive freeplay or rod slippage in the pitch trim actuator, which, if not detected and corrected, could result in pitch trim actuator failure. We are also proposing this AD to lessen the severity of pitch upset if a pitch trim actuator mechanical failure occurs. These conditions could lead to possible loss of control.

DATES: We must receive comments on this proposed AD by June 29, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact M7 Aerospace LP, P.O. Box 790490, San Antonio, Texas 78279–0490; *telephone:* (210) 824–9421, extension 7294.

FOR FURTHER INFORMATION CONTACT: Werner Koch, Aerospace Engineer, 2601 Meacham Blvd, Fort Worth, Texas 76137–4298; *telephone:* (817) 222–5133; *fax:* (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2006–25927; Directorate Identifier 2006–CE–52–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

History of AD Actions

Failure of a Barber-Coleman pitch trim actuator, which allowed the horizontal stabilizer to move to a full aircraft nose up position on an M7 Aerospace LP Model SA227 airplane, caused us to issue AD 98–19–15 R1, Amendment 39–11507 (65 FR 1540, January 11, 2000). AD 98–19–15 R1 currently requires you to revise the Limitations Section of the FAA-approved AFM to limit the maximum indicated airspeed and increase the minimum crew size if a Barber-Coleman pitch trim actuator P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005 is installed.

To avoid the above limitations, AD 98–19–15 R1 allows installation of a Barber-Coleman P/N 27–19008–006, Barber Coleman P/N 27–19008–007, Simmonds-Precision P/N DL5040M5, Simmonds-Precision P/N DL5040M6, or Simmonds-Precision P/N DL5040M8 pitch trim actuator. All airplane models are eligible for any of these installations. The applicable service bulletin depends on the airplane model and pitch trim actuator.

The FAA also issued AD 2000–03–17, Amendment 39–11576 (65 FR 8037, February 17, 2000), to establish inspection and replacement intervals for the pitch trim actuators. Inspection times and replacement times vary depending on the model of the airplane and the P/N of the pitch trim actuator installed.

Events Since Previous AD Actions

Since we issued ADs 98–19–15 R1 and 2000–03–17, the FAA has determined that the actions fall within the FAA's aging commuter-class aircraft policy, which briefly states that reliance on critical repetitive inspections carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. We also determined that the number of repetitive replacements could be reduced in these AD actions

because of pitch trim actuator design changes.

The FAA has identified installation of Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or Simmonds-Precision P/N DL5040M8 pitch trim actuators on all SA226 and SA227 series airplanes or installation of Simmonds-Precision P/N DL5040M6 pitch trim actuators on all SA226 and SA227 series airplanes (except Models SA227-CC and SA227-DC) will significantly reduce the number of repetitive inspections and repetitive replacements currently required by AD 2000–03–17.

Relevant Service Information

We have reviewed the following Fairchild Aircraft service information:

- Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005, Revised: August 3, 1999;
- Fairchild Aircraft SA227 Series SL 227–SL–011, Revised August 3, 1999;
- Fairchild Aircraft SA227 Series SL CC7–SL–028, Issued: August 12, 1999;
- Fairchild Aircraft SA226 Series SL 226–SL–014, Revised: February 1, 1999;
- Fairchild Aircraft SA227 Series SL 227–SL–031, Revised: February 1, 1999; and
- Fairchild Aircraft SA227 Series SL CC7–SL–021, Revised: February 1, 1999.

The service information describes procedures for inspecting the various pitch trim actuators that can be installed in SA226 and SA227 series airplanes. This service information is currently referenced in the existing ADs.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 98–19–15 R1 and AD 2000–03–17 with a new AD that would retain all of the actions of the previously referenced ADs, but limit the part numbers of the pitch trim actuators that can be used for replacement. This proposed AD would also place a life limit on Barber-Coleman P/N 27–19008–001, Barber-Coleman P/N 27–19008–002, Barber-Coleman P/N 27–19008–004, and Barber-Coleman P/N 27–19008–005 pitch trim actuators. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 307 airplanes in the U.S. registry.

This proposed AD requires pitch trim actuators to either be inspected or overhauled. We have no way of determining the number of airplanes that may need the inspection or overhaul. We have presented the fleet cost as the lowest cost based on all airplanes needing the inspection and the highest cost based on all airplanes needing the overhaul. The actual fleet cost will be somewhere between the lowest and highest fleet cost presented.

We estimate the following costs to do the proposed inspection or overhaul:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	None	$320	$98,240
4 work-hours × $80 per hour = $320	$9,000	9,320	2,861,240

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection or proposed mandatory replacement. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
4 work-hours × $80 per hour = $320	$64,000	$64,320

The replacement estimate is based on replacing the pitch trim actuator with a new Simmonds-Precision P/N DL5040M8 pitch trim actuator. If the pitch trim actuator is replaced with a different P/N FAA-approved pitch trim actuator or a zero-timed FAA-approved pitch trim actuator the cost to the owner/operator could be less.

The estimated costs represented in the above actions include the costs associated with AD 98–19–15 R1, AD 2000–03–17, and the costs of this proposed AD. The added cost impact this AD imposes upon an owner/operator over that already required by AD 98–19–15 R1 and AD 2000–03–17 is the eventual replacement of the pitch trim actuator if the airplane currently has a Barber-Coleman P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005 installed.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–19–15 R1, Amendment 39–11507 (65 FR 1540, January 11, 2000), and AD 2000–03–17, Amendment 39–11576 (65 FR 8037, February 17, 2000); and by adding the following new AD:

M7 Aerospace LP (Type Certificate No. A5SW, A8SW, and A18SW formerly held by Fairchild Aircraft Incorporated): Docket No. FAA–2006–25927; Directorate Identifier 2006–CE–52–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by June 29, 2007.

Affected ADs

(b) This AD supersedes the following ADs:

(1) AD 98–19–15 R1, Amendment 39–11507; and

(2) AD 2000–03–17, Amendment 39–11576.

Applicability

(c) This AD applies to all Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), SA227–PC, and SA227–TT airplanes, all serial numbers, that:

(1) are certificated in any category; and

(2) are equipped with pitch trim actuator Barber-Coleman part number (P/N) 27–19008–001, Barber-Coleman P/N 27–19008–002, Barber-Coleman P/N 27–19008–004, Barber-Coleman P/N 27–19008–005, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, Simmonds-Precision P/N DL5040M5, Simmonds-Precision P/N DL5040M6, or Simmonds-Precision P/N DL5040M8.

Unsafe Condition

(d) This AD results from reports of mechanical failure of the pitch trim actuator causing the horizontal stabilizer to move to full aircraft nose up. We are proposing this AD to detect excessive freeplay or rod slippage in the pitch trim actuator, which, if not detected and corrected, could result in pitch trim actuator failure. We are also proposing this AD to lessen the severity of pitch upset if a pitch trim actuator mechanical failure occurs. These conditions could lead to possible loss of control. In addition, we are proposing this AD to eliminate the use of certain pitch trim actuators that require frequent critical inspections or replacements.

Compliance

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

(1) *For airplanes with a Barber-Coleman pitch trim actuator, P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005:* Before further flight after September 25, 1998 (the effective date of AD 98–19–15), incorporate the text in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD into the AFM Limitations Section. This may be done by inserting a copy of this AD into the AFM. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(i) ''Limit the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM)''; and

(ii) ''The minimum crew required is two pilots.''

Note 1: Fairchild Service Letter 226–SL–017, Fairchild Service Letter 227–SL–033, and Fairchild Service Letter CC7–SL–023, all FAA Approved: August 26, 1998; Revised: September 2, 1998, address the subject matter of this AD.

Note 2: The before further flight compliance time of paragraph (e)(1) of this AD is retained from AD 98–19–15 R1.

Note 3: Installation of any FAA-approved pitch trim actuator other than the Barber-Coleman P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005 terminates the requirements of paragraph (e)(1) of this AD.

(2) *For all airplanes:* Do the following initial inspection or overhaul and repetitive inspection or overhaul at the times specified in the table in paragraph (4) of this AD:

(i) *For airplanes equipped with a Simmonds-Precision pitch trim actuator P/N DL5040M5, P/N DL5040M6, or P/N DL5040M8:* Measure the freeplay of the pitch trim actuator and inspect the pitch trim actuator for rod slippage using the INSTRUCTIONS section of Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005 or Fairchild Aircraft SA227 Series SL 227–SL–011, both Revised: August 3, 1999; or Fairchild Aircraft SA227 Series Service Letter CC7–SL–028, Issued: August 12, 1999, as applicable.

(ii) *For airplanes equipped with Barber-Coleman pitch trim actuators, P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005:* Do a functional inspection of the pitch trim actuator using the INSTRUCTIONS section of Fairchild Aircraft SA226 Series SL 226–SL–014, Fairchild Aircraft SA227 Series SL 227–SL–031, or Fairchild Aircraft SA227 Series SL CC7–SL–021; all Revised: February 1, 1999; as applicable.

Note 4: The actions in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD are the same as the actions in AD 2000–03–17. The only difference between this AD and AD 2000–03–17 is the addition of life limits to Barber-Coleman pitch trim actuators P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005.

(iii) *For airplanes equipped with Barber-Coleman pitch trim actuators, P/N 27–19008–006 or P/N 27–19008–007:* Overhaul the pitch trim actuator following the applicable maintenance manual.

(3) *For all airplanes:* Before further flight replace the pitch trim actuator following the applicable maintenance manual when any of the following occurs:

(i) The pitch trim actuator is inspected following paragraphs (e)(2)(i) and (e)(2)(ii) of this AD and the freeplay limitations are exceeded, rod slippage is found, or a ratching sound occurs, as specified in the applicable service letters; or

(ii) The installed pitch trim actuator reaches its repetitive replacement time as specified in the table in paragraph (e)(4) of this AD.

(4) The table below presents the pitch trim actuators that could be installed and the compliance times for the initial inspections or overhaul, repetitive inspections or overhaul, and repetitive replacements required by this AD:

TABLE—INSPECTION/OVERHAUL AND REPLACEMENT REQUIREMENTS FOR PITCH TRIM ACTUATORS.

Condition	Initial inspection or overhaul	Repetitive inspection or overhaul	Repetitive replacement
(i) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have an original Simmonds-Precision pitch trim actuator, P/N DL5040M5, installed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 3,000 hours time-in-service (TIS) on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 250 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 250 hours TIS until accumulating the hours TIS specified in the paragraph (e)(4)(i) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator, 500 hours TIS after the initial inspection, or within 30 days after the effective date of this AD, whichever occurs later.
(ii) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision pitch trim actuator, P/N DL5040M5, installed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 5,000 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in the paragraph (e)(4)(ii) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 6,500 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.
(iii) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision pitch trim actuator, P/N DL5040M6, installed. This part can be new, modified from a P/N DL5040M5 pitch trim actuator, or overhauled and zero-timed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 7,500 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in the paragraph (e)(4)(iii) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 9,900 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.
(iv) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision pitch trim actuator, P/N DL5040M5, installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were replaced with new assemblies during overhaul.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 5,000 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in the paragraph (e)(4)(iv) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 6,500 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.
(v) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a replacement Simmonds-Precision P/N DL5040M5 pitch trim actuator installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were not replaced with new assemblies during overhaul.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 3,000 hours TIS on the pitch trim actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 250 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 250 hours TIS until accumulating the hours TIS specified in the paragraph (e)(4)(v) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.

TABLE—INSPECTION/OVERHAUL AND REPLACEMENT REQUIREMENTS FOR PITCH TRIM ACTUATORS.—Continued

Condition	Initial inspection or overhaul	Repetitive inspection or overhaul	Repetitive replacement
(vi) For all affected airplane models (except for the Models SA227–CC and SA227–DC) that have a newly fabricated or overhauled and zero-timed Barber-Colman pitch trim actuator, P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 500 hours total TIS on the pitch trim actuator or within 50 hours TIS after December 1, 1997 (the effective date of AD 97–23–01), whichever occurs later.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in the paragraph (e)(4)(vi) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M6, Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.
(vii) For the Models SA227–CC and SA227–DC that have a Simmonds-Precision pitch trim actuator, P/N DL5040M5 or P/N DL5040M6, installed.	None	None	Replace the pitch trim actuator with a Simmonds-Precision pitch trim actuator P/N DL5040M8, a Barber-Coleman P/N 27–19008–006 or P/N 27–19008–007, or an FAA-approved equivalent before accumulating 1,500 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.
(viii) For the Models SA227–CC and SA227–DC that have a newly fabricated or over-hauled and zero-timed Barber-Colman pitch trim actuator, P/N 27–19008–001, P/N 27–19008–002, P/N 27–19008–004, or P/N 27–19008–005.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 500 hours total TIS on the pitch trim actuator or within 50 hours TIS after December 1, 1997 (the effective date of AD 97–23–01), whichever occurs later.	Inspect following paragraph (e)(2)(ii) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in the paragraph (e)(4)(viii) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision P/N DL5040M8, Barber-Coleman P/N 27–19008–006, Barber-Coleman P/N 27–19008–007, or an FAA-approved equivalent pitch trim actuator before accumulating 5,000 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.
(ix) For all affected airplanes with a Simmonds-Precision pitch trim actuator, P/N DL5040M8, installed.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 7,500 hours TIS on the pitch trim actuator or within the next 50 hours TIS after April 10, 2000 (the effective date of AD 2000–03–17), whichever occurs later.	Inspect following paragraph (e)(2)(i) of this AD before accumulating 300 hours TIS after the initial inspection and repetitively thereafter at intervals not to exceed 300 hours TIS until accumulating the hours TIS specified in paragraph (e)(4)(ix) Repetitive Replacement column of this AD.	Replace the pitch trim actuator with a Simmonds-Precision pitch trim actuator P/N DL5040M8, a Barber-Coleman P/N 27–19008–006 or P/N 27–19008–007, or an FAA-approved equivalent before accumulating 9,900 hours TIS on the pitch trim actuator or within 30 days after the effective date of this AD, whichever occurs later.
(x) For all affected airplanes with a Barber-Colman P/N 27–19008–006 or 27–19008–007 pitch trim actuator installed.	Overhaul following paragraph (e)(2)(iii) of this AD before accumulating 2,000 hours TIS on the pitch trim actuator.	Overhaul following paragraph (e)(2)(iii) of this AD before accumulating 2,000 hours TIS on the pitch trim actuator.	No replacement requirements.

(5) *For all airplane models except Models SA227–CC and SA227–DC:* As of the effective date of this AD, do not install as a replacement any of the following pitch trim actuators or FAA-approved equivalent P/N:

(i) Barber-Colman P/N 27–19008–001;
(ii) Barber-Colman P/N 27–19008–002;
(iii) Barber-Colman P/N 27–19008–004;
(iv) Barber-Colman P/N 27–19008–005; or
(v) Simmonds-Precision P/N DL5040M5.

(6) *For all airplane Models SA227–CC and SA227–DC:* As of the effective date of this AD, do not install as a replacement any of the following pitch trim actuators or FAA-approved equivalent P/N:

(i) Barber-Colman P/N 27–19008–001;
(ii) Barber-Colman P/N 27–19008–002;
(iii) Barber-Colman P/N 27–19008–004;
(iv) Barber-Colman P/N 27–19008–005;
(v) Simmonds-Precision P/N DL5040M5; or
(vi) Simmonds-Precision P/N DL5040M6.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office (ACO), FAA, ATTN: Werner Koch, Aerospace Engineer, 2601 Meacham Blvd, Fort Worth, Texas 76137–4298, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(g) To get copies of the service information referenced in this AD, contact M7 Aerospace LP, 10823 N. E. Entrance, San Antonio, Texas 78216. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–25927; Directorate Identifier 2006–CE–52–AD.

Issued in Kansas City, Missouri, on April 20, 2007.

Charles L. Smalley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–8163 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–252–FOR]

Ohio 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 (OSM) are announcing receipt of a proposed amendment to the Ohio regulatory program (the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposes to revise the Ohio Revised Code (ORC) regarding changes to the State's alternate bonding system (bond pool), funding for its regulatory and abandoned mine land programs and its bond pool, permitting procedures for determining the potential that proposed mine sites may or may not produce acid-mine drainage, and authorizes rule-making if Ohio becomes covered by a State programmatic general permit issued by the U.S. Army Corps of Engineers for the discharge of dredged or fill material into waters of the United States by coal mining operations. The amendment is primarily intended to satisfy a program condition codified in the Federal regulations. This amendment replaces the State's bond pool amendment that the State previously submitted and that OSM announced, and requested public comments on, in the **Federal Register** dated February 13, 2006 (71 FR 7480).

This document gives the times and locations that the Ohio program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), May 30, 2007. If requested, we will hold a public hearing on the amendment on May 25, 2007. We will accept requests to speak at a hearing until 4 p.m., local time, on May 15, 2007.

ADDRESSES: You may submit comments, identified by OH–252–FOR, by any of the following methods:

- E-mail: *grieger@osmre.gov.* Include OH–252–FOR in the subject line of the message;
- Mail/Hand Delivery: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 4605 Morse Road, Room 102, Columbus, OH 43230. Telephone: 614–416–2238.
- 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 Ohio 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 also receive one free copy of this amendment by contacting OSM's Pittsburgh Field Division listed below:

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement 4605 Morse Road, Room 102, Columbus, OH 43230 614–416–2238. E-mail: *grieger@osmre.gov.*

Mr. Scott Kell, Acting Chief, Division of Mineral Resources Management, Ohio Department of Natural Resources, 2045 Morse Road, Bldg. H–2, Columbus, Ohio 43229, Telephone: (614) 265–6633.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Chief, Pittsburgh Field Division, Telephone: (717) 782–4849, extension 11; or 614–416–2238; or 412–937–2153. E-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Ohio 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 Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated March 6, 2007, Ohio sent us a proposed amendment to its program (Administrative Record Number OH–2185–28) under SMCRA (30 U.S.C. 1201 *et seq.*). In its letter, Ohio stated that in December of 2006, the Ohio legislature passed House Bill 443, which is intended to address many of the issues of concern relative to Ohio's bond pool. Ohio proposes to revise the Ohio Revised Code (ORC) regarding changes to the State's alternate bonding system (bond pool), funding for its regulatory and abandoned mine land programs and its bond pool, permitting procedures for determining the potential that proposed mine sites may or may not produce acid-mine drainage, and authorizes rule-making if Ohio becomes covered by a State programmatic general permit issued by the U.S. Army Corps of Engineers for the discharge of dredged or fill material into waters of the United States by coal mining operations.

The amendment is intended to satisfy a program condition codified in the Federal regulations at 30 CFR 935.11(h), and is in response to OSM's letter of May 4, 2005, issued under provisions of 30 CFR 733.12(b). The program condition provides that Ohio must submit a program amendment that demonstrates how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited.

The State also acknowledged that its March 6, 2007, submittal is intended to replace the bond pool amendment that the State had submitted to OSM on December 19, 2005. We published and requested public comment on that previous bond pool amendment in the **Federal Register** on February 13, 2006 (71 FR 7480). Because the State has requested that the current amendment replace its previous amendment, we are hereby withdrawing the proposed rulemaking that we announced in the **Federal Register** on February 13, 2006.

In its March 6, 2007, submittal, Ohio also stated that it realizes that the passage of HB 443 is only the first step in its efforts to establish a bonding program in Ohio that is in accordance with the requirements of SMCRA. Ohio anticipates that significant amendments to the Ohio Administrative Code (OAC) will be needed in order to ensure that the final program amendment, in whole, is consistent with the relevant Federal regulations. To that end, Ohio stated, the Division of Mineral Resources Management (DMRM) has chartered several workgroups made up of internal and external stakeholders to develop final procedures and policies that will be used as a basis for revising the OAC to implement the provisions of HB 443. Ohio has requested OSM's technical assistance on these workgroups.

The current amendment provides the following specific revisions. In the descriptions below, we have not identified the numerous paragraph re-numbering and citation referencing changes that result from the substantive changes proposed in this amendment.

1. ORC 1513.01(W) Definition of ''Performance Security''

This definition is new, and provides as follows:

(W) ''Performance security'' means a form of financial assurance, including, without limitation, a surety bond issued by a surety licensed to do business in this state; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, this state, or a municipal corporation in this state; a trust fund of which the state is named a conditional beneficiary; or other form of financial guarantee or financial assurance that is acceptable to the chief.

In addition to the change quoted above, the State has amended or deleted terms throughout ORC Chapter 1513 in which the word ''bond'' appears, such as in the terms ''performance bond'' and ''bond coverage,'' and has replaced those terms with the term ''performance security.''

2. ORC 1513.02(E)(3) Responsibilities of the DMRM

This provision is being amended by deleting the phrase ''coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code'' and revising that phrase to read: ''Reclamation forfeiture fund created in section 1513.18 of the Revised Code.''

3. ORC 1513.02(J) Responsibilities of DMRM

This provision is new, and provides as follows:

(J) If this state becomes covered by a state programmatic general permit issued by the United States Army Corps of engineers for the discharge of dredged or fill material into the waters of the United States by operations that conduct surface and underground coal mining and reclamation operations and the restoration of abandoned mine lands, the chief may establish programs and adopt rules and procedures designed to implement the terms, limitations, and conditions of the permit. The purpose of the programs, rules, and procedures shall be to enable the state to reduce or eliminate duplicative state and federal project evaluation, simplify the regulatory approval process, provide environmental protection for aquatic resources that is equivalent to Federal protection, and satisfy the requirements of the United States Army Corps of Engineers regulatory program under which the permit is issued and that is established under section 404 of the ''Federal Water Pollution Control Act,'' 86 Stat. 48 (1972), 33 U.S.C. 1344, as amended by the ''Clean Water Act of 1977,'' 91 Stat. 1600, 33 U.S.C. 1344; section 10 of the ''Rivers and Harbors Act of 1899,'' 30 Stat. 1151, 33 U.S.C. 403; and section 103 of the ''Marine Protection, Research, and Sanctuaries Act of 1972,'' 86 Stat. 1055, 33 U.S.C. 1413.

In its submittal, Ohio stated that ''if'' a General Permit is issued for Ohio by the U.S. Army Corps of Engineers regarding discharges into jurisdictional waters of United States from surface/underground coal mining operations and abandoned mine land reclamation (AML) projects, then DMRM ''may'' establish programs, adopt rules and develop procedures to implement the General Permit.

4. ORC 1513.07(B)(1) Permit Application; Permit Fee

Paragraph (B)(1) is proposed to be deleted in its entirety, and provides as follows.

(B)(1) Each application for a coal mining and reclamation permit or renewal of such a permit shall be accompanied by a permit or renewal fee in an amount equal to the product of seventy-five dollars multiplied by the number of acres, estimated in the application, that will comprise the area of land to be affected within the permit or renewal period by the coal mining operation for which the permit or renewal is requested.

5. ORC 1513.07(B)(1)(o) Permit Application; Statement of Acid Generating Potential and Acid Neutralizing Potential

The following new language is added at the end of this existing paragraph:

If the test borings or core samplings from the permit area indicate the existence of potentially acid forming or toxic forming quantities of sulfur in the coal or overburden to be disturbed by mining, the application also shall include a statement of the acid generating potential and the acid neutralizing potential of the rock strata to be disturbed as calculated in accordance with the calculation method established under section 1513.075 of the Revised Code or with another calculation method.

In its submittal, Ohio stated that this new provision directs applicants to provide an Acid Base Accounting statement pursuant to methodology prescribed in ORC 1513.075, or another method.

6. ORC 1513.07(E)(8) Permit Application; Monitoring and Recordkeeping Related to Potential Acidity and Neutralization Potential

This paragraph is new and provides as follows:

(8) In the case of the issuance of a permit that involves a conflict of results between various methods of calculating potential acidity and neutralization potential for purposes of assessing the potential for acid mine drainage to occur at a mine site, the permit shall include provisions for monitoring and record keeping to identify the creation of unanticipated acid water at the mine site. If the monitoring detects the creation of acid water at the site, the permit shall impose on the permittee additional requirements regarding mining practices and site reclamation to prevent the discharge of acid mine drainage from the mine site. As used in division (E)(8) of this section, ''potential acidity'' and ''neutralization potential'' have the same meanings as in section 1513.075 of the Revised Code.

In its submittal, Ohio stated that this new paragraph provides for additional monitoring for Acid Mine Drainage if there is a conflict concerning the assessment of the potential for a mine to discharge AMD. In the event unanticipated AMD occurs during mining and reclamation, additional mining practices and reclamation shall be required in order to prevent AMD discharges.

7. ORC 1513.075 Definitions and Calculating Potential Acidity and Neutralization Potential

This provision is new and provides as follows:

Sec. 1513.075. (A) As used in this section:

(1) ''Potential acidity'' means a laboratory measurement of the amount of acidity that could be produced by material in a rock strata proposed to be disturbed by mining and that is expressed by a numeral indicating the number of tons of that acidity that would be present in one thousand tons of disturbed overburden.

(2) ''Neutralization potential'' means a laboratory measurement of the alkalinity of a rock strata expressed as the amount of acidity that would be neutralized by material proposed to be disturbed by mining and that is expressed by a numeral indicating the number of tons of that alkalinity that would be present in one thousand tons of disturbed overburden.

(3) ''Test borings or core samplings'' refer to test borings or core samplings performed on rock strata in an area proposed to be covered by a permit for a coal mining operation, the results of which must be stated in the permit application in accordance with division (B)(1)(o) of section 1513.07 of the Revised Code.

(B) For purposes of the determination of the chief of the division of mineral resources management regarding whether to approve an application for a permit for a coal mining operation based on criteria established in divisions (E)(2)(a) and (c) of section 1513.07 of the Revised Code and related performance standards established in division (A)(10) of section 1513.16 of the Revised Code, the potential acidity and the neutralization potential of the rock strata that would be disturbed under the permit may be calculated in accordance with this section.

(C) The measurement of potential acidity may be based on laboratory analyses of the sulfur content of the coal and overburden to be disturbed by mining. If the results of test borings or core samplings include laboratory analyses of the pyritic form of sulfur, the applicant may base the calculation of the potential acidity for the area on the pyritic sulfur content of the coal and overburden to be disturbed by mining rather than on the total sulfur content.

(D) The tons of rock in the area represented by each core hole resulting from test boring or core sampling may be estimated and used to calculate the tons of potential acidity and tons of neutralization potential for each rock stratum. The sum of those values across the proposed permit area may be used to calculate the site's overall neutralization potential and potential acidity.

(E) The proposed permit area may not be considered to have the potential to create acid or other toxic mine drainage if either of the following applies:

(1) The numeral that indicates the site's overall neutralization potential divided by the numeral that indicates the site's overall potential acidity results in a quotient that is equal to or greater than two.

(2) The numeral that indicates the neutralization potential subtracted from the numeral that indicates the potential acidity results in a remainder that is equal to or less than either of the following:

(a) Negative five in the case that the total sulfur content of rock strata is used to calculate potential acidity;

(b) Negative ten in the case that the pyritic sulfur content of rock strata is used to calculate potential acidity.

In its submittal, Ohio stated that this new provision defines certain terms relative to potential acidity and neutralization potential of strata overlying the coal to be mined. The provision also provides for calculation of proposed mining operations' potential to create acid or toxic drainage based on specific criteria and indicates that proposed mining areas not meeting certain numeric criteria ''may'' not be considered as potential acid/toxic producers.

8. ORC 1513.08 Requirement to File a Performance Security

This provision is amended by deleting, adding and rearranging language relating to performance security. Much new language is added to this provision, and the provision is reorganized to accommodate the new language. As amended this section provides as follows:

Sec. 1513.08. (A) After a coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the chief of the division of mineral resources management, on a form prescribed and furnished by the chief, the performance security required under this section.

(B) Using the information contained in the permit application; the requirements contained in the approved permit and reclamation plan; and, after considering the topography, geology, hydrology, and revegetation potential of the area of the approved permit, the probable difficulty of reclamation; the chief shall determine the estimated cost of reclamation under the initial term of the permit if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the applicant. The chief shall send written notice of the amount of the estimated cost of reclamation by certified mail to the applicant. The applicant shall send written notice to the chief indicating the method by which the applicant will provide the performance security pursuant to division (C) of this section.

(C) The applicant shall provide the performance security in an amount using one of the following:

(1) If the applicant elects to provide performance security without reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code, the amount of the estimated cost of reclamation as determined by the chief under division (B) of this section for the increments of land on which the operator will conduct a coal mining and reclamation operation under the initial term of the permit as indicated in the application;

(2) If the applicant elects to provide performance security together with reliance on the reclamation forfeiture fund through payment of the additional tax on the severance of coal that is levied under division (A)(8) of section 5749.02 of the Revised Code, an amount of twenty-five hundred dollars per acre of land on which the operator will conduct coal mining and reclamation under the initial term of the permit as indicated in the application. However, in order to be eligible to provide performance security in accordance with division (C)(2) of this section, an applicant shall have held a permit issued under this chapter for any coal mining and reclamation operation for a period of not less than five years. In the event of forfeiture of performance security that was provided in accordance with division (C)(2) of this section, the difference between the amount of that performance security and the estimated cost of reclamation as determined by the chief under division (B) of this section shall be obtained from money in the reclamation forfeiture fund as needed to complete the reclamation.

The performance security provided under division (C) of this section for the entire area to be mined under one permit issued under this chapter shall not be less than ten thousand dollars. The performance security shall cover areas of land affected by mining within or immediately adjacent to the permitted area, so long as the total number of acres does not exceed the number of acres for which the performance security is provided. However, the authority for the performance security to cover areas of land immediately adjacent to the permitted area does not authorize a permittee to mine areas outside an approved permit area. As succeeding increments of coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the chief additional performance security to cover the increments in accordance with this section. If a permittee intends to mine areas outside the approved permit area, the permittee shall provide additional performance security in accordance with this section to cover the areas to be mined.

An applicant shall provide performance security in accordance with division (C)(1) of this section in the full amount of the estimated cost of reclamation as determined by the chief for a permitted coal preparation plant or coal refuse disposal area that is not located within a permitted area of a mine. A permittee shall provide the performance security not later than one year after the effective date of this amendment for a permitted coal preparation plant or coal refuse disposal area that is in existence on the effective date of this amendment and that is not located within a permitted area of a mine.

(D) A permittee's liability under the performance security shall be limited to the obligations established under the permit, which include completion of the reclamation plan in order to make the land capable of supporting the postmining land use that was approved in the permit. The period of liability under the performance security shall be for the duration of the coal mining and reclamation operation and for a period coincident with the operator's responsibility

for revegetation requirements under section 1513.16 of the Revised Code.

(E) The amount of the estimated cost of reclamation determined under division (B) of this section and the amount of a permittee's performance security provided in accordance with division (C)(1) of this section may be adjusted by the chief as the land that is affected by mining increases or decreases or if the cost of reclamation increases or decreases. If the performance security was provided in accordance with division (C)(2) of this section and the chief has issued a cessation order under division (D)(2) of section 1513.02 of the Revised Code for failure to abate a violation of the contemporaneous reclamation requirement under division (A)(15) of section 1513.16 of the Revised Code, the chief may require the permittee to increase the amount of performance security from twenty-five hundred dollars per acre of land to five thousand dollars per acre of land.

The chief shall notify the permittee, each surety, and any person who has a property interest in the performance security and who has requested to be notified of any proposed adjustment to the performance security. The permittee may request an informal conference with the chief concerning the proposed adjustment, and the chief shall provide such an informal conference.

If the chief increases the amount of performance security under this division, the permittee shall provide additional performance security in an amount determined by the chief. If the chief decreases the amount of performance security under this division, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount of reduction to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief.

(F) A permittee may request a reduction in the amount of the performance security by submitting to the chief documentation proving that the amount of the performance security provided by the permittee exceeds the estimated cost of reclamation if the reclamation would have to be performed by the division in the event of forfeiture of the performance security. The chief shall examine the documentation and determine whether the permittee's performance security exceeds the estimated cost of reclamation. If the chief determines that the performance security exceeds that estimated cost, the chief shall determine the amount of the reduction of the performance security and send written notice of the amount to the permittee. The permittee may reduce the amount of the performance security in the amount determined by the chief. Adjustments in the amount of performance security under this division shall not be considered release of performance security and are not subject to section 1513.16 of the Revised Code.

(G) If the performance security is a bond, it shall be executed by the operator and a corporate surety licensed to do business in this state. If the performance security is a cash deposit or negotiable certificates of deposit of a bank or savings and loan association, the bank or savings and loan association shall be licensed and operating in this state. The cash deposit or market value of the securities shall be equal to or greater than the amount of the performance security required under this section. The chief shall review any documents pertaining to the performance security and approve or disapprove the documents. The chief shall notify the applicant of the chief's determination.

(H) If the performance security is a bond, the chief may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the chief the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.

(I) Performance security provided under this section may be held in trust, provided that the state is the conditional beneficiary of the trust and the custodian of the performance security held in trust is a bank, trust company, or other financial institution that is licensed and operating in this state. The chief shall review the trust document and approve or disapprove the document. The chief shall notify the applicant of the chief's determination.

(J) If a surety, bank, savings and loan association, trust company, or other financial institution that holds the performance security required under this section becomes insolvent, the permittee shall notify the chief of the insolvency, and the chief shall order the permittee to submit a plan for replacement performance security within thirty days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(1) of this section, the permittee shall provide the replacement performance security within ninety days after receipt of notice from the chief. If the permittee provided performance security in accordance with division (C)(2) of this section, the permittee shall provide the replacement performance security within one year after receipt of notice from the chief, and, for a period of one year after the permittee's receipt of notice from the chief or until the permittee provides the replacement performance security, whichever occurs first, money in the reclamation forfeiture fund shall be the permittee's replacement performance security in an amount not to exceed the estimated cost of reclamation as determined by the chief.

(K) A permittee's responsibility for repairing material damage and replacement of water supply resulting from subsidence may be satisfied by liability insurance required under this chapter in lieu of the permittee's performance security if the liability insurance policy contains terms and conditions that specifically provide coverage for repairing material damage and replacement of water supply resulting from subsidence.

(L) If the performance security provided in accordance with this section exceeds the estimated cost of reclamation, the chief may authorize the amount of the performance security that exceeds the estimated cost of reclamation together with any interest or other earnings on the performance security to be paid to the permittee.

In its submittal, Ohio summarized the amendments at ORC 1513.08 as follows. Ohio stated that ORC 1513.08(B) requires the Chief of DMRM to determine the cost of reclamation, on a case by case basis, for all permit applications submitted. The cost of such reclamation shall be determined as if forfeiture of the performance security had occurred and DMRM is required to perform the reclamation. This determination shall be a basis for the amount of performance security, and shall be made subsequent to application approval, but prior to permit issuance. DMRM notifies the applicant via certified mail of the cost of performance security. Ohio stated that the applicant then responds and indicates the method of providing performance security at ORC 1513.08(C):

(C)(1) Full cost, incrementally, under the initial permit term, or

(C)(2) $2,500/acre on land under initial permit term.

If choosing option (C)(2), the company will pay additional tax into the bond pool in the amount provided by ORC 5749.02(A)(8).

Ohio stated that if performance security is forfeited, the bond pool may be used to supplement the $2,500/acre flat bond rate up to the Chief's determination of cost pursuant to ORC1513.08(B). Only applicants holding permits in Ohio for at least 5 years have option (C)(2).

The minimum performance security shall be $10,000 for any one permit. Existing (permitted) coal prep plants/refuse disposal facilities not within a permit of a mine must provide full cost performance security within one year of the effective date of the law.

Ohio stated that under ORC 1513.08(D), performance security liability is limited to obligations established under the permit.

Ohio stated that under ORC 1513.08(E), the Chief's estimated cost of reclamation and amount of performance security may be adjusted by DMRM based upon cost increases/decreases. Operators choosing the flat rate/bond pool option may have the bond rate increased to $5,000/acre if a failure to abate cession order is issued due to non-contemporaneous reclamation.

Ohio stated that performance security adjustments require notification to permittee, surety and any person who has a property interest in the performance security upon request. A permittee may request an informal conference regarding a proposed rate adjustment.

Ohio stated that ORC 1513.08(F), provides for a permittee to request reduction in performance security based upon documentation proving actual cost

of reclamation to the Division is less than the amount posted.

Ohio stated that under ORC 1513.08 (G), if performance security is issued in the form of a bond, the surety must be licensed to conduct business in Ohio. If the performance security is cash deposit or a certificate of deposit of a bank or savings and loan association, that business shall be licensed and operating in Ohio. Ohio further stated that the Chief is required to review performance security documents and approve of their use.

Ohio stated that ORC 1513.08(I) provides criteria for performance security held in trust. The Chief must review and approve trust documents.

Ohio stated that ORC 1513.08 (J) provides the following procedures for holder of performance security insolvency: Permittee notification to DMRM; Plan for replacement of performance; security; Replacement of full cost performance security in 90 days; Replacement of flat rate performance security in one year.

Ohio stated that ORC 1513.08(K) provides that subsidence damages and replacement of subsidence damaged water supplies may be satisfied by liability insurance in lieu of performance security. Such insurance specifically must address such damages.

Ohio stated that ORC 1513.08(L) provides that performance security exceeding the cost of reclamation may be returned to the operator along with interest or other earnings.

9. ORC 1513.081 DMRM Priority Lien

This provision is new and provides as follows:

Sec. 1513.081. (A) If an operator becomes insolvent, the division of mineral resources management shall have a priority lien in front of all other interested creditors against the assets of that operator for the amount of any reclamation that is required as a result of the operator's mining activities. The chief of the division of mineral resources management shall file a statement in the office of the county recorder of each county in which the mined land lies of the estimated cost to reclaim the land. The estimated cost to reclaim the land shall include the direct and indirect costs of the development, design, construction, management, and administration of the reclamation. The statement shall constitute a lien on the assets of the operator as of the date of the filing. The lien shall continue in force so long as any portion of the lien remains unpaid or until the chief issues a certificate of release of the lien. If the chief issues a certificate of release of the lien, the chief shall file the certificate of release in the office of each applicable county recorder.

(B) The chief promptly shall issue a certificate of release of a lien under any of the following circumstances:

(1) Upon the repayment in full of the money that is necessary to complete the reclamation;

(2) Upon the transfer of an existing permit that includes the areas of the operation for which reclamation was not completed to a different operator;

(3) Any other circumstance that the chief determines to be in the best interests of the state.

(C) The chief may modify the amount of a lien under this section. If the chief modifies a lien, the chief shall file a statement in the office of the county recorder of each applicable county of the new amount of the lien.

(D) The chief may authorize an agent to hold a certificate of release in escrow for a period not to exceed one hundred eighty days for the purpose of facilitating the transfer of unreclaimed mine land.

(E) All money from the collection of liens under this section shall be deposited in the state treasury to the credit of the reclamation forfeiture fund created in section 1513.18 of the Revised Code.

In its submittal, Ohio stated that ORC 1513.081(A) provides for DMRM's priority lien ahead of other creditors in event of operator insolvency. Lien can be used to recover the cost of reclamation including all associated administrative costs. Lien must be filed by DMRM in the appropriate county recorder's office. Ohio stated that subsection (B) provides for the release of a filed lien and/or adjustment.

10. ORC 1513.16(F)(8)(a) Alternative Financial Security (AFS)

This provision is new and provides as follows:

(8)(a) Except as provided in division (F)(8)(c) of this section, if the chief determines that a permittee is responsible for mine drainage that requires water treatment after reclamation is completed under the terms of the permit or that a permittee must provide an alternative water supply after reclamation is completed under the terms of the permit, the permittee shall provide alternative financial security in an amount determined by the chief prior to the release of the remaining portion of performance security under division (F)(3)(c) of this section. The alternative financial security shall be in an amount that is equal to or greater than the present value of the estimated cost over time to develop and implement mine drainage plans and provide water treatment or in an amount that is necessary to provide and maintain an alternative water supply, as applicable. The alternative financial security shall include a contract, trust, or other agreement or mechanism that is enforceable under law to provide long-term water treatment or a long-term alternative water supply, or both.

(b) The chief shall adopt rules in accordance with Chapter 119 of the Revised Code that are necessary for the administration of division (F)(8)(a) of this section.

(c) Division (F)(8)(a) of this section does not apply while the chief's determination of a permittee's responsibility under that division is the subject of a good faith administrative or judicial appeal contesting the validity of the determination. If after completion of the appeal there is an enforceable administrative or judicial decision affirming or modifying the chief's determination, the permittee shall provide the alternative financial security in an amount established in the administrative or judicial decision.

In its submittal, Ohio stated that ORC 1513.16(F)(8) provides provisions for an Alternative Financial Security (AFS) to address mine drainage treatment or alternative water supply replacement after reclamation is completed. An AFS is to be provided prior to release of remaining bond in the form of a contract, trust or other agreements enforceable under law to provide long-term water treatment or alternative supply. Subsection (b) requires the Chief to adopt new rules to administer the AFS.

11. ORC 1513.16(F)(9) Termination of Jurisdiction

This provision is new and provides as follows:

(9) Final release of the performance security in accordance with division (F)(3)(c) of this section terminates the jurisdiction of the chief under this chapter over the reclaimed site of a surface coal mining and reclamation operation or applicable portion of an operation. However, the chief shall reassert jurisdiction over such a site if the release was based on fraud, collusion, or misrepresentation of a material fact and the chief, in writing, demonstrates evidence of the fraud, collusion, or misrepresentation. Any person with an interest that is or may be adversely affected by the chief's determination may appeal the determination to the reclamation commission in accordance with section 1513.13 of the Revised Code.

In its submittal, Ohio stated that this provision provides for the final release of performance security and terminates the Division's jurisdiction unless certain specific issues are subsequently found to be present.

12. ORC 1513.171 Coal Reclamation Tax Credit

This provision is new, and provides as follows:

Sec. 1513.171. (A) For the purpose of claiming a credit under section 5749.11 of the Revised Code, an operator with a valid permit issued under section 1513.07 of the Revised Code may submit an application to the chief of the division of mineral resources management to perform reclamation on land or water resources that are not within the area of the applicant's permit and that have been adversely affected by past coal mining for which the performance security was

forfeited. The chief shall provide the application form. The application shall include all of the following:

(1) The operator's name, address, and telephone number;

(2) The valid permit number of the operator;

(3) An identification of the area or areas to be reclaimed;

(4) An identification of the owner of the land;

(5) A reclamation plan that describes the work to be done to reclaim the land or water resources. The plan shall include a description of how the plan is consistent with local physical, environmental, and climatological conditions and the measures to be taken during the reclamation to ensure the protection of water systems.

(6) An estimate of the total cost of the reclamation;

(7) An estimate of the timetables for accomplishing the reclamation;

(8) Any other requirements that the chief prescribes by rule.

The chief shall approve, disapprove, or approve with modifications the application concerning the proposed reclamation work. If the chief approves the application, the applicant may commence reclamation in accordance with the timetables included in the application. Upon the completion of the reclamation to the satisfaction of the chief, the chief shall issue a numbered reclamation tax credit certificate showing the amount of the credit and the identity of the recipient. Prior to the close of the fiscal quarter in which the tax credit certificate is issued, the chief shall certify to the tax commissioner the amount of the credit and the identity of the recipient.

(B) The chief shall determine the amount of the credit in accordance with this section and rules adopted under it. The amount of the credit shall be equal to the cost that the division of mineral resources management would have expended from the reclamation forfeiture fund created in section 1513.18 of the Revised Code to complete the reclamation.

(C) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to administer this section. The rules shall establish all of the following:

(1) A procedure that the chief shall use to determine the amount of the credit issued under this section;

(2) A procedure by which the chief may obtain consent of the owners of land or water resources to allow reclamation work for purposes of this section;

(3) A procedure for delivery of notice to the owners of land or water resources on which the reclamation work is to be performed. The rules shall require the notice to include the date on which the reclamation work is scheduled to begin.

In its submittal, Ohio stated that this provision establishes procedures for claiming tax credit pursuant to section 5749.11 of the ORC. A coal mine operator may submit an application to reclaim another mined area with forfeited bond. Once reclamation is completed, the Chief shall issue numbered tax credits in the amount of the credit. Under subsection (B), the Chief shall determine the amount of the credit, equivalent to the cost of reclamation to the division if the work had been completed by the state. Subsection (C) requires the Chief to adopt rules to administer and establish procedures to address: Amount of tax credit; Consent of landowner or owner of the water resources to conduct reclamation; and Notification to landowner of reclamation work and schedule.

13. ORC 1513.18 Reclamation Forfeiture Fund

Subsection (B) is amended in the first sentence by deleting the phrase ''any moneys transferred to it under this division from the unreclaimed lands fund created in section 1513.30.'' In place of that deleted language, the following phrase is added: ''All money from the collection of liens under section 1513.081.'' The first sentence in subsection (B) is also amended by identifying that funds derived from certain fines will be added to the reclamation forfeiture fund. Language concerning the Chief's management of the fund is deleted. Language concerning the transfer of funds from the unreclaimed lands fund is deleted. Language concerning use of money from the reclamation forfeiture fund to cover administrative expenses has been added. As amended, subsection (B) provides as follows:

(B) The fund also shall consist of all money from the collection of liens under section 1513.081 of the Revised Code, any moneys transferred to it under section 1513.181 of the Revised Code from the coal mining and reclamation reserve fund created in that section, fines collected under division (E) of section 1513.02 and section 1513.99 of the Revised Code, fines collected for a violation of section 2921.31 of the Revised Code that, prior to July 1, 1996, would have been a violation of division (G) of section 1513.17 of the Revised Code as it existed prior to that date, and moneys collected and credited to it pursuant to section 5749.02 of the Revised Code. Disbursements from the fund shall be made by the chief in accordance with division (D) of this section for the purpose of reclaiming areas that an operator has affected by mining and failed to reclaim under a coal mining and reclamation permit issued under this chapter or under a surface mining permit issued under Chapter 1514. of the Revised Code.

The chief may expend moneys from the fund to pay necessary administrative costs, including engineering and design services, incurred by the division of mineral resources management in reclaiming these areas. The chief also may expend moneys from the fund to pay necessary administrative costs of the reclamation forfeiture fund advisory board created in section 1513.182 of the Revised Code as authorized by the board under that section. Expenditures from the fund to pay such administrative costs need not be made under contract.

Subsection (C) is amended by adding the phrase ''or trustee, if the performance security is held in trust,'' immediately following the words ''or a contractor hired by the surety.''

Subsection (D) is amended by amending the existing language, codifying the existing language as paragraph (1), and by adding three new paragraphs. As amended, subsection (D) provides as follows:

(D)(1) The chief shall expend money credited to the reclamation forfeiture fund from the forfeiture of the performance security applicable to an area of land or under section 1513.181 of the Revised Code the amount of money to pay for the cost of the reclamation of the land.

(2) If the performance security for the area of land was provided under division (C)(1) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter.

(3) If the performance security for the area of land was provided under division (C)(2) of section 1513.08 of the Revised Code, the chief shall use the money from the forfeited performance security to complete the reclamation that the operator failed to do under the operator's applicable coal mining and reclamation permit issued under this chapter. If the money credited to the reclamation forfeiture fund from the forfeiture of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code is not sufficient to complete the reclamation, the chief shall notify the reclamation forfeiture fund advisory board of the amount of the insufficiency. The chief may expend money credited to the reclamation forfeiture fund under section 5749.02 of the Revised Code or transferred to the fund under section 1513.181 of the Revised Code to complete the reclamation. The chief shall not expend money from the fund in an amount that exceeds the difference between the amount of the performance security provided under division (C)(2) of section 1513.08 of the Revised Code and the estimated cost of reclamation as determined by the chief under divisions (B) and (E) of that section.

(4) Money from the reclamation forfeiture fund shall not be used for reclamation of land or water resources affected by material damage from subsidence, mine drainage that requires extended water treatment after reclamation is completed under the terms of the permit, or coal preparation plants or coal refuse disposal areas not located within a permitted area of a mine if performance security for the area of land was provided under division (C)(2) of section 1513.08 of the Revised Code.

Subsection (F) is amended in the first sentence by adding the following proviso to the beginning of the sentence: ''Except as otherwise provided in division (H) of this section.''

New subsection (H) is added to provide as follows:

(H) All investment earnings of the fund shall be credited to the fund and shall be used only for the reclamation of land for which performance security was provided under division (C)(2) of section 1513.08 of the Revised Code.

14. ORC 1513.181 Coal Mining Administration and Reclamation Reserve Fund

This provision is amended by deleting from the first paragraph, third sentence, the following phrase: ''Or by surface mining under a surface mining permit issued under Chapter 1514 of the Revised Code.'' Also, the second paragraph, concerning the identification of fines collected that would be added to the coal mining administration and reclamation reserve fund is deleted. That deleted paragraph is replaced by the following new paragraph:

If the director of natural resources determines it to be necessary, the director may request the controlling board to transfer an amount of money from the coal mining administration and reclamation reserve fund to the unreclaimed lands fund created in section 1513.30 of the Revised Code.

15. ORC 1513.182 Reclamation Forfeiture Fund Advisory Board

This provision is new, and provides as follows:

Sec. 1513.182. (A) There is hereby created the reclamation forfeiture fund advisory board consisting of the director of natural resources, the director of insurance, and seven members appointed by the governor with the advice and consent of the senate. Of the governor's appointments, one shall be a certified public accountant, one shall be a registered professional engineer with experience in reclamation of mined land, two shall represent agriculture, agronomy, or forestry, one shall be a representative of operators of coal mining operations that have valid permits issued under this chapter and that have provided performance security under division (C)(1) of section 1513.08 of the Revised Code, one shall be a representative of operators of coal mining operations that have valid permits issued under this chapter and that have provided performance security under division (C)(2) of section 1513.08 of the Revised Code, and one shall be a representative of the public.

Of the original members appointed by the governor, two shall serve an initial term of two years, three an initial term of three years, and two an initial term of four years. Thereafter, terms of appointed members shall be for four years, with each term ending on the same date as the original date of appointment. An appointed member shall hold office from the date of appointment until the end of the term for which the member was appointed. Vacancies shall be filled in the same manner as original appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first. The governor may remove an appointed member of the board for misfeasance, nonfeasance, or malfeasance.

The directors of natural resources and insurance shall not receive compensation for serving on the board, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the board. The members appointed by the governor shall receive per diem compensation fixed pursuant to division (J) of section 124.15 of the Revised Code and reimbursement for the actual and necessary expenses incurred in the performance of their duties.

(B) The board annually shall elect from among its members a chairperson, a vice-chairperson, and a secretary to record the board's meetings.

(C) The board shall hold meetings as often as necessary as the chairperson or a majority of the members determines.

(D) The board shall establish procedures for conducting meetings and for the election of its chairperson, vice-chairperson, and secretary.

(E) The board shall do all of the following:

(1) Review the deposits into and expenditures from the reclamation forfeiture fund created in section 1513.18 of the Revised Code;

(2) Retain periodically a qualified actuary to perform an actuarial study of the reclamation forfeiture fund;

(3) Based on an actuarial study and as determined necessary by the board, adopt rules in accordance with Chapter 119. of the Revised Code to adjust the rate of the tax levied under division (A)(8) of section 5749.02 of the Revised Code and the balance of the reclamation forfeiture fund that pertains to that rate;

(4) Evaluate any rules, procedures, and methods for estimating the cost of reclamation for purposes of determining the amount of performance security that is required under section 1513.08 of the Revised Code; the collection of forfeited performance security; payments to the reclamation forfeiture fund; reclamation of sites for which operators have forfeited the performance security; and the compliance of operators with their reclamation plans;

(5) Provide a forum for discussion of issues related to the reclamation forfeiture fund and the performance security that is required under section 1513.08 of the Revised Code;

(6) Submit a report biennially to the governor that describes the financial status of the reclamation forfeiture fund and the adequacy of the amount of money in the fund to accomplish the purposes of the fund and that may discuss any matter related to the performance security that is required under section 1513.08 of the Revised Code;

(7) Make recommendations to the governor, if necessary, of alternative methods of providing money for or using money in the reclamation forfeiture fund and issues related to the reclamation of land or water resources that have been adversely affected by past coal mining for which the performance security was forfeited;

(8) Adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to administer this section.

In its submittal, Ohio stated that ORC 1513.182 creates the reclamation forfeiture fund advisory board, establishes specific terms of appointments and per diem compensation, and establishes the duties of the board.

16. ORC 1513.29 Council on Unreclaimed Strip Mined Lands

This existing provision is amended in the third paragraph by deleting the requirement to hold ''at least four regular quarterly meetings each year,'' and amending the provision to authorize meetings ''as necessary.'' The fourth paragraph is amended by deleting reference to the ''strip mining reclamation fund,'' and in its place, adding reference to the ''reclamation forfeiture fund created in section 1513.18 of the Revised Code.'' The fifth paragraph is amended by deleting the phrase ''of the division of mineral resources management.''

17. ORC 1513.30 Unreclaimed Strip Mined Lands Fund

This provision is amended by deleting the following requirement to provide public notice:

At least two weeks before any meeting of the council on unreclaimed strip mined lands at which the chief will submit a project proposal, a project area will be selected, or the boundaries of a project area will be determined, the chief shall mail notice by first class mail to the board of county commissioners of the county and the board of township trustees of the township in which the proposed project lies and the chief executive and the legislative authority of each municipal corporation within the proposed project area. The chief also shall give reasonable notice to the news media in the county where the proposed project lies.

ORC 1513.30 is also amended by deleting a paragraph that authorized the controlling board to transfer excess funds from the oil and gas well fund.

ORC 1513.30 is amended by adding a new paragraph to authorize the controlling board to transfer money from the fund to the coal mining administration and reclamation reserve fund. The new paragraph provides as follows:

If the director of natural resources determines it to be necessary, the director may request the controlling board to transfer an amount of money from the fund to the coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code.

18. ORC 1513.37 Abandoned Mine Reclamation Fund

This provision is amended at subsection (C)(3) by adding the words ''performance security, or other form of financial guarantee'' in three places following the word ''bond.''

19. ORC 1513.371 Mined Land Set Aside Fund

This provision is new and provides as follows:

There is hereby created in the state treasury the mined land set aside fund consisting of grants made by the United States secretary of the interior from the federal abandoned mine reclamation fund pursuant to section 402 of the ''Surface Mining Control and Reclamation Act of 1977,'' 91 Stat. 445, 30 U.S.C. 1232. The chief of the division of mineral resources management shall administer the fund. Money in the fund shall be used solely for the purposes specified in divisions (B)(1) to (4) of section 1513.37 of the Revised Code. All investment earnings of the fund shall be credited to the fund.

20. ORC 5749.02 Excise Tax on Severance of Natural Resources

Subsection (A) is amended at paragraph (A)(1) by increasing the severance tax levied on coal from ''Seven'' cents to ''Ten'' cents.

Subsection (A) is further amended by adding new paragraphs (8) and (9). New paragraph (A)(8) levies a tax of 14 cents per ton of coal to fund the bond pool, and paragraph (A)(9) levies a tax of one and two tenths cents per ton of coal. New paragraphs (A)(8) and (A)(9) provide as follows:

(8) Except as otherwise provided in this division or in rules adopted by the reclamation forfeiture fund advisory board under section 1513.182 of the Revised Code, an additional fourteen cents per ton of coal produced from an area under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code for which the performance security is provided under division (C)(2) of section 1513.08 of the Revised Code. If at the end of a fiscal biennium the balance of the reclamation forfeiture fund created in section 1513.18 of the Revised Code is equal to or greater than ten million dollars, the rate levied shall be twelve cents per ton. If at the end of a fiscal biennium the balance of the fund is at least five million dollars, but less than ten million dollars, the rate levied shall be fourteen cents per ton. If at the end of a fiscal biennium the balance of the fund is less than five million dollars, the rate levied shall be sixteen cents per ton. Not later than thirty days after the close of a fiscal biennium, the chief of the division of mineral resources management shall certify to the tax commissioner the amount of the balance of the reclamation forfeiture fund as of the close of the fiscal biennium. Any necessary adjustment of the rate levied shall take effect on the first day of the following January and shall remain in effect during the calendar biennium that begins on that date.

(9) An additional one and two-tenths cents per ton of coal mined by surface mining methods.

In its submittal, Ohio stated that ORC 5749.02(A) has been amended by increasing the coal severance tax from seven cents to 10 cents per ton. New paragraph (8) provides that if performance security is provided by way of the bond pool and $2,500 flat rate bond, then an additional 14 cents per ton is required by those operations.

If the forfeiture fund balance exceeds $10 million at the end of a fiscal biennium, the rate is reduced to 12 cents per ton. If the balance is greater than $5 million but less than $10 million, 14 cents per ton is required. If the balance is less than $5 million, 16 cents per ton is required.

Ohio stated that paragraph (9) provides for an additional one and two tenths cents per ton at all surface coal mines.

Subsection (B) is amended by changing the allocation values of the moneys received under the taxes levied under ORC 5749.02(A)(1), specifying that all of the moneys received under paragraph (A)(8) will be credited to the reclamation forfeiture fund, and specifying that all of the moneys received under paragraph (A)(9) will be credited to the unreclaimed lands fund. Paragraph (C), concerning a tax levied for the purpose of crediting moneys to the reclamation forfeiture fund is deleted. Paragraph (D) is amended by deleting the first paragraph (including its designation as (D)) concerning a tax levied for the purpose of crediting moneys to the reclamation forfeiture fund, and revising the second paragraph by adding language concerning adjustments to be made to the tax levied under paragraph (A)(8) based upon the balance of the reclamation forfeiture fund at the close of any fiscal year. As amended, ORC 5749.02(B) provides as follows:

(B) Of the moneys received by the treasurer of state from the tax levied in division (A)(1) of this section, four and seventy-six-hundredths per cent shall be credited to the geological mapping fund created in section 1505.09 of the Revised Code, eighty and ninety-five-hundredths per cent shall be credited to the coal mining administration and reclamation reserve fund created in section 1513.181 of the Revised Code, and fourteen and twenty-nine-hundredths per cent shall be credited to the unreclaimed lands fund created in section 1513.30 of the Revised Code.

Fifteen per cent of the moneys received by the treasurer of state from the tax levied in division (A)(2) of this section shall be credited to the geological mapping fund and the remainder shall be credited to the unreclaimed lands fund.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(3) and (4) of this section, seven and five-tenths per cent shall be credited to the geological mapping fund, forty-two and five-tenths per cent shall be credited to the unreclaimed lands fund, and the remainder shall be credited to the surface mining fund created in section 1514.06 of the Revised Code.

Of the moneys received by the treasurer of state from the tax levied in divisions (A)(5) and (6) of this section, ninety per cent shall be credited to the oil and gas well fund created in section 1509.02 of the Revised Code and ten per cent shall be credited to the geological mapping fund. All of the moneys received by the treasurer of state from the tax levied in division (A)(7) of this section shall be credited to the surface mining fund.

All of the moneys received by the treasurer of state from the tax levied in division (A)(8) of this section shall be credited to the reclamation forfeiture fund.

All of the moneys received by the treasurer of state from the tax levied in division (A)(9) of this section shall be credited to the unreclaimed lands fund.

When, at the close of any fiscal year, the chief finds that the balance of the reclamation forfeiture fund, plus estimated transfers to it from the coal mining administration and reclamation reserve fund under section 1513.181 of the Revised Code, plus the estimated revenues from the tax levied by division (A)(8) of this section for the remainder of the calendar year that includes the close of the fiscal year, are sufficient to complete the reclamation of lands for which the performance security has been provided under division (C)(2) of section 1513.08 of the Revised Code, the purposes for which the tax under division (A)(8) of this section is levied shall be deemed accomplished at the end of that calendar year. The chief, within thirty days after the close of the fiscal year, shall certify those findings to the tax commissioner, and the tax levied under division (A)(8) of this section shall cease to be imposed after the last day of that calendar year on coal produced under a coal mining and reclamation permit issued under Chapter 1513. of the Revised Code if the permittee has made tax payments under division (A)(8) of this section during each of the preceding five full calendar years. Not later than thirty days after the close of a fiscal year, the chief shall certify to the tax commissioner the identity of any permittees who accordingly no longer are required to pay the tax levied under division (A)(8) of this section.

Ohio stated that subsection ORC 5749.02(B) is amended to provide that the moneys received from the ten-cent tax per ton of coal tax levied in ORC

5749.02(A)(1) is allocated as follows: 0.476 cents per ton to the geological mapping fund; 8.095 cents per ton to the coal mining administration fund; and 1.429 cents per ton to the State AML fund. Ohio also stated that all of the moneys received from the 1.2 cents per ton of on coal tax levied in ORC 5749.02(A)(9) is allocated to the State AML fund.

Ohio stated that subsection ORC 5749.02(C) is deleted to eliminate the tax levied at the rate of one cent per ton of coal, the moneys of which were allocated to reclaiming bond forfeiture lands.

Ohio stated that subsection ORC 5749.02(D) is amended to eliminate the one cent per ton of coal that was allocated to bond forfeited permits issued between April 10, 1972 and September 1, 1981. Subsection (D) also provides for cessation of the subsection (A)(8) tax (14 cents/ton) upon finding by Chief that funds in the reclamation forfeiture fund are adequate to address bond pool reclamation on a permit by permit basis; upon such finding operators listed as having provided adequate performance security shall no longer be required to pay the (A)(8) tax (14 cents/ton), provided such operators have made such payments during the preceding five years.

21. ORC 5749.11 Nonrefundable Credit

This provision is new, and provides for a nonrefundable credit against the taxes imposed under ORC 5749.02(A)(8). This new provision provides as follows:

Sec. 5749.11. (A) There is hereby allowed a nonrefundable credit against the taxes imposed under division (A)(8) of section 5749.02 of the Revised Code for any severer to which a reclamation tax credit certificate is issued under section 1513.171 of the Revised Code. The credit shall be claimed in the amount shown on the certificate. The credit shall be claimed by deducting the amount of the credit from the amount of the first tax payment due under section 5749.06 of the Revised Code after the certificate is issued.

If the amount of the credit shown on a certificate exceeds the amount of the tax otherwise due with that first payment, the excess shall be claimed against the amount of tax otherwise due on succeeding payment dates until the entire credit amount has been deducted. The total amount of credit claimed against payments shall not exceed the total amount of credit shown on the certificate.

(B) A severer claiming a credit under this section shall retain a reclamation tax credit certificate for not less than four years following the date of the last tax payment against which the credit allowed under that certificate was applied. Severers shall make tax credit certificates available for inspection by the tax commissioner upon the tax commissioner's request.

22. Section 3 of the Amendment Submittal Provides as Follows

Section 3. It is the intent of the General Assembly to appropriate five million dollars for the reclamation of land affected by the surface mining of coal. Of that five million dollars, not more than fifty thousand dollars shall be used to study the management of the financial resources of the coal mining regulatory program of the Division of Mineral Resources Management in the Department of Natural Resources. The Chief of the Division of Mineral Resources Management, in consultation with a statewide association representing the coal mining industry and a statewide association representing environmental advocacy, shall develop an outline of the subjects for the study. The Chief shall select an objective third party that has knowledge in the management of finances to conduct the study. Upon completion of the study, the third party shall prepare a report of its findings and submit the report to the Director of [the Department of] Natural Resources.

23. Section 6 of the Amendment Submittal Provides That Section 5749.02 of the Revised Code as Amended by This Act Shall Take Effect on April 1, 2007

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 Ohio program.

Written Comments

Send your written 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 will 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 Appalachian Region office identified above 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. OH–252–FOR,'' 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 Appalachian Region office at: (614) 416–2238 .

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 May 15, 2007. 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 the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a 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. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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 are 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 regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) 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, to the extent allowable by law, 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 since each such 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. 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 that our decision is on a State regulatory program and does not involve a Federal program 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

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

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 has determined 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 that 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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, geographic regions, or Federal, State or local governmental agencies; 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 fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 2007.

H. Vann Weaver,

Acting Regional Director Appalachian Region.

[FR Doc. E7–8171 Filed 4–27–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[Docket No. TX–057–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) and the Texas abandoned mine land plan (Texas plan) under the Surface Mining

Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding postmining land uses; terms and conditions of the bond; topsoil redistribution; standards for revegetation success; public hearings; review of notice of violation or cessation order; determination of amount of penalty; assessment of separate violation for each day; request for hearing; and liens. Texas also proposes revisions to its statute regarding liens and administrative penalties for violation of permit conditions. Texas intends to revise its program to be consistent with the corresponding Federal regulations and/or SMCRA, to clarify ambiguities, and to improve operational efficiency.

This document gives the times and locations that the Texas program and Texas plan and the proposed amendment are available for your inspection, the period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.t. May 30, 2007. If requested, we will hold a public hearing on the amendment on May 25, 2007. We will accept requests to speak at a hearing until 4 p.m., c.t. on May 15, 2007.

ADDRESSES: You may submit comments, identified by Docket No. TX–057–FOR, by any of the following methods:

- *E-mail: athomas@osmre.gov.* Include ''Docket No. TX–057–FOR'' in the subject line of the message.
- *Mail/Hand Delivery:* A. Dwight Thomas, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128
- Fax: (918) 581–6419
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Texas program and Texas plan, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

A. Dwight Thomas, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128, *Telephone:* (918) 581–6430, *E-mail: athomas@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711–2967, *Telephone:* (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: A. Dwight Thomas, Acting Director, Tulsa Field Office. *Telephone:* (918) 581–6430. *E-mail: athomas@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program and Texas Plan
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Texas Program and Texas Plan

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 this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior (Secretary) for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Texas plan on June 23, 1980. You can find background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 23, 1980, **Federal Register** (45 FR 41937). You can find later actions concerning the Texas plan and amendments to the plan at 30 CFR 943.25.

II. Description of the Proposed Amendment

By letter dated February 14, 2007 (Administrative Record No. TX–662), and at its own initiative, Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. Revisions to Texas' Regulations, Title 16 Texas Administrative Code (TAC)

1. Section 12.147 Reclamation Plan: Postmining Land Uses

Texas proposes to delete paragraph (a)(2) that requires permit applicants to submit a detailed management plan if the postmining land use is to be range or grazing. Texas also proposes to redesignate paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3).

2. Section 12.309 Terms and Conditions of the Bond

Texas proposes to add to paragraph (g)(2) a requirement that a letter of credit used as security in areas requiring continuous bond coverage must be forfeited and collected by the Railroad Commission of Texas if it is not replaced by other suitable bond or letter of credit at least 30 days before it expires.

3. Section 12.337 Topsoil: Redistribution

Texas proposes to revise subsections (a) and (b) to read as follows:

(a) After final grading and before the replacement of topsoil, topsoil substitutes

and other materials segregated in accordance with § 12.335 of this title (relating to Topsoil: Removal), regraded land shall be scarified or otherwise treated as required by the Commission to eliminate slippage surfaces and to promote root penetration. If the person who conducts the surface mining activities shows, through appropriate tests, and the Commission approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(b) Topsoil material, and topsoil substitutes and other supplements shall be redistributed in a manner that:

(1) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;

(2) Prevents excess compaction of the topsoil, topsoil substitutes and supplements; and

(3) Protects the topsoil, topsoil substitutes and supplements from wind and water erosion before and after it is seeded and planted.

4. Section 12.395 Revegetation: Standards for Success

a. Texas proposes to revise paragraph (a)(1) to require standards for success and statistically valid sampling techniques for measuring success to be described in writing and made available to the public.

b. Texas proposes to revise paragraph (b)(1) to read as follows:

(1) For areas developed as grazingland or pastureland, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the Commission;

c. Paragraph (b)(3) lists the kinds of areas whose success of vegetation is to be determined on the basis of tree and shrub stocking and vegetative ground cover. Texas proposes to revise this paragraph by adding ''undeveloped land'' as an area requiring this determination and by removing ''shelter belts.''

d. For areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products, Texas proposes to revise paragraph (b)(3)(A) to allow consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs to occur on either a program-wide or permit-specific basis.

e. Texas proposes to revise paragraph (b)(3)(B) by adding instructions explaining how to meet the requirements for determining the success of stocking and the adequacy of the planting arrangement for trees and shrubs.

f. Texas proposes to revise paragraph (c)(3) to read as follows:

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in § 12.395(b) of this title (relating to Revegetation: Standards for Success) for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period. Areas approved for the other uses identified in § 12.395(b) of this title (relating to Revegetation: Standards for Success) shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

g. Texas proposes to revise paragraph (c)(4) by clarifying that selective husbandry practices may be approved if the discontinuance of the practice ''after the liability period expires'' will not reduce the probability of permanent revegetation success. Texas also proposes to clarify that the unmined land, for which the selective husbandry practices are normal, must be land that has a land use similar to that of the approved postmining land use of the disturbed land.

5. Section 12.681 Public Hearing

a. Texas proposes to revise the title of this section to read ''Informal Public Hearing.''

b. Texas proposes to revise subsection (a) so that a notice of violation or cessation order which requires cessation of mining will expire within 30 days after it is served unless an informal public hearing has been held within that time. Texas also proposes to clarify that the expiration of the notice or order will not affect the Commission's right to assess civil penalties with respect to the period during which the notice or order was in effect. In addition, Texas proposes that no hearing will be required where the condition, practice, or violation has been abated or the hearing has been waived. Furthermore, Texas proposes to clarify, for the purpose of this section, what is included in ''mining.''

c. Texas proposes to revise subsection (b) to clarify that a notice of violation or cessation order will not expire as provided in subsection (a) if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order is served. Texas also proposes to set forth the conditions under which the informal public hearing is deemed to be waived.

d. Texas proposes to revise subsections (c), (e), (f), and (g) to change the name of the ''public hearing'' to ''informal public hearing.'' Also, Texas proposes to revise subsection (g) to clarify that the ''review'' mentioned in this subsection is a ''formal review.''

e. Texas proposes to add new subsection (h) to read as follows:

(h) The person conducting the informal hearing for the Commission shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the persons conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

6. Section 12.682 Review of Notice of Violation or Cessation Order

a. Texas proposes to revise the title of this section to read, ''Formal Review of Notice of Violation or Cessation Order.''

b. Texas proposes to revise subsection (a) and to add new subsection (b) to read as follows:

(a) A person issued a notice of violation or cessation order under § 12.677 or § 12.678 of this title, or a person having an interest which may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for a hearing pursuant to the requisites of §§ 134.168–134.172 of the Act and the APA, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or any modification, termination or vacation, of either.

7. Section 12.688 Determination of Amount of Penalty

Texas' penalty schedule currently begins with a minimum penalty of $20 and increases to a maximum penalty of $5,000. Texas proposes to change the penalty schedule so that it starts with a minimum penalty of $550 and increases to a maximum penalty of $13,000. Texas proposes to increase the penalties to reflect the decreased value in the dollar since the penalty schedule was promulgated in 1979.

8. Section 12.689 Assessment of Separate Violation for Each Day

Texas proposes to revise subsection (b) to increase the per day civil penalty from $750 to $1,025 and to make additions and/or corrections regarding regulatory and statutory citations. Texas also proposes to add new paragraph (b)(3) to clarify that the daily penalty will not be assessed for more than 30 days and that if the permittee has not abated the violation within the 30-day period, it will take appropriate action to

ensure that abatement occurs or that there will not be a reoccurrence of the failure to abate.

9. Section 12.693 Request for Hearing

Texas proposes to revise this section to read as follows:

The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if an assessment conference has been held, the reassessed or affirmed penalty to the Commission, to be held in escrow, within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the assessment conference examiner's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under § 12.682 of this title.

10. Section 12.816 Liens

Texas proposes to revise subsection (c) to remove the requirement that the landowner must own the surface before May 2, 1977, before he or she is exempt from having a lien placed against his or her property because reclamation resulted in a significant increase in the fair market value of the property.

B. Revisions to Texas' Statute, Chapter 134 Texas Natural Resources Code

1. Section 134.150 Lien

Texas proposes to revise subsection (c) to read as follows:

(c) A lien may not be filed under this section against the property of a person who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this chapter.

2. Section 134.174 Administrative Penalty for Violation of Permit Condition of This Chapter

Texas proposes to revise subsection (b) to read as follows:

(b) The penalty may not exceed $13,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

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 State 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 will 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 Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file, avoiding the use of special characters and any form of encryption. Please also include ''Attn: Docket No. TX–057–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 Tulsa Field Office at (918) 581–6430.

Public 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., c.t. on May 15, 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 are 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 exempted from review by the Office of Management and Budget (OMB) 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. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

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 fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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 fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 2007.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

[FR Doc. E7–8156 Filed 4–27–07; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0138; FRL–8302–6]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the incorporation of revised air pollution permitting and emissions standards rules into the Illinois State Implementation Plan (SIP). The State submitted this request for revision to its State Implementation Plan to EPA on May 31, 2006. Approval would make the State's rules federally enforceable.

DATES: Comments must be received on or before May 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0138, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: blakley.pamela@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits 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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671, *Blathras.constantine@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives an adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 6, 2007.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

[FR Doc. E7–8102 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–OPPT–2005–0042; FRL–8120–6]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, and distribution in commerce of polychlorinated biphenyls (PCBs). For purposes of TSCA, ''manufacture'' is defined to include import into the Customs Territory of the United States. One of these exceptions is TSCA section 6(e)(3)(B), which gives EPA authority to grant petitions to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. On July 21, 2005, the U.S. Defense Logistics Agency (DLA), a component of the Department of Defense (DOD), submitted a petition to EPA to import foreign-manufactured PCBs that DOD currently owns in Japan for disposal in the United States. In this document, EPA is proposing to grant DLA's petition and is soliciting public comment on this decision; if finalized, this decision to grant the petition would allow DLA to manufacture (i.e., import) certain PCBs for disposal.

DATES: Comments must be received on or before May 30, 2007.

If a hearing is requested on or before May 24, 2007, an informal hearing will be held in Washington, DC on a date to be announced in a future **Federal Register**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number HQ–EPA–OPPT–2005–0042, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number HQ–EPA–OPPT–2005–0042. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DOC's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0042. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention

and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Tom Simons, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0517; e-mail address: *simons.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action primarily applies to the petitioner, the DLA. However, you may be potentially affected by this action if you process, distribute in commerce, or dispose of PCB waste generated by others, i.e., you are an EPA-permitted PCB waste handler. Potentially affected categories and entities include, but are not necessarily limited to:

- Waste Treatment and Disposal (NAICS code 5622), e.g., Facilities that store or dispose of PCB waste.
- Materials Recovery Facilities (NAICS code 56292), e.g., Facilities that process and/or recycle metals.
- Public Administration (NAICS code 92), e.g., the Petitioning Agency (i.e., the Defense Logistics Agency).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Proposing to Take?

In this notice of proposed rulemaking, the Agency is proposing to grant a petition submitted by DLA to import PCB waste for disposal. In the absence of an exemption, import of this waste would be banned by section 6(e)(3) of TSCA. The petition, dated July 21, 2005, is for an exemption to import certain foreign-generated PCBs owned by DOD that are currently in use or storage in Japan. (The term ''foreign-generated PCBs'' is used to identify those PCBs that DOD acquired from foreign sources and that are subject to the TSCA ban on import.)

On April 16, 2001, DLA submitted a similar petition to import over four million pounds of foreign-generated PCB waste. EPA granted that petition in a final rule document published in the **Federal Register** of January 31, 2003 (Ref. 1).

B. What is the Agency's Statutory Authority for Taking this Action?

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture (which includes import) of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and most uses of PCBs after October 11, 1977. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs except for the distribution in commerce of PCBs that were sold for purposes other than resale before July 1, 1979. Section 6(e)(1) of TSCA also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in TSCA section 6(e)(2) and (3).

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that:

> i. an unreasonable risk of injury to health or the environment would not result, and ii. good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl. (15 U.S.C. 2605(e)(3)(B)(i)-(ii)).

The Administrator may prescribe terms and conditions for an exemption and may grant an exemption for a period of not more than 1 year from the date the petition is granted. In addition, TSCA section 6(e)(4) requires that a rule under TSCA section 6(e)(3)(B) be promulgated in accordance with TSCA section 6(c)(2), (3), and (4), which provide for a proposed rule, the opportunity for an informal public hearing, and a final rule.

EPA's procedures for rulemaking under TSCA section 6 are found under 40 CFR part 750. This part includes Subpart B—Interim Procedural Rules for Manufacturing Exemptions, which describes the required content for manufacturing exemption petitions and the procedures EPA follows in rulemaking on these petitions. These rules are codified at 40 CFR 750.10 through 750.21.

III. Findings Necessary to Grant Petitions

A. No Unreasonable Risk Finding

Before granting an exemption petition, TSCA section 6(e)(3)(B)(i) requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or the environment in the United

States. EPA has interpreted this provision to require a petitioner to demonstrate that the activity will not pose an unreasonable risk. (See 40 CFR 750.11.)

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition. See generally, 15 U.S.C. 2605(c)(1). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment*. In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors. A more complete discussion of these factors is provided in the preamble to the 1988 PCB proposed rule document published in the **Federal Register** of August 24, 1988 (Ref. 2).

i. *Health effects*. EPA has determined that PCBs cause significant human health effects including cancer, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs exhibit neurotoxicity as well as reproductive and developmental toxicity. PCBs are readily absorbed through the skin and are absorbed at even faster rates when inhaled. Because PCBs are stored in animal fatty tissue, humans are also exposed to PCBs through ingestion of animal products.

ii. *Environmental effects*. Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained. PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

iii. *Risks*. Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has previously determined that some activities, including the disposal of PCBs in accordance with 40 CFR part 761, pose no unreasonable risks. Other activities, such as long-term storage of PCB waste, are generally considered by EPA to pose unreasonable risks.

2. *Benefits and costs*. The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. As discussed in Unit IV., EPA has taken benefits and costs into consideration when evaluating this exemption petition.

B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that ''good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for [PCBs].'' EPA has interpreted this provision to require that a petitioner has the burden of demonstrating that it has made the requisite good faith efforts. (40 CFR 750.11) EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what they did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs.

To satisfy this finding for requests for an exemption to import PCBs for disposal, a petitioner must show why such activity must occur in the United States. and what steps will be taken to eliminate the need to import PCBs in the future. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with traditional manufacture and distribution exemption petitions, the issue of the development of substitute chemicals seems to have little bearing on whether to grant a petition for exemption that would allow the import into the United States for disposal of waste generated by the Department of Defense overseas. EPA believes the more relevant ''good faith'' issue for such an exemption request is whether the disposal of the waste could and/or should occur outside the United States.

IV. Proposed Disposition of Pending Exemption Petition

A. The Petition: July 21, 2005 Petition to Import PCBs Located in Japan

On July 21, 2005, DLA submitted a petition seeking a 1–year exemption to import PCBs and PCB Items currently in temporary storage at U.S. military installations in Japan. In revised figures provided in November 2006 (Ref. 4), DLA estimates that as much as 1,328,482 pounds of waste contaminated with PCBs could be generated in Japan through the calendar year 2008. Exactly how much of this waste would be imported under this exemption would depend on the date when the final exemption would be in effect, as the exemption is limited to a 1–year maximum. The final exemption would be limited to the specific portion (amount and type) of such waste as provided by DLA prior to publication of the final rule. The material in Japan consists of liquids, electrical transformers, capacitors, switches, circuit breakers, other miscellaneous items and debris (rags, gaskets, and personal protective equipment). PCB concentrations of the waste include amounts in all regulatory concentrations (i.e., <50 parts per million (ppm), 50–499 ppm, and >500 ppm); however, 88% of the waste is at concentrations below 50 ppm PCB and less than 5% of the total shipment is liquid PCBs greater than 50 ppm. Details of the particular amounts and concentrations DLA petitioned to import are provided in Refs. 3 and 4.

DLA proposes to package and transport, treat and dispose of this PCB waste in the same manner as waste identified in its previous petitions (Ref. 1), which EPA granted in 2003 to allow the import of over 4,000,000 pounds of waste contaminated with PCBs; DLA notes that compliance is required with the International Maritime Dangerous Goods Code/International Maritime Organization, the International Civil Aviation Organization Technical Instructions, the International Air Transport Association Dangerous Goods Code, the United Nations Recommendations on the Transport of Dangerous Goods Code, and 49 CFR parts 100–199. DLA further notes that proper handling and shipping will include blocking, bracing, over packing, and inclusion of spill containment devices, as required by applicable transportation regulations.

DLA states that it will handle and dispose of all PCBs in conformance with the PCB regulations at 40 CFR part 761. DLA notes that it has ''considerable experience and expertise in awarding

and administering disposal contracts for PCB waste in the U.S.'' and that it will only ''award contracts for treatment and disposal services with commercial firms. Contracts will be awarded in accordance with all applicable federal procurement statutes and the Federal Acquisition Regulations (FAR).'' On October 12, 2005, DLA selected Clean Harbors Environmental Services (CHES) in Coffeyville, Kansas to dispose of the PCB waste to be removed from Japan. CHES has disposed of PCBs returning from Japan at the Coffeyville facility on four separate occasions since 2003 without incident. In addition, DLA will use shippers approved by the U.S. Department of Transportation when the waste materials are transported from the California port to the Coffeyville disposal facility. The surface commercial transport trucks and the sea vessels themselves are approved and contracted for use by the DOD Surface Deployment and Distribution Command.

1. *Information regarding no unreasonable risk provided by the petitioner*. DLA notes that the materials in question would be managed in accordance with all applicable laws and regulations. Once in the United States, the PCB waste would be transported, handled, treated and disposed of in compliance with the PCB regulations at 40 CFR part 761. DLA states that it would only contract with companies with the required Federal and State-permitted storage, treatment, and disposal facilities for dealing with PCBs and PCB items. DLA notes that it and its contractors ''have extensive experience in safely returning U.S.-manufactured PCBs and PCB items to the U.S. for disposal,'' and that ''prior to safely returning and disposing of 2.7 million pounds of foreign-generated PCB containing waste under the previously granted exemption, DLA returned 2.4 million pounds of U.S.-manufactured PCBs and PCB Items from Japan since 1991 for compliant disposal without incident.''

In contrast, DLA notes that the continued storage of PCBs at U.S. facilities in Japan is problematic. DOD currently has a considerable amount of PCB waste in storage at its facilities in Japan, and more will accumulate over the coming years as equipment is retired from use and contaminated sites are cleaned up. DLA notes that due to the unavailability of disposal capacity in Japan, much of DLA's foreign-manufactured PCB waste inventory in Japan has been in storage for years and movement of PCB waste presently in storage is frequently necessary to accommodate additional PCBs taken out of service. DLA summarizes the risks of this situation as follows:

> Continued accumulation over extended time periods increases the risk of exposure to U.S. military personnel, to people living in and around the U.S. installations where the PCBs are stored, and to the environment should releases occur due to human error, or unforeseen severe weather, or seismic events. In addition, storage containers will deteriorate with time, increasing the likelihood that personnel who must monitor such items and repack them if they suspect leakage are exposed to the PCBs. Long-term storage may increase the DOD's liability for cleanup costs if spills occur. This would increase exposure to U.S. personnel and local citizens and could potentially result in ground and water contamination. Each time an item is handled, another opportunity for a spill or exposure is created. The storage situation is exacerbated in Japan because the installations where these materials are located are relatively small, storage space is at a premium, and the surrounding civilian communities are located in very close proximity to the stored PCBs. Moreover, the situation for the DOD is further complicated because of the perceptions of the local communities regarding PCBs.

DLA further notes that EPA expressed concerns about long-term storage in the PCB Import for Disposal Rule (Ref. 5):

> EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment. (61 FR 11096)

The same rule also underscored the benefit of prompt disposal in the United States (Ref. 5):

> Based on the persistence of PCBs in the global environment and EPA's finding that any exposure to human beings or the environment may be significant, EPA believes that the safe disposal of PCBs in approved U.S. facilities poses less risk of injury to health or the environment in the United States than the continued presence of PCBs in other countries, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere. (61 FR 11096)

Beyond the immediate environmental risk, DLA describes other benefits to the United States that it believes would result from the granting of its petition:

> In 1968, a tragic human poisoning episode in Western Japan affected over 1,000 people causing 22 deaths. The ''Yusho'' or ''rice oil disease'' was attributed to the consumption of rice bran oil contaminated with PCBs and served as a catalyst for current PCB prohibitions such as those imposed by TSCA, the Stockholm Convention, and Japanese domestic law. As a result of this highly publicized incident, Japanese citizens exhibit particular sensitivity to PCB issues. Delicate U.S.-Japan relations over the presence and operation of U.S. military installations could be adversely affected by denial of this petition.
>
> The presence of PCBs on U.S. military bases in Japan has in the past attracted significant adverse attention from Japanese politicians, the Japanese press, Japanese environmental groups, and local citizens. There has been constant local surveillance of U.S. military PCB storage in Sagamihara and demands for inspections and sampling for PCBs since at least 1992, when a member of Congress released a report outlining the storage and presence of PCBs and other hazardous materials on U.S. bases in Japan. Any perception that the United States would return to stockpiling and long term storage of these materials invites unwarranted claims that the U.S. military is neglecting its environmental responsibilities.

DLA concludes:

> Allowing PCB material to remain in storage indefinitely may lead to degradation of storage containers and releases of PCBs into the environment from the materials located at temporary or permanent storage facilities. PCBs released into the environment as a result of disasters, accidents, container degradation or other events can present significant exposure risks. This material is currently stored, or will need to be stored, on crowded DOD facilities in close proximity to where U.S. military and civilian personnel and the local community live and work. Since there are no permitted PCB disposal facilities available to U.S. forces in Japan, and because of the unique environmental conditions in Japan, as noted above, the potential for PCB contamination via leaks from aging containers or accidental spills is higher at these locations than at EPA-permitted disposal facilities in the DOD civilian employees, U.S. military personnel, and contractors employed by the U.S. Government are at greatest risk.

2. *Information regarding good faith efforts provided by the petitioner*. DLA argues in its petition that disposal of its PCBs in Japan is not an available disposal option:

> As DLA noted in its previous exemption requests, there are significant impediments to disposal on DOD military installations in Japan. To be properly processed, PCB materials should be separated into three streams: (1) metallic components to be decontaminated and recycled; (2) used oils to be treated/dechlorinated and recycled or burned for energy recovery; and (3) non-recyclable material to be treated and disposed of as residual solid wastes. Although certain portable treatment technologies are becoming available in Japan, the domestic regulatory standards are very stringent and would require PCB decontamination levels to be less than 0.5 ppm without dilution to qualify an item as being non PCB. Complicating the situation further is that any transfer or sale of property from the U.S. military installations into Japanese commerce is considered an ''import'' of property. Japan has banned the importation of PCBs at any detectable concentration including concentrations below the very stringent 0.5 ppm level at

which Japan regulates domestic PCBs. DLA is not aware of any available technologies that are permitted in Japan that would treat all PCBs items to the level that PCBs are completely removed or that could be acquired at a cost that is economically feasible. Moreover, if such technology were to become available, it would not resolve the issue of the residual ''non-recyclable'' waste that would remain or result from the treatment process. There are no permitted commercial disposal facilities currently available to the U.S. military for PCB disposal in Japan; hence, treatment outside of Japan would still be required for the residual wastes resulting from any ''on-installation'' treatment process.

DLA further argues that disposal of this waste in another country is not a viable option. DLA cites its 1999 Report to Congress as background on the difficulty it faces in finding suitable disposal alternatives for PCB waste generated by DOD overseas. In particular, DLA discusses the difficulty of shipping waste from Japan to other countries posed by the Basel Convention:

Prior to submitting its previous request to EPA for an exemption from the TSCA PCB import ban, DLA and its primary disposal contractor made contacts over a period of several years with Japanese officials and with disposal facilities located outside the U.S. in an effort to identify firms that could dispose of waste PCB items overseas while satisfying Basel Convention requirements. The DOD also consulted with State Department officials in Japan and the U. S. whose responsibilities included international environmental matters. These consultations resulted in a consensus that use of existing facilities in other developed countries was not a reasonable alternative. Even if other countries would accept these wastes, non-governmental organizations could be expected to oppose disposal of its U.S. waste in third countries, principally because the U. S. already has the technical capability to dispose of PCBs.

DLA concludes that it has made every reasonable effort to locate appropriate disposal sites outside the United States and that it has accordingly satisfied the good faith efforts criteria necessary for an exemption.

B. EPA's Proposed Decision on the Petition: July 21, 2005 Petition; EPA Proposes to Grant this Petition

1. *No unreasonable risk determination*. EPA finds generally that the disposal of imported PCB waste at an EPA-approved PCB disposal facility poses no unreasonable risks as these facilities have been approved on the basis of that standard. In addition, the risks to human health and the environment associated with long-term storage of this waste far outweigh the risks associated with the transportation of this waste from Japan to an approved disposal facility in the United States.

As with the previous petition, EPA concurs with DLA's assessment that transportation of this waste will pose no unreasonable risk if conducted in accordance with all applicable laws and regulations. EPA permits the domestic processing and distribution in commerce of PCBs and PCB Items for disposal in compliance with 40 CFR part 761, and in issuance of the PCB Import for Disposal rule EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5). For the following reasons, EPA finds that there is no unreasonable risk from the transport of this waste to the United States for disposal:

i. PCBs are hazardous and pose a potential risk to health and the environment. Proper disposal would reduce PCB-associated risks.

ii. Risk results from a combination of exposure (likelihood, magnitude and duration) and the probability of effects occurring under the conditions of exposure. Because the probability of a transport accident occurring is low, the likelihood of exposure to PCBs is commensurately low. Consequently, the risk of adverse effects to human health or the environment is minimal.

iii. The PCB-containing materials would be packaged in a manner consistent with federal, state, and local regulations addressing the storage and transport of hazardous materials. In addition, PCB waste would be continuously monitored during the water transport from Japan to the U.S. Contingency plans are required by the International Maritime Dangerous Goods Code and the Department of Transportation to be in place before and after the import of PCB-containing items to the United States. Moreover, the PCB items that would be transported to the United States are not combustible, which would make the probability of fires low. Together, these contingency measures would minimize exposure to humans and the environment in the event of an accident or emergency during ocean transport.

iv. Given the aforementioned information, the exposure likelihood, frequency, and duration are so low that even though PCBs are considered to be highly hazardous, risk (combined exposure and hazard) would not be unreasonable to human health or the environment.

v. The potential for human health risks are further mitigated by duration of exposure. PCBs are most hazardous following long-term (chronic) exposures. Under the transport scenario proposed, any exposures to humans (i.e., accidental or emergency situation) would be of very short duration. Hence, the low probability of exposure occurring combined with the short-term duration of exposure, should one occur, further supports a qualitative conclusion that there is no unreasonable risk to human health.

vi. The long-term concern is the potential for accumulation in the ecological environment. Under a worst case scenario where all of the PCBs were released due to an unforeseen and highly unlikely catastrophic event during transport, PCB-exposed biological receptors could be adversely affected. However, this scenario is highly unlikely because it would require a complete failure of all safeguards that would be in place. The DLA analyses indicate that there would be a low probability of a complete failure. The alternative of storing the PCBs indefinitely seems to pose more risk than transport. Further, should an accident occur, emergency response authorities at least within U.S. waters, would be invoked to mitigate and/or remediate exposures.

2. *Good faith efforts to find substitutes met*. Section 6(e)(3(B)(ii) of TSCA requires the Administrator to make an additional finding, that ''good faith efforts have been made to develop a chemical substance that does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.'' EPA has interpreted this provision to require that a petitioner has the burden of demonstration that it has made the requisite good faith efforts. (See 40 CFR 750.11.)

EPA believes that DLA has demonstrated good faith efforts to find alternatives to disposal of this PCB waste in the United States. EPA is aware of the lack of adequate PCB disposal capacity in Japan. DLA has explored exporting this waste to other countries as an alternative but since this is waste owned by the United States, the waste may not be shipped to other countries in the area because the United States is not a party to the Basel Convention and does not have bilateral agreements with countries in the area. EPA also acknowledges the peculiar circumstances of DOD's PCBs, which, while present in one country, are owned by another country's government, leading to significant difficulty in providing Basel notification to third countries. Given these difficulties, EPA concurs with DLA's conclusion that

disposal in a third country is not a viable alternative for this waste.

3 . *Benefits of granting the petition*—

i. *Avoiding the risks of long-term storage*. EPA believes that granting the petition to import 1,328,482 pounds of waste contaminated with PCBs (88% is less than 50 ppm and less than 5% is liquid PCBs greater than 50 ppm) will benefit the United States and the environment in general in several ways. As DLA notes, the continued long term storage of PCB waste on U.S. military facilities in Japan poses risks of exposure to U.S. personnel and the environment—risks that can be eliminated through the action proposed in the petition.

ii. *Ensuring proper and safe disposal*. Granting the petition would allow the U.S. to accept responsibility for the toxic waste it generates by assuring proper and safe disposal in domestic permitted disposal facilities.

iii . *Ensuring the safety of Japanese citizens*. EPA considers the reduction of risk to Japanese citizens to be advantageous, especially in light of the heightened concerns over PCBs in that country and the sensitivities surrounding the U.S. military's presence in Japan. Granting the petition is the only practical mechanism to remove this waste from Japan. Otherwise the U.S. military is in the awkward position of explaining to its Japanese hosts that it cannot remove its own toxic waste from their country because U.S. law does not allow the waste to be sent to the United States.

For these reasons EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and proposes to grant the petition.

V. References

1. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions. Final Rule. OPPT–2002–0013. **Federal Register** (68 FR 4934, January 31, 2003) (FRL–7288–6). Available at *http://www.epa.gov/fedrgstr*.

2. EPA, Office of Toxic Substances (OTS). Polychlorinated Biphenyls; Manufacturing, Processing, Distribution in Commerce Exemptions. Proposed Rule. OPTS–66008F. **Federal Register** (53 FR 32326, August 24, 1988).

3. DOD, DLA. Petition from Keith W. Lippert, Vice Admiral, SC, USN, Director to Stephen L. Johnson, Administrator, EPA. Subject: Petition to the Administrator, United Sates Environmental Protection Agency, For an Exemption Under the Toxic Substances Control Act to Import Polychlorinated Biphenyls (PCB) and PCB Items for Disposal. July 21, 2005. 13 pp. with attachments.

4. DOD, DLA. Electronic mail dated November 2, 2006 from Miriam Alonso, Hazardous Programs, to Tom Simons, National Program Chemicals Division, OPPT, EPA. Subject: Updated Petition Data for EPA for petition submitted July 21, 2005. 2 pp.

5. EPA, OPPTS. Disposal of Polychlorinated Biphenyls; Import for Disposal. Final Rule. **Federal Register** (61 FR 11096, March 18, 1996) (FRL–5354–8). Available at *http://www.epa.gov/fedrgstr*.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a ''significant regulatory action'' provided in section 3(f) of the Executive order.

B. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

This proposed rule would not impose any new information collection burden. EPA is proposing to grant the petition by DLA to import PCBs for disposal. DLA would then be subject to the existing EPA regulations regarding the disposal of PCBs in 40 CFR part 761. OMB has previously approved the information collection requirements contained in 40 CFR part 761 under the provisions of PRA, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2070–0003 (EPA ICR No. 1000.06), 2070–0008 (EPA ICR No. 1001.06), 2070–0011 (EPA ICR No. 1012.06), 2070–0021 (EPA ICR No. 0857.07), 2070–0112 (EPA ICR No. 1446.06), and 2070–0159 (EPA ICR No. 1729.02). Copies of these ICR documents may be obtained by mail at the Office of Environmental Information, Collection Strategies Division (2822), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by e-mail at *auby.susan@epa.gov* or by calling (202) 566–1672. Copies may also be downloaded from the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB numbers in any correspondence.

As defined by PRA and 5 CFR 1230.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as:

1. A small business that meets the Small Business Administration size standards codified at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. EPA is proposing to grant this petition by DLA to import PCBs for disposal. Only DLA, which is not a small entity, would be regulated by this proposed rule.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104–4, EPA has determined that this proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA is proposing to grant a petition by DLA to import PCBs for disposal. If the petition is granted, and DLA imports PCBs for disposal, DLA would be required to comply with the existing regulations on PCB disposal at 40 CFR part 761. The only mandate that would be imposed by this proposal would be imposed on DLA. In addition, EPA has determined that this proposal would not significantly or uniquely affect small governments. The DLA petition states that the PCBs will be disposed of in PCB-approved facilities. No new facilities, which could affect small government resources if a permit is required, are contemplated. EPA believes that the disposal of PCBs in previously approved facilities in the amounts specified in this proposal would have little, if any, impact on small governments. Thus, this proposed rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132: Federalism

This action will not have a 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. EPA's proposal would grant a petition from DLA to import PCBs and dispose of them in PCB-approved disposal facilities in accordance with existing regulations. EPA does not believe that this activity will have any impacts on the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule. However, in the spirit of Executive Order 13175, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045: Children's Health

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that:

1. Is determined to be ''economically significant'' as defined under Executive Order 12866.

2. Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA is proposing to grant the petition from DLA to import PCBs and dispose of them in approved PCB disposal facilities in accordance with existing regulations. EPA believes that the import and disposal of the amount of PCBs specified in the exemption petitions will present little, if any, additional risk to persons living in the vicinity of the approved disposal facilities or in the communities through which the PCBs may be transported.

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

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

I. The National Technology Transfer and Advancement Act

This action does not involve any technical standards; therefore, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the *Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings* issued under the Executive order.

L. Executive Order 12988: Civil Justice Reform

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: April 19, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 would continue to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. Section 761.80 is amended by adding a new paragraph (j) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(j) The Administrator grants the United States Defense Logistics Agency's July 21, 2005 petition for an exemption for 1 year to import 1,328,482 pounds of PCBs and PCB items stored or in use in Japan as identified in its petition, as amended, for disposal.

* * * * *

[FR Doc. E7–8182 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 042307F]

Gulf of Mexico Fishery Management Council; Scoping Hearings

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

ACTION: Notification of scoping hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene Public Hearings on Reef Fish Amendment 27/Shrimp Amendment 14.

DATES: The public hearings will held from May 14 - 24, 2007 at 13 locations throughout the Gulf of Mexico. For specific dates and times see **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting addresses: The public hearings will be held in the following locations: Brownsville, Port Aransas, Palacios, and Galveston, TX, New Orleans, Chauvin, and Abbeville, LA, Destin, Tampa, and Ft. Myers., FL, Foley and Mobile, AL and Biloxi, MS. For specific dates and times see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) has scheduled a series of public hearings to receive comments on Draft Amendment 27 to the Reef Fish Fishery Management Plan and Amendment 14 to the Shrimp Fishery Management Plan. This amendment contains potential management measures to modify the rebuilding plan for red snapper in order to end overfishing and recover this overfished stock. These measures would further reduce the directed red snapper harvest as well as bycatch from both the directed fishery and the shrimp fishery.

The public hearings will begin at 6 pm and conclude at the end of public testimony or no later than 10 pm at each of the following locations:

Monday, May 14, 2007, Holiday Inn Brownsville, 3777 N. Expressway, Brownsville, TX 78520, 956–547–1500;

Tuesday, May 15, 2007, Four Points Sheraton New Orleans Airport, 6401 Veterans Memorial Blvd., Metairie, LA 70003, 504–885–5700;

Tuesday, May 15, 2007, Plantation Suites, 1909 Hwy 361, Port Aransas, TX 78373, 361–749–3866;

Wednesday, May 16, 2007, Chauvin Parish Recreation Center, 215 Angel St., Chauvin, LA 70345, 985–594–2020;

Wednesday, May 16, 2007, Palacios Rec Center, 2401 Perryman Ave, Palacios, TX 77465, 361–972–2387;

Thursday, May 17, 2007, LSU Agricultural Center, 1105 W. Port St., Abbeville, LA 70510, 337–898–4335;

Thursday, May 17, 2007, San Luis Resort, 5222 Seawall Boulevard, Galveston, Texas 77550, 409–744–1500;

Monday, May 21, 2007, Embassy Suites Hotel, 570 Scenic Gulf Drive, Destin, FL 32550, 850–337–7000;

Monday, May 21, 2007, Clarion Hotel, 12635 S. Cleveland Ave., Ft. Myers, FL 33907, 239–936–0931;

Tuesday, May 22, 2007, Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609, 813–289–8200;

Tuesday, May 22, 2007, Foley Community Center, 407 E. Laurel Ave., Foley, AL 36535, 251–943–1545;

Wednesday, May 23, 2007, Riverview Plaza Hotel, 64 S. Water St., Mobile, AL 36602, 251–438–4000;

Thursday, May 24, 2007, Donal Snyder Parks & Rec Center, 2520 Pass Road, Biloxi, MS 39531, 228–435–6281.

Copies of the Amendment can be obtained by calling the Council office at 813–348–1630. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least five working days prior to the meeting.

Dated: April 24, 2007.

James P. Burgess,

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

[FR Doc. E7–8189 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 042307E]

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) will hold hearings to allow for public input on Amendment 9 to the Fishery Management Plan for the AtlanticMackerel, Squid, and Butterfish Fishery (FMP).

DATES: Written comments will be accepted until May 27, 2007. All meetings begin at 7 a.m. For specific dates and locations of the hearings see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Comments may be submitted through any of the following methods:

- Mail: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904.
- FAX: 302–674–5399.
- E-mail: *info@mafmc.org*. Please indicate the subject as SMB 9 Comments.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904, 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the hearings is to receive public input on management actions under consideration in Amendment 9 to the Atlantic Mackerel, Squid, and Butterfish FMP. The proposed management actions could:

(1) Allow multi-year specifications for all four species managed through the FMP,

(2) Extend or eliminate the moratorium on entry into the directed *Illex* squid fishery,

(3) Revise the current overfishing definition for *Loligo* squid,

(4) Designate EFH for *Loligo* eggs,

(5) Implement area closures to reduce damage to habitat from squid-mackerel-butterfish fisheries,

(6) Increase the minimum codend mesh size requirement in the *Loligo* fishery,

(7) Modify the exemption of the *Illex* fishery from the minimum codend mesh size requirement of the *Loligo* fishery,

(8) Modify the *Loligo* incidental catch limit in the *Illex* fishery during *Loligo* fishery closures,

(9) Establish a requirement for electronic daily reporting in the directed *Illex* fishery,

(10) Establish gear restricted areas that are seasonally closed to small-mesh gear.

Dates and Locations of the Hearings

Monday May 14, 2007: Hilton Garden Inn Providence Airport, One Thuber Street, Warwick, RI 02886.

Tuesday, May 15, 2007: Holiday Inn Express East End, 1707 Old Country Road, Riverhead, NY 11901.

Wednesday, May 16, 2007: The Grand Hotel, 1045 Beach Ave., Cape May, NJ 08204.

Thursday, May 17, 2007: Days Inn Norfolk Airport, 5708 Northampton Blvd., Virginia Beach, VA 23455.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office (302) 674–2331 extension 18 at least five days prior to the meeting date.

Dated: April 24, 2007.

James P. Burgess,

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

[FR Doc. E7–8197 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 041 307D]

RIN 0648–AU68

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards

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

ACTION: Notification of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to NMFS for review. If approved, Amendment 80 would allocate several Bering Sea and Aleutian Islands (BSAI) non-pollock trawl groundfish species among trawl fishing sectors, and facilitate the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. Amendment 80 is necessary to increase resource conservation and improve economic efficiency for harvesters who participate in the BSAI groundfish fisheries. This proposed amendment also is necessary to implement recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) that modify the allocation of groundfish resources in the BSAI to the Western Alaska Community Development Quota (CDQ) Program, and statutory mandates that define who is eligible to harvest fish in the non-AFA catcher/processor sector for a defined list of non-pollock groundfish species in the BSAI. This action is intended to promote the goals and objectives of the MSA, the FMP, and other applicable laws. The amendment is available for public review and comment.

DATES: Comments on Amendment 80 must be received on or before June 29, 2007.

ADDRESSES: Send written comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian, Records Officer. Comments may be submitted by:

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail: *0648–AU68NOA80@noaa.gov*. Include in the subject line the following document identifier: Amendment 80 RIN 0648–AU68. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Fax: 907–586–7557;
- Mail: P.O. Box 21668, Juneau, AK 99802–1668; or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Amendment 80 Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the NMFS Alaska Region website at *www.fakr.noaa.gov* or from the mailing and street addresses listed above.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MSA requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The MSA also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment. This requirement is satisfied by this notice of availability for Amendment 80.

Amendment 80 and Bycatch Reduction Efforts in the BSAI

Amendment 80 and its implementing regulations would continue initiatives by the Council and NMFS to reduce bycatch of fish species in the BSAI non-pollock trawl groundfish fisheries. Amendment 80 would reduce the amount of halibut and crab bycatch, known as prohibited species catch (PSC), that may be taken while non-AFA trawl catcher/processors are fishing for groundfish in the BSAI. These measures would consider efficiency in utilization of fishery resources, minimize costs, and further minimize bycatch to the extent practicable, thereby meeting the objectives of National Standards 5, 7, and 9 of the MSA.

Amendment 80 would facilitate this and other bycatch reductions through specific economic incentives provided by a limited access privilege program (LAPP). This LAPP would encourage improved retention and utilization of fishery resources by allocating specific amounts of certain species of non-pollock groundfish, and halibut and crab PSC, to non-AFA trawl catcher processors; and authorize the formation of cooperatives that would receive exclusive harvest privileges for a portion of these fishery resources.

One of the primary reasons for the relatively high discard rates of groundfish by non-AFA trawl catcher/processors is the nature of the fisheries in which those vessels participate. The non-AFA trawl catcher/processor sector primarily participates in non-pollock groundfish fisheries. The non-pollock groundfish fisheries are primarily comprised of groups of species that share similar habitat (e.g., flatfish fisheries such as rock sole, flathead sole, and yellowfin sole). Because these species occur together, they are typically harvested together. When a non-AFA trawl catcher/processor retrieves its net, very often multiple

species of fish are present. If a vessel operator is targeting only one species of fish, and other species are retrieved along with the desired catch, the vessel operator may have an incentive to discard the less valuable species and retain only the higher value species. The multi-species nature of these fisheries makes it difficult for vessel operators to target only one species, and an economic incentive exits to discard less valuable fish.

NMFS establishes a total allowable catch (TAC) for each groundfish species based on the species's annual biomass with the goal of providing a conservatively managed sustainable yield. In the non-pollock groundfish fisheries, harvesters compete for the TAC, resulting in a ''race for fish,'' wherein vessels attempt to maximize their harvest in as little time as possible, in order to claim a larger share of the available TAC. This race for fish only increases the economic incentive to discard less valuable species in a multi-species harvest, and accelerate the harvest rate for the more valuable species.

Because vessel operators are competing with each other for shares of a common quota, a vessel operator has little economic incentive to undertake actions to reduce unwanted incidental catch, such as searching for fishing grounds with lower incidental catch rates, or use gear modifications that may reduce bycatch but have a lower harvest rate, if those actions would limit the ability of that vessel to effectively compete with other vessels. Additionally, a vessel operator has little incentive to process and store less valuable species if by doing so, he loses an opportunity to use that processing or storage capacity for more valuable catch. Therefore, an individual vessel operator has strong incentives to harvest fish as quickly as possible, and discard less valuable species, before the TAC limit is reached because all vessel operators are competing for a limited TAC.

Additionally, non-pollock groundfish fisheries are constrained by catch limits for non-target species, such as halibut, red king crab, *Chinocetes bairdi* crab, and *C. opilio* crab. Halibut and crab are harvested in other fisheries and cannot be retained by vessels using trawl gear. NMFS establishes prohibited species catch (PSC) limits for halibut in the entire BSAI, and red king crab, *C. opilio* crab, and *C. bairdi* crab in specific areas of the BSAI to limit the adverse impact of harvesting operations on the long-term productivity of those species. NMFS monitors these PSC limits, and may close or otherwise restrict trawl harvests if PSC limits are projected to be reached. Fishery closures due to reaching PSC limits can limit harvest of the groundfish TAC and reduce overall revenue to vessel operators and crew. As vessel operators seek to maximize harvest of TAC, they may accelerate fishing operations to maximize harvest before a crab or halibut PSC limit is reached. A ''race for PSC'' further exacerbates competition and the incentives to harvest rapidly, resulting in greater potential waste and higher discard rates of less valuable groundfish species.

The multi-species nature of non-pollock groundfish fisheries further limits the ability of a fisherman to specifically target valuable groundfish species as they race with their competitors. Vessel operators may discard considerable portions of their catch to maximize harvests of more valuable species even though the discarded species may have considerable market value if competition did not create such a strong incentive to maximize harvests of the more valuable species in as short a time as possible.

LAPP Management

The primary method to offset the economic incentives that lead to a race for fish and relatively high discard rates is to reduce the impact of those incentives through a LAPP. LAPPs have been used extensively in the North Pacific as a means to encourage economic efficiency and less wasteful harvest methods, and to resolve allocation disputes among harvesters by providing a group of harvesters with exclusive harvest privileges that can be traded. North Pacific LAPPs include (1) the halibut and sablefish individual fishing quota (IFQ) Program (November 9, 1993, 58 FR 59375); (2) the AFA (December 30, 2002, 67 FR 69692); (3) the BSAI Crab Rationalization Program (March 2, 2005; 70 FR 10174); and (4) the Central GOA Rockfish Program (November 20, 2006; 71 FR 67210). An extensive discussion of LAPPs can be found in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

Based on experience with past LAPPs, and after weighing potential advantages and disadvantages, the Council adopted Amendment 80 to create economic incentives that provide additional opportunities to reduce bycatch while increasing the potential for greater economic returns to persons holding the harvest privileges. Amendment 80 would provide an incentive for non-AFA trawl catcher/processors to harvest non-pollock groundfish in a less wasteful manner by granting an exclusive harvest privilege to a limited number of harvesters. Amendment 80 would encourage participants to harvest more efficiently and less wastefully by allowing them to choose to (1) form one or more harvesting cooperatives with other harvesters that would receive an exclusive annual harvest privilege of specific groundfish species and PSC; or (2) fish in a limited access fishery comprised of fishery participants that choose not to join a cooperative. The principal benefits from Amendment 80 would be realized by harvesters that choose to join a cooperative.

Overview of Amendment 80

The Council adopted Amendment 80 to meet the broad goals of: (1) improving retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet; (2) allocating fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns and future harvest needs; (3) authorizing the allocation of groundfish species to harvesting cooperatives and establishing a LAPP for the non-AFA trawl catcher/processors to reduce potential bycatch reduction costs, encourage fishing practices with lower discard rates, and improve the opportunity for increasing the value of harvested species; and (4) limiting the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries not managed under a LAPP.

As with all other LAPPs in the North Pacific, the extensive changes to existing management of BSAI non-pollock trawl fisheries proposed by Amendment 80 would affect a wide range of fishing practices and regulations. Amendment 80 would affect management of the non-AFA trawl catcher/processors, and all other BSAI trawl fishery participants. As such, Amendment 80 proposes a complex suite of measures to ensure the goals of Amendment 80 are met and to minimize potential adverse impacts on other affected fishery participants.

The following section provides an overview of the suite of measures Amendment 80 proposes to implement.

1. Community Development Quota (CDQ) Program

Amendment 80 would incorporate statutory mandates in the MSA as amended by Section 416 of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; July 11, 2006), and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109–479, January 12, 2007). The proposed rule would modify the percentage of the total allowable catch (TAC) for directed

fisheries that are allocated to the CDQ Program, and the percentage of halibut, crab, and salmon prohibited species catch (PSC) allocated to the CDQ Program as prohibited species quota. Also proposed are other provisions necessary to bring Amendment 80 and the CDQ Program into compliance with applicable law.

2. Amendment 80 Sector and Amendment 80 Vessels

Eligible Amendment 80 sector participants would be defined by applicable legislation and the implementing regulations. Amendment 80 would incorporate statutory mandates in section 219 of the Consolidated Appropriations Act of 2005 (Public Law 108–447; December 8, 2004) which defines who is eligible to harvest fish in the non-AFA catcher/processor sector for a defined list of non-pollock groundfish species. Amendment 80 would define the ''Amendment 80 sector'' as non-AFA trawl catcher/processor harvesters eligible to fish under this statutory mandate. The list of non-AFA trawl catcher/processor vessels that may be used to fish in the Amendment 80 sector are called ''Amendment 80 vessels.''

3. Amendment 80 Species

Amendment 80 would allocate a specific portion of six non-pollock groundfish species among trawl fishery sectors. These six species would be the ''Amendment 80 species,'' and include Aleutian Islands Pacific ocean perch, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. These Amendment 80 species would be allocated between the Amendment 80 sector and all other BSAI trawl fishery participants. These other trawl fishery participants include AFA catcher/processors, AFA catcher vessels, and non-AFA catcher vessels. Collectively, this group of trawl fishery participants comprises the ''BSAI trawl limited access sector.'' These six species are economically valuable and have historically been targeted by non-AFA trawl catcher/processors, but fisheries associated with these species have high rates of discard of other groundfish species.

4. Allocations of TAC and PSC in the BSAI Trawl Fisheries

Each year, NMFS would allocate an amount of Amendment 80 species available for harvest, and crab and halibut PSC to two defined groups of trawl fishery participants: (1) the Amendment 80 sector; and (2) the BSAI trawl limited access sector. The amount of Amendment 80 species TAC assigned to each sector would be based on the amount of TAC remaining after allocation to the CDQ Program and for incidental catch allowance requirements in other fisheries as necessary. This allocation amount is termed the initial TAC (ITAC). Allocations made to one sector would not be subject to harvest by participants in the other fishery sector except under a specific condition. Fish that are allocated to the BSAI trawl limited access sector and projected to be unharvested could be reallocated to Amendment 80 cooperatives.

Amendment 80 would further address the Council's goals of reducing bycatch and discard of groundfish species by reducing the total amount of crab and halibut PSC allocated to the Amendment 80 sector.

5. BSAI Trawl Limited Access Sector

Amendment 80 would provide a specific allocation of Amendment 80 species and crab and halibut PSC to this sector. Amendment 80 would modify the calculation of AFA sideboard limits for Amendment 80 species and crab and halibut PSC limits as necessary to allow the efficient operation of AFA vessels.

6. Amendment 80 Quota Share

Amendment 80 would assign Amendment 80 quota share (QS) for Amendment 80 species to the owners of Amendment 80 vessels. Amendment 80 QS could be used to yield an exclusive harvest privilege for a portion of the Amendment 80 sector ITAC. Amendment 80 would establish criteria for harvesters in the Amendment 80 sector to apply for and receive QS, criteria for initially allocating QS, and criteria for the transfer of QS.

Amendment 80 would assign Amendment 80 QS based on historic catch patterns of an Amendment 80 vessel during 1998 through 2004. Amendment 80 would assign QS based on the relative proportion of an Amendment 80 species harvested by an Amendment 80 vessel compared to all other Amendment 80 vessels.

Amendment 80 would assign Amendment 80 QS only to members of the Amendment 80 sector who submit a complete application for Amendment 80 QS. In most cases, Amendment 80 would assign the Amendment 80 QS to an Amendment 80 vessel owner. In specific cases where an Amendment 80 vessel has been lost or is otherwise permanently ineligible to fish in U.S. waters, the Amendment 80 QS would be assigned to the holder of the license limitation Amendment 80 (LLP) license originally assigned to that Amendment 80 vessel. Once Amendment 80 QS is assigned based on the historic catch patterns of an Amendment 80 vessel, it could not be divided or transferred separately from that Amendment 80 vessel. If Amendment 80 QS is assigned to the LLP license originally issued for that Amendment 80 vessel, it could not be transferred separately from that LLP license.

7. Amendment 80 Cooperatives

Persons who receive Amendment 80 QS would be able to join a cooperative to receive an exclusive harvest privilege for a portion of the ITAC. Amendment 80 QS holders would be able to form a cooperative with other Amendment 80 QS holders on an annual basis, provided they meet specific criteria. Each Amendment 80 cooperative would receive an annual cooperative quota (CQ), an amount of Amendment 80 species ITAC that would be for the exclusive use by that cooperative for harvest in a given year. Amendment 80 would establish requirements for forming an Amendment 80 cooperative with other Amendment 80 QS holders, the allocation of annual CQ to a cooperative, and transfers of CQ among cooperatives. A cooperative would receive an amount of CQ equivalent to the proportion of QS held by all of the members of the cooperative relative to the total QS held by all Amendment 80 QS holders.

Each Amendment 80 cooperative would receive an annual CQ with an exclusive limit on the amount of crab and halibut PSC the cooperative can use while harvesting in the BSAI. This halibut and crab PSC CQ would be assigned to a cooperative proportional to the amount of Amendment 80 QS held by the members, and would not be based on the amount of crab or halibut PSC historically used by the cooperative members.

Amendment 80 would provide opportunities for Amendment 80 sector participants to trade harvest privileges among cooperatives to further encourage efficient fishing operations. An Amendment 80 cooperative would not be able to transfer CQ to the Amendment 80 limited access fishery, or to the BSAI trawl limited access sector.

A cooperative structure may allow Amendment 80 vessel operators to manage PSC rates more efficiently than vessels who must race to harvest fish as quickly as possible before a PSC limit is reached and a fishery is subject to closure. By reducing PSC through more efficient cooperative operations, such as through gear modifications that reduce PSC use, Amendment 80 vessel operators may also increase the harvest of valuable targeted groundfish species

and improve revenues that would otherwise be foregone if a fishery were closed due to reaching PSC limits.

Amendment 80 would allow Amendment 80 cooperatives to receive a rollover of an additional amount of CQ, if a portion of the Amendment 80 species or crab or halibut PSC allocated to the BSAI trawl limited access sector is projected to go unharvested. This rollover to the Amendment 80 cooperatives would be at the discretion of NMFS based on projected harvest rates in the BSAI trawl limited access sector and other criteria. Each Amendment 80 cooperative would receive an additional amount of CQ that is based on the proportion of the Amendment 80 QS held by that Amendment 80 cooperative compared to all other Amendment 80 cooperatives.

Fishery participants in a cooperative could consolidate fishing operations on a specific Amendment 80 vessel or subset of Amendment 80 vessels, thereby reducing monitoring and enforcement (M&E) and other operational costs, and harvest fish in a manner more likely to be economically efficient and less wasteful.

8. Amendment 80 Limited Access Fishery

Amendment 80 QS holders that choose not to join an Amendment 80 cooperative would be able to participate in the Amendment 80 limited access fishery. Amendment 80 would assign the Amendment 80 limited access fishery the amount of the Amendment 80 sector's allocation of Amendment 80 species ITAC and halibut and crab PSC that remains after allocation to all of the Amendment 80 cooperatives. Participants fishing in the Amendment 80 limited access fishery would continue to compete with each other; would not realize the same potential benefits from consolidation and coordination; and would not receive an exclusive harvest privilege that accrues to members of an Amendment 80 cooperative.

9. Use Caps

The Council considered the effect of consolidation with the allocation of an excessive share of harvest privileges to Amendment 80 cooperatives. In response, Amendment 80 would implement use caps to limit the amount of Amendment 80 QS a person could hold, the amount of CQ they could use, and the amount of ITAC an Amendment 80 vessel could harvest. These use caps would moderate some of the potentially adverse effects of excessive consolidation of fishing operations on fishery participants, such as lost employment opportunities for fishing crew while providing economic efficiencies to Amendment 80 QS holders.

10. Gulf of Alaska Sideboard Limits

Catch limits, commonly known as sideboards, would limit the ability of Amendment 80 vessel operators to expand their harvest efforts in the Gulf of Alaska (GOA). Amendment 80 is designed to provide certain economic advantages to participants. Amendment 80 participants could use this economic advantage to increase their participation in other fisheries, primarily in the GOA fisheries, adversely affecting the participants in those fisheries. GOA groundfish and halibut PSC sideboards would limit the catch by Amendment 80 vessels to historic levels in the GOA.

11. Economic Data Report (EDR)

Amendment 80 would implement an economic data collection program to assess the impacts of Amendment 80 on various components of the fishery, including skippers and crew. Amendment 80 would establish a process for collecting and reviewing economic data generated under Amendment 80 by requiring the annual submission of an EDR from each Amendment 80 QS holder.

Other management measures necessary to implement Amendment 80 would be provided in the proposed rule that accompanies Amendment 80. These measures include an expansion of the groundfish retention standard to all vessels in the Amendment 80 sector and monitoring and enforcement provisions necessary to support Amendment 80 and its implementing regulations.

Public comments are being solicited on proposed Amendment 80 through the end of the comment period stated (see **DATES**). A proposed rule to implement Amendment 80 will be published in the **Federal Register** for public comment, following NMFS' evaluation under MSA procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 80 to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on Amendment 80, whether specifically directed to the amendment or the proposed rule, will be considered in the decision to approve, partially approve, or disapprove the proposed amendment. Comments received after the comment period for the amendment will not be considered in that decision. To be considered, written comments must be received by NMFS, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

Dated: April 24, 2007.

James P. Burgess

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

[FR Doc. E7–8190 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 82

Monday, April 30, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 25, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Animal and Plant Health Inspection Service

Title: Importation of Mangoes from the Philippines.

OMB Control Number: 0579–0172.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant pests and noxious weeds from entering the United States. Under the Plant Protection Act (7 U.S.C. 7711–7714), the Secretary of Agriculture, either independently or in cooperation with the States, is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) allow the importation of mangoes from Guimaras Island in the Republic of the Philippines into the United States under certain conditions. The regulations require the use of box marking to indicate the origin of the fruit, phytosanitary certificate to confirmed that the fruit has been grown and treated in accordance with the regulations and a trust fund agreement between the Republic of the Philippines Department of Agriculture and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to cover the Agency's participation in the treatment and inspection activities in the Philippines that are required for the importation of mangoes.

Need and Use of the Information: APHIS will collect information to verify that the commodity was treated adequately with heat to eliminate the pest risk and to verify that the temperature remained at the appropriate level for the entire treatment period, thereby destroying any fruit flies present in the commodity.

Description of Respondents: Business or other for-profit; Farms; Federal Government.

Number of Respondents: 1,827.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 121.

Animal and Plant Health Inspection Service

Title: Importation of Unshu Oranges.

OMB Control Number: 0579–0173.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pest and noxious weeds. The regulations in ''Subpart-Citrus Fruit'' (7 CFR 319.28) allow the importation of unshu oranges from Kyushu Island and Honshu Island, Japan, into the United States under certain conditions. A certificate must accompany the unshu oranges from the Japanese plant protection service certifying that the fruit is apparently free of citrus canker.

Need and Use of the Information: The Animal and Plant Health Inspection (APHIS) will collect information using form PPQ 203, Foreign Site Certificate of Inspection and/or Treatment. The information from the form will be used to certify that unshu oranges from Japan are free of citrus canker and to also ensure that the oranges are not imported into citrus-producing areas of the United States such as Florida and California.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 23.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,535.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–8153 Filed 4–27–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 25, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the

methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

Agricultural Marketing Service

Title: Federal Seed Act Program.

OMB Control Number: 0581–0026.

Summary of Collection: The Federal Seed Act (FSA) (7 U.S.C. 1551–1611) regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is being shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints involving seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties. AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary.

Need and Use of the Information: The information collected consists of records pertaining to interstate shipments of seed which have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by FSA program specialists and are used to determine if a violation of the FSA occurred. The records are also used to determine the precautions taken by the shipper to assure that the seed was accurately labeled. The FSA program would be ineffective without the ability to examine pertinent records as necessary to resolve complaints of violations.

Description of Respondents: Business or other for-profit; Farm.

Number of Respondents: 2,880.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 40,263.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–8154 Filed 4–27–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wild and Scenic River Suitability Study for National Forest System Lands in Utah; Ashley, Dixie, Fishlake, Manti-La Sal, Uinta, and Wasatch-Cache National Forests; Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: The Forest Service, in cooperation with the State of Utah, will prepare a draft and final legislative environmental impact statement (LEIS) to complete the process for giving consideration to potential national wild, scenic, and recreational river areas on the National Forests in Utah under the Wild and Scenic Rivers Act. Portions of those National Forests extend into Colorado and Wyoming, and those areas will be included in the study. The Forest Service has evaluated river segments on these National Forests to determine which ones meet criteria for eligibility for inclusion in the National Wild and Scenic Rivers System. The purpose of the LEIS is to determine which eligible river segments are suitable for inclusion in the National Wild and Scenic Rivers System. More information including: the full text of the proposal, a list of eligible river segments by county and forest, and a map showing eligible river segments is posted on the web at: *http://www.fs.fed.us/r4/rivers/*.

The Forest Service invites written comments and suggestions on the suitability of eligible river segements for designation as wild, scenic, or recreational rivers. The Forest Service gives notice of the environmental analysis and determinations that will occur as a result of this study so that interested and affected people are aware of how they may participate and contribute to the final determination of suitability for inclusion in the National Wild and Scenic Rivers System.

DATES: Comments concerning the scope of the analysis will be most useful if submitted on or before June 30, 2007. The draft legislative environmental impact statement is expected in November 2007 and the final legislative environmental impact statement is expected to be completed by the summer of 2008.

ADDRESSES: Send written comments concerning the suitability of the river segments to: Catherine Kahlow, USFS WSR Team Leader, Attention: WSR, P.O. Box 68, Kamas, UT 84036. Comments can also be hand delivered Monday through Friday 8:00 am to 4:30 pm at: 50 East Center Street in Kamas, Utah. In addition, comments can be submitted electronically to: *r4_utah_rivers@fs.fed.us* on or before June 30, 2007.

FOR FURTHER INFORMATION CONTACT: Visit the website for up-to-date information at: *http://www.fs.fed.us/r4/rivers/* or contact Catherine Kahlow, USFS WSR Team Leader (see previous address information). For information regarding meetings or media inquiries contact: Loyal Clark, USFS Public Affairs Officer (Northern Utah) at (801) 342–5117 or Kenton Call, USFS Public Affairs Officer (Southern Utah) at (435) 865–3730.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

This Forest Service proposes to complete the process for considering potential national wild, scenic, and recreational river areas on the National Forest System lands in Utah under the Wild and Scenic Rivers Act. The purpose of and need for this study is to assess whether or not eligible river segments should be recommended to Congress for inclusion in the National Wild and Scenic Rivers System.

Proposed Action

The Forest Service is proposing to conduct an environmental analysis to complete the process for considering potential national wild, scenic, and recreational river areas on the National Forests in Utah under the Wild and Scenic Rivers Act. This action is conducted pursuant to the Wild and Scenic Rivers Act of 1968 (Public Law 90–542) and complies with the National

Environmental Policy Act (NEPA) of 1969.

The final record of decision may also include amendments to the Land and Resource Management Plans for the Utah National Forests to provide direction for management of river segments determined to be suitable for inclusion in the National Wild and Scenic Rivers System.

Background: Over the past decade, National Forests in Utah have evaluated river segments on the National Forest for potential eligibility for designation under the National Wild and Scenic Rivers System. The majority of the eligibility inventory and tentative classification took place during forest land and resource management plan revision processes. However, eight river segments on the Dixie National Forest were analyzed in conjunction with the Bureau of Land Management (BLM) in the Grand Staircase Escalante National Monument Management Plan.

In order to be eligible, a river segment must be free-flowing and must possess at least one outstandingly remarkable value. River segments determined to be eligible were assigned a potential classification as wild, scenic, or recreational based on the level of development and access along the river corridor.

Forest Supervisors proposed interim direction for the management of activities and uses that have the potential to affect the outstandingly remarkable values and/or the wild, scenic, or recreational classification of the eligible river segments until such a time that the suitability studies are completed and a new management emphasis is developed.

The eligibility process has largely been completed for all National Forests in Utah. The purpose of this study is to further evaluate the suitability of eligible river segements for inclusion in the National Wild and Scenic Rivers System.

A suitability study is the final administrative step before a recommendation is made to Congress. Evaluation of suitability will provide an opportunity to determine if it will be appropriate to pursue Congressional designation for specific river segments. The Forest Service and State of Utah will consider, but not be limited to, the following: ''worthy additions'' to the National System; tradeoffs in management scenarios other than designation; land ownership status; existing and potential uses of that segment; interest expressed by the public, and tribal, Federal, State, and local agencies; estimated costs for management and protection of identified outstandingly remarkable values; ability of agency to manage and/or protect the river; and, historical and existing uses which could be affected. The Wild and Scenic Rivers Team will evaluate the suitability of the eligible river segments together in one analysis to maintain consistency and to complete the work efficiently.

Possible Alternatives

A range of alternatives will be considered. The range of alternatives will include, as required be NEPA, a no action alternative that does not recommend any eligible river segment for designation into the National Wild and Scenic Rivers System, and may include an alternative that recommends designation of all eligible rivers (All Suitable). Additional alternatives may be developed from information analyzed during the suitability study, including public comments received during the scoping process.

Cooperating Agencies

The State of Utah is a Cooperating Agency.

Responsible Officials

Kevin B. Elliott, Ashley National Forest, 355 North Vernal Avenue, Vernal, Utah 84078;

Rob MacWhorter, Dixie National Forest, 1789 North Wedgewood Lane, Cedar City, Utah 84720;

Mary C. Erickson, Fishlake National Forest, 115 East 900 North, Richfield, Utah 84701;

Alice B. Carlton, Manti-La Sal National Forest, 599 West Price River Dr., Price, Utah 84501;

Brian A. Ferebee, Uinta National Forest, 88 West 100 North, Provo, Utah 84601;

Faye L. Krueger, Wasatch-Cache National Forest, 125 South State Street, Salt Lake City, Utah 84138.

Nature of Decision To Be Made

The record of decision will answer the following question: Which, if any, of the eligible river segments under consideration should be recommended to the Congress of the United States for inclusion in the National Wild and Scenic Rivers System?

Scoping Process

Public participation is especially important at several points in the study process. The first is the scoping process. The Forest Service is seeking information and comments from Federal, State, and local agencies, Tribes, organizations, and individuals who may be interested in or affected by the proposed action. Public input will be considered during preparation of the Draft LEIS.

Scoping meetings will be held around the State of Utah and in Paradox, Colorado and Lyman, Wyoming during May and June of 2007. For a list of meeting dates and locations, please check the WSR Web site at: *http://www.fs.fed.us/r4/rivers*.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. This suitability study is driven by suitability factors that will shape the analysis of each river segment. These suitability factors are used to identify and evaluate the trade-offs between competing uses and need for potential designation of these rivers to the Wild and Scenic River System. Suitability factors are noted on the website at *http://www.fs.fed.us/r4/rivers*. Comment on the application of existing suitability factors, additional factors for the agency to consider, potential alternatives to analyze and other related specific comments is requested.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that comments

and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: April 24, 2007.

Faye L. Krueger,

Wasatch-Cache Forest Supervisor.

[FR Doc. E7–8149 Filed 4–27–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Southwest Region, Regional Office, California, Sierra Nevada Forests—Management Indicator Species Amendment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Pacific Southwest Region of the U.S. Forest Service proposes to adopt a common list of Management Indicator Species (MIS) and associated monitoring strategies by amending the Land and Resource Management Plans (LRMPs) for the Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus, and Tahoe National Forests and Lake Tahoe Basin Management Unit. These will likely be non-significant forest plan amendments.

DATES: To be most effective, comments concerning the scope of the analysis should be received by May 21, 2007. Public scoping for this analysis, originally expected to be documented in an Environmental Assessment, began on February 21, 2007. Unless response to this notice raises concerns not yet expressed, the draft environmental impact statement is expected in late May 2007 and the final environmental impact statement is expected in July 2007.

ADDRESSES: Send comments to the Forest Service at the following addresses. Hardcopy mail: U.S. Forest Service, 1323 Club Drive, Vallejo, CA 94592, ATTN: Brenda Kendrix. Electronic mail: *comments-pacificsouthwest-regional-office@fs.fed.us*, Subject Line: Sierra Nevada Forests MIS Amendment. Use Rich Text Format (.rtf) or Word (.doc).

FOR FURTHER INFORMATION CONTACT: For further information contact Diana Craig, Interdisciplinary Team Leader, at U.S. Forest Service, 1323 Club Drive, Vallejo, CA, or at the e-mail address above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

This proposed action responds to a need for a more suitable and manageable list of MIS, while maintaining a sufficient number of species to cover the range of habitats in the Sierra Nevada affected by Forest Service management activities. Monitoring and recent judicial interpretations have led to the conclusion that the Forest plan provisions related to MIS and MIS monitoring are in need of reconsideration. Specifically, some MIS currently identified in the LRMPs are problematic because (1) no tested monitoring methodology exists or the methodology is prohibitively expensive, (2) some MIS currently identified in the LRMPs are not strongly linked to habitats or ecosystem components that are affected by national forest management activities, or (3) some MIS do not occur on or occur only incidentally on a Forest and, therefore, neither populations nor habitat relationships can be monitored for MIS objectives.

In addition, the current lists provide no coordination or standardization across the Sierra Nevada Forests. Each national forest has a different, and often unrelated, MIS list. Often forest scale information does not provide the most meaningful biological data. Maintaining a monitoring program on each individual forest is not strategic and is an inefficient use of money and resources.

The purpose of this action is to improve the ability of the national forests to provide for the diversity of plant and animal communities, as identified in the National Forest Management Act (NFMA). This will be accomplished by identifying MIS for the 10 national forests (1) that are clearly linked to habitats or ecosystem components that are affected by national forest management activities, and (2) for which population or habitat status and change can be effectively and affordably monitored and evaluated.

Proposed Action

The Forest Service proposes to adopt common list of MIS and associated monitoring strategies by amending, via non-significant forest plan amendment, the LRMPs for the ten Sierra Nevada National Forests in the Pacific Southwest Region (Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus, and Tahoe National Forests and Lake Tahoe Basin Management Unit). These ten national forests occur in Alpine, Amador, Butte, Calaveras, El Dorado, Fresno, Inyo, Kern, Lassen, Madera, Mariposa, Modoc, Mono, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Tulare, Tuolumne, Yuba, and Douglas Counties in California and Esmeralda and Mineral Counties in Nevada.

This action will replace the existing MIS lists and associated monitoring strategies identified in the LRMPs for each of the 10 national forests. Other MIS-related parts of the LRMPs (e.g., habitat objectives, desired conditions, standards and guidelines) will NOT be changed by this proposal; therefore, habitat and species-specific protection measures will continue for all current MIS.

The proposed action will have the following components: (1) Major habitats or ecosystem components that are affected by national forest management activities on the ten national forests; (2) suitability and feasability criteria to assess whether a species meets the identified need; (3) MIS for major habitats or ecosystem components identified in component 1; and (4) appropriate monitoring strategies for each identified MIS (habitat or population monitoring, including the specific type of population monitoring).

Possible Alternatives

Public comment has suggested an alternative analyzing all species identified as MIS in Appendix E of the 2001 Final Environmental Impact Statement for the Sierra Nevada Forest Plan Amendment (2001 SNFPA FEIS) and associated monitoring. We will analyze this alternative, called SNFPA Appendix E, in detail.

Responsible Official

Bernard Weingardt, Regional Forester, Pacific Southwest Region, U.S. Forest Service, 1323 Club Drive, Vallejo, California 94592, is the Responsible Official.

Nature of Decision To Be Made

The Responsible Official will decide whether to amend by adopting a common list of MIS and associated monitoring strategies for each of the 10 LRMPs as proposed, to amend with an alternative MIS list and associated strategies, or retain the existing MIS lists and associated monitoring strategies. Although non-significant Forest Plan amendments are normally signed by Forest Supervisors, the Regional Forester for the Pacific Southwest Region will be the Deciding Officer for this decision.

Scoping Process

The analysis of this proposed action was originally expected to be documented in an Environmental Assessment (EA). Formal scoping for this analysis began on February 21, 2007 when a scoping letter was sent to over 4,000 addresses. The Forest Service used the last known distribution list of the 2004 Sierra Nevada Forests Plan Amendment Record of Decision because the current amendment covers roughly the same area and communities of interest. An open house was held on March 23, 2007. The proposed action was first published in the Schedules of Proposed Actions for each of the ten Forests for the Second Quarter of Fiscal Year 2007. An Internet Web site (*http://www.fs.fed.us/r5/snfmisa*) displays comprehensive information about the project. This notice of intent offers the opportunity to comment to a larger audience.

Preliminary Issues

Comments about implementing the existing monitoring requirements in the Sierra Nevada Forests Plan Amendment and concerns that those requirements should not be weakened will drive development of an alternative as described above in the Possible Alternatives section.

Comment Requested

This notice of intent continues the scoping process which now guides the development of an environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: April 24, 2007.

Beth G. Pendleton,

Deputy Regional Forester, Pacific Southwest Region.

[FR Doc. E7–8160 Filed 4–27–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Tonto National Forest, USDA Forest Service

ACTION: Notice of new fee site (Reference to previously published **Federal Register** document, Vol. 772, No. 12, Page 2490, January 19, 2007).

SUMMARY: The Tonto National Forest plans to implement a $6 per vehicle fee for overnight camping and day-use at Haigler Canyon Recreation Site. This site is undergoing major improvements which will increase facilities and services available to the public once completed. Fees paid at similar recreation sites on the Tonto National Forest demonstrate that the public appreciates and enjoys the availability of developed recreation sites and is willing to pay reasonable fees for use of such sites. Funds from the fee revenue will be used for the continued operation and maintenance of Haigler Canyon Recreation Site.

DATES: Haigler Canyon will become available for recreation use in August, 2007.

ADDRESSES: Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, AZ 85006

FOR FURTHER INFORMATION CONTACT: Dave Killebrew, Recreation Fee Coordinator, 602–225–5239

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. The Arizona Bureau of Land Management Resource Advisory Council serves as the Recreation Resource Advisory Committee for this project.

The Tonto National Forest currently has over 50 recreation sites where use fees are charged. A business analysis has shown that people desire having this sort of recreation experience on the Tonto National Forest. A market analysis indicates that the $6 per vehicle fee is both reasonable and acceptable for camping and day-use at Haigler Canyon. Once the site is complete, visitors wanting to use facilities at Haigler Canyon Recreation

Site can obtain self-validating passes at more than 150 commercial vendors in central Arizona including at least three locations in Payson, Arizona or at any Tonto National Forest administrative office including the Payson and Pleasant Valley ranger stations. An on-site fee payment option may also be provided. Details about the Tonto fee program can be found at the Tonto National Forest Web site, *http://www.fs.fed.us/r3/tonto* or by calling 602–225–5200.

Dated: April 24, 2006.

Gene Blankenbaker,

Forest Supervisor.

[FR Doc. 07–2099 Filed 4–27–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for New Construction in Fiscal Year 2007

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for Section 515 Rural Rental Housing (RRH) loan funds, including applications for the nonprofit set-aside for eligible nonprofit entities, the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs) and Rural Economic Area Partnership (REAP) zones, and a designated reserve for states with rental assistance programs. This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The deadline for receipt of all applications in response to this NOFA is 5 p.m., local time for each USDA Rural Development State Office on June 29, 2007. The application closing deadline is firm as to date and hour. The Agency will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the USDA Rural Development State Office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. USDA Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of USDA Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3618, TDD (334) 279–3495, Van McCloud.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Debbie Andrys.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8768, TDD (602) 280–8706, Carol Torres.

Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3063, Greg Kemper.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5821, TDD (530) 792–5848, Debra Moretton.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585, Pat Baker.

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 933–8321, Thao Khamoui.

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Miriam Haylett.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, Stephen Dye.

Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4685, TDD (515) 284–4858, Julie Sleeper.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, TDD (413) 253–4590, Donald Colburn.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Julie Putnam.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–7830, Rodney Jackson.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Colleen James.

Montana State Office, 900 Technology Blvd., Suite B, Bozeman, MT 59718, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE. 68508, (402) 437–5734, TDD (402) 437–5093, Linda Anders.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222 (ext. 25), TDD (775) 885–0633, Angilla Denton.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6050, TDD (603) 229–0536, Robert McCarthy.

New Jersey State Office, 5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez.
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless.
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, Beverly Casey.
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake.
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2418, TDD (614) 255–2554, Melodie Taylor-Ward.
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan S. Graves.
Oregon State Office, 1201 NE Lloyd Blv., Suite 801, Portland, OR 97232, (503) 414–3325, TDD (503) 414–3387, Sherryl Gleason.
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Martha Eberhart.
Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.
Rhode Island, Served by Massachusetts State Office .
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Don Harris.
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9758, TDD (254) 742–9712, Julie Hayes.
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4325, TDD (801) 524–3309, Janice Kocher.
Vermont State Office, City Center, 3rd Floor 89 Main Street, Montpelier, VT 05602, (802) 828–6021, TDD (802) 223–6365, Heidi Setien.
Virgin Islands, Served by Florida State Office .
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.
Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7760, Robert Lund.
Western Pacific Territories, Served by Hawaii State Office.
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4872, TDD (304) 284–4836, David Cain.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615 (ext. 151), TDD (715) 345–7614, Peter Kohnen.
Wyoming State Office, PO Box 11005, Casper, WY 82602, (307) 233–6715, TDD (307) 233–6733, Jack Hyde.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Barbara Chism, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 690–1436 (voice) (this is not a toll free number), (800) 877–8339 (TDD-Federal Information Relay Service), or via e-mail, *Barbara.Chism@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and, when available, may be requested with applications for such facilities.

B. Distribution Methodology

The total amount available for Fiscal Year (FY) 2007 for section 515 is $99,000,000, of which $25,740,000 is available for new construction as follows:

Non-Restricted—$8,234,537
Set-aside for nonprofits—$8,910,000
Set-aside for Underserved Counties and Colonias—$4,950,000
Earmark for EZ, EC, and REAP Zones—$2,655,463
Designated Reserve for States with Rental Assistance Programs—$990,000

C. Section 515 New Construction Funds

For FY 2007, the Administrator has determined that it would not be practical to allocate funds to States because of funding limitations; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR 3560.56. The scoring factors are:

(a) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents, comparable to those if RHS provided full financing, computed as a percentage of the RHS total development cost (TDC). Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be processed as follows: The proposal will be scored based on the requested funds, provided (1) the applicant includes evidence of a filed application for the funds; and (2) the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. Points will be awarded in accordance with the following table. Percentages will be rounded to the next higher whole number. (0 to 20 points)

Percentage of leveraging	Points
75 or more	20
70–74	19
65–69	18
60–64	17
55–59	16
50–54	15
45–49	14

Percentage of leveraging	Points
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
15–19	8
10–14	7
5–9	6
0–4	0

(b) The units to be developed are in a colonia, tribal land, EZ, EC, or Rural Economic Area Partnership (REAP) community, or in a place identified in the State Consolidated Plan or State Needs Assessment as a high need community for multifamily housing. (20 points)

(c) Pursuant to 7 CFR 3560.56 (c)(1)(iii), in states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State resources (State funds, State RA, HOME funds, Community Development Block Grant (CDBG) funds, or Low-Income Housing Tax Credits (LIHTC)) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding such State resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the TDC. Native American Housing and Self Determination Act (NAHASDA) funds may be considered a State Resource if the Tribal Plan for NAHASDA funds contains provisions for partnering with RHS for multi-family housing. (National Office initiative)

(d) The loan request includes donated land meeting the provisions of 7 CFR 3560.56(c)(1)(iv). (5 points)

(e) In an effort to implement USDA's nationwide initiative to promote renewable energy and energy conservation, Rural Development has adopted incentives for energy generation and energy conservation. Participation in these nationwide initiatives is voluntary, but is strongly encouraged.

Energy Generation. Applicants will be awarded points if the proposal includes the installation of energy generation systems to be funded by a third party. The proposal must include an overview of the energy generation system being proposed. Evidence that an energy generation system has been funded by a third party and that it has a quantifiable positive impact on energy consumption will be required. (5 points)

Energy Conservation. Applicants will be awarded points to construct (or substantially rehabilitate) housing that earns the ENERGY STAR label for new residential construction. Units earning the ENERGY STAR label must be independently verified to meet guidelines for energy efficiency as set by the U.S. Environmental Protection Agency. All procedures used in verifying a unit for the ENERGY STAR label must comply with National Home Energy Ratings System (HERS) guidelines. ENERGY STAR guidelines for residential construction apply to homes that are three stories or less and single or low-rise multi-family residential buildings.

The Applicant will include in the summary an explanation of how they plan to incorporate ENERGY STAR. Construction plans pertaining to energy efficiency must be developed with, reviewed, and accepted by a HERS certified rater, the contractor, and the owner. Progress inspections must be made at appropriate times by a HERS certified rater to ensure that the housing is being constructed or rehabilitated according to ENERGY STAR specifications. In order to receive final payment, applicants will be required to submit the appropriate rating reports from the HERS rater to Rural Development as evidence that the housing has been constructed to meet the standards of ENERGY STAR. In the event that housing does not meet ENERGY STAR guidelines for new residential construction, the Agency shall, at its discretion, deduct 5 points from future funding proposals. For further information about ENERGY STAR, see *http://www.energystar.gov* or call the following toll-free numbers: (888) 782–7939 or (888) 588–9920 (TTY). (5 points)

2. The National Office will rank all requests nationwide and distribute funds to States in rank order, within funding limits. If insufficient funds remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels. Point score ties will be handled in accordance with 7 CFR 3560.56(c)(2).

D. Applications That Do Not Require New Construction RA

In the event new construction RA is available for FY 2007, it will be available in limited amounts. Therefore, the Agency is inviting applications to develop units in markets that do not require RA. The market study for proposals must clearly demonstrate a need and demand for the units by prospective tenants at income levels that can support the proposed rents without tenant subsidies. The proposed units must offer amenities that are typical for the market area at rents that are comparable to conventional rents in the market for similar units.

E. Set-Asides

Loan requests will be accepted for the following set-asides:

1. Nonprofit set-aside. An amount of $8,910,000 has been set aside for nonprofit applicants. All loan proposals must be in designated places in accordance with 7 CFR 3560.57. A State or jurisdiction may receive one proposal from this set-aside, which cannot exceed $1 million. A State could get additional funds from this set-aside if any funds remain after funding one proposal from each participating State. If there are insufficient funds to fund one loan request from each participating State, selection will be made by point score. If there are any funds remaining, they will be handled in accordance with 42 U.S.C. 1485(w)(3). Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

2. Underserved counties and colonias set-aside. An amount of $4,950,000 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

3. EZ, EC, and REAP Earmark. An amount of $2,655,463 has been set aside to develop units in an EZ, EC, or REAP zone. Loan requests that are eligible for this set-aside are also eligible for regular Section 515 funds. If requests for this set-aside exceed available funds, selection will be made in accordance with 7 CFR 3560.56(c).

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular section 515 funds and set-aside

funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more.

B. No State may receive more than 20% of the total available for new construction, including set-aside funds.

III. Rental Assistance (RA)

In addition to the State Matching RA program as described in Section VI. E. of this Notice and subject to its availability, new construction RA will be held in the National Office for use with section 515 Rural Rental Housing loans. Because the amount of RA available for new construction is minimal, RA will be granted to projects which best meet the scoring and ranking criteria at 7 CFR 3560.56(c). Unused RA may be allocated from within the State jurisdiction to approved new construction projects. New construction RA may not be used in conjunction with a transfer or subsequent loan for repairs or rehabilitation, preservation purposes or for inventory property sales.

IV. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State Office and must meet the requirements of 7 CFR 3560.56, as well as comply with the provisions of Section V. of this notice. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

V. Application Submission Requirements

A. Each application shall include the following information, materials, forms and exhibits required by 7 CFR 3560.56, as well as comply with the provisions of this Notice.

Forms to be included in initial application package:

1. Form SF 424, Application for Federal Assistance, which can be found online at *http://www.whitehouse.gov/omb/grants/sf424.pdf;*

2. Form RD 1940–20, Request for Environmental Information, which can be found online at *http://www.rurdev.usda.gov/regs/forms/1940-20.pdf;*

3. Form RD 3560–7, Multiple Family Housing Project Budget/Utility Allowance, which can be found online at *http://www.rurdev.usda.gov/regs/forms/3560-07.pdf;*

4. Form HUD 2530, Previous Participation Certification, which can be found online at *http://www.hudclips.org/sub_nonhud/cgi/pdfforms/2530.pdf;*

5. Form RD 1924–13, Estimate and Certificate of Actual Costs, which can be found online at *http://www.rurdev.usda.gov/regs/forms/1924-13.pdf;*

6. Form RD 410–9, Statement Required by the Privacy Act (for individuals only), which can be found online at *http://www.rurdev.usda.gov/regs/forms/0410-09.pdf;*

Information requested in initial application package:

I. To establish applicant eligibility:

A. Current (within 6 months) financial statements with the following paragraph certified by someone with the legal authority to do so:

> I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

B. Check for $28 from individual applicants and $40 from organizational applicants made out to United States Department of Agriculture. This will be used to pay for credit reports obtained by the Agency.

C. Statement signed by applicants that they will pay any cost overruns.

D. Proposed limited partnership agreement and certificates of limited partners, if applicable. (Agency requirements should be contained in one section of the agreement and their location identified by the applicants or their attorney in a cover sheet.)

E. If a nonprofit organization:

1. Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.

2. Purpose statement, including the provision of low income housing.

3. Evidence of organization under state and local law, or copies of pending applications.

4. List of Board of Directors.

F. If a limited liability company, proposed operating agreement and the authorized agent who has the authority to complete the loan application and loan closing documents.

G. If a trust, organizational documents and attorney opinion letter that the trust is validly formed and identifying the authorized representative to act on the trust's behalf.

II. To establish project feasibility:

A. Market feasibility documentation: Either a market study or a market survey, as appropriate.

B. Type of project and structures proposed (total number of units by bedroom size, size of each unit type, size and type of other facilities).

C. Schematic drawings:

1. Site plan, including contour lines;

2. Floor plan of each living unit type and other spaces, such as laundry facilities, community rooms, stairwells, etc.;

3. Building exterior elevations;

4. Typical building exterior wall section; and

5. Plot plan.

D. Description and justification of related facilities, schedule of separate charges for related facilities.

E. Type and method of construction (owner builder, negotiated bid, or contractor method).

F. Estimated costs (Form RD 1924–13).

G. Statement of proposed management.

H. Congregate services package/plan (if applicable).

I. Statement of support from other Government services providers to the project (congregate only).

J. Response to the Uniform Relocation Assistance Act (if applicable).

III. To establish project financing:

A. Statement of budget and cash flow (applicant completes Form RD 3560–7), including type of utilities and utility allowance, if applicable and contribution to reserves.

B. Congregate services charges (if applicable).

C. Status of efforts to obtain leveraged funds.

D. Proposed construction financing (interim or multiple advance; if interim financing, letter of interest from intended lender).

IV. Environmental and site information:

A. Environmental information (applicant completes Form RD 1940–20).

B. Evidence of compliance with Executive Order 12372 (A–95) (if applicable) Form SF 424 is sent to a clearinghouse for intergovernmental review.

C. Phase I due diligence (Environmental Site Assessment; see Chapter 3 of the section 515 Rural Rental Housing Loan Origination Handbook).

D. Map showing location of support services.

E. Evidence of submission of project description to State Housing Preservation Office with request for comments.

F. Comments regarding relevant offsite conditions.

G. Explanation of any proposed energy efficiency components.

Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State Office serving the place in which they desire to submit an application for the following:

1. Questions pertaining to the application process; and

2. List of designated places for which applications for new section 515 facilities may be submitted.

VI. *Areas of Special Emphasis or Consideration*

A. The RHS encourages the use of funding from other sources in conjunction with Agency loans. This year there will be a National Office Initiative pursuant to 7 CFR 3560.56(c)(1)(iii), whereby preference points will be awarded to loan requests that meet the selection criteria as follows: In states where RHS has an on-going formal working relationship, agreement, or MOU with the State to provide State resources (State funds, State RA, HOME funds, CDBG funds, or LIHTC) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the TDC. NAHASDA funds may be considered a State Resource if the Tribal Plan for NAHASDA funds contains provisions for partnering with RHS for multi-family housing.

B. $8,910,000 is available nationwide in a set-aside for eligible nonprofit organizations as defined in 42 U.S.C. 1485(w).

C. $4,950,000 is available nationwide in a set-aside for the 100 most Underserved Counties and Colonias.

D. $2,655,463 is available nationwide in an earmark for EZ, EC, and REAP zone.

E. $990,000 is available nationwide in a reserve for States with viable State RA programs. In order to participate, States are to submit specific written information about the State RA program, i.e., a memorandum of understanding, documentation from the provider, etc., to the National Office.

Dated: April 23, 2007.

James C. Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. E7–8157 Filed 4–27–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability: Section 515 Multi-Family Housing Preservation and Revitalization Restructuring Program (MPR) for Fiscal Year 2007

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

Announcement Type: Inviting applications from eligible applicants for Fiscal Year 2007 funding.

Catalog of Federal Domestic Assistance Number (CFDA): 10.447.

SUMMARY: USDA Rural Development administers the programs of Rural Housing Service (RHS) announces the availability of funds and the timeframe to submit applications to participate in a demonstration program to preserve and revitalize existing rural rental housing projects financed by Rural Development under Section 515 of the Housing Act of 1949. The intended effect is to restructure selected existing Section 515 loans expressly for the purpose of ensuring that sufficient resources are available to preserve the rental project for the purpose of providing safe and affordable housing for very low-, low-, or moderate-income residents. Expectations are that properties participating in this program will be revitalized and affordable use extended without displacing tenants because of increased rents. No additional Rural Development rental assistance units will be made available under this program.

DATES: The deadline for receipt of all pre-applications in response to this Notice of Funding Availability (NOFA) is 5 p.m., Eastern Time, May 30, 2007. The pre-application closing deadline is firm as to date and hour. The Agency will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must allow sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage-due pre-applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Carlton Jarratt, *carlton.jarratt@wdc.usda.gov*, (804) 561–0665; Sherry Engel, *sherry.engel@wi.usda.gov* (715) 345–7677; or Sandra Mercier, *sandra.mercier@wdc.usda.gov* (202) 720–1617, Senior Loan Specialists, Multi-Family Housing Office of Rental Housing Preservation, STOP 0782, (Room 1263–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Avenue, SW., Washington, DC 20250–0782. (Please note these phone numbers are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have received approval from the Office of Management and Budget (OMB) under Control Number 0570–0190.

Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2007 (Pub. L. 110–5), February 15, 2007, provides funding for and authorizes Rural Development to conduct a demonstration program for the preservation and revitalization of the Section 515 multi-family housing portfolio. The Section 515 multi-family housing program is authorized by Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and provides Rural Development the authority to make loans for low-income multi-family housing and related facilities.

Program Administration

I. Funding Opportunities Description

This NOFA solicits pre-applications from eligible borrowers/applicants to restructure existing multi-family housing within the Agency's Section 515 multi-family housing portfolio for the purpose of revitalization and preservation. The demonstration program shall be referred to in this notice as the Multi-Family Housing Preservation and Revitalization Restructuring Demonstration (MPR) program. Agency regulations for the Section 515 multi-family housing program are published at 7 CFR part 3560. The MPR is intended to assure that existing rental projects will continue to deliver decent, safe, and sanitary affordable rental housing for the lesser of the remaining term of the loan or 20 years from the date of the MPR transaction closing. Once an applicant has been confirmed eligible and the project has been selected by the Agency in the process described in this notice, and the applicant agrees to participate in the MPR demonstration by written notification to the Agency, an

independent third party capital needs assessment (CNA) will be conducted to provide a fair and objective review of projected capital needs. The Agency shall implement this NOFA through an MPR Conditional Commitment (MPRCC) with the eligible borrower, which will include all the terms and conditions under this NOFA, including the MPR Debt Deferral Agreement.

The primary restructuring tool to be used in this program is debt deferral up to 20 years of the existing 1% Section 515 loans obligated prior to October 1, 1991. The cash flow from the deferred payment will be deposited to the reserve account to help meet the future physical needs of the property. If the resulting cash flow is not adequate to address the long-term needs of the project, the Agency may use the following sources of funds:

(1) Other Agency restructuring tools as discussed below;

(2) Section 515 Rehabilitation loan funds; and

(3) Third party funds in the form of grants, tax credits, tax exempt financing, owner-provided rehabilitation funds, Rural Development Section 538 Guaranteed Rural Rental Housing Program financing, and financing from loan funds established through the Rural Development Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program.

For the purposes of the MPR, the restructuring transactions will be identified in three categories:

(1) Simple transactions involve no change in ownership.

(2) Complex transactions will consist of a property transfer to new ownership processed in accordance with 7 CFR 3560.406, or transactions requiring a subordination agreement as a result of third party funds.

(3) Portfolio Sale transactions that are defined as multiple project sale transactions with a common purchaser all within one state closed no earlier than September 30, 2006.

Each category may utilize any or all restructuring tools. Restructuring tools that may be available to address capital needs during the MPR demonstration based on the capital needs assessment process and the underwriting feasibility determination. Restructuring tools include:

(1) *Debt Deferral:* A deferral of the existing Agency debt for the lesser of the remaining term of the loan or 20 years. All terms and conditions of the deferral will be described in the MPR Debt Deferral Agreement. A balloon payment of accrued principal and interest will be due at the end of the deferral period. Interest will accrue at the promissory note rate and subsidy will be applied as set out in the Agency's Interest Credit Agreement. Interest will not be charged on the deferred interest.

(2) *Revitalization Grant:* A revitalization grant (for non-profit applicants/borrowers only), is limited to the cost of correcting health and safety violations as identified by the CNA. The grant administration will be in accordance with 7 CFR part 3015.

(3) *Rehabilitation Loan:* A rehabilitation loan at zero percent interest that will be amortized over 30 years.

(4) *Bullet Loan:* A loan with a one percent interest rate that will have its interest and principal deferred, to a balloon payment, due at the time the latest maturing Section 515 loan becomes due.

(5) *Additional Section 515 Loan:* A Section 515 rehabilitation loan at traditional rates and terms.

(6) *Regulatory Approvals:* Transfers, subordinations, and consolidations may be approved as part of a MPR transaction in accordance with existing servicing authorities of the Agency as available in 7 CFR part 3560.

While all non-deferred Agency debt, either in first lien position or a subordinated lien position, must be secured within market value, deferred debt may exceed market value of the security. Payment of the deferred debt will not be required from normal project operation income, but from excess cash from project operations and the value of the property after all other secured debts are satisfied.

(1) *Pre-application:* Applicants must submit a pre-application described in Section VI. This pre-application process is designed to lessen the cost burden on applicants who may not be eligible or whose proposals may not be feasible.

(2) *Eligible Properties:* Using criteria described below in Section III, USDA will conduct an initial screening for eligibility. As described in Section VIII, USDA will conduct additional eligibility screening later in the process.

(3) *Scoring and Ranking:* All eligible, complete and timely-filed pre-applications will be scored, ranked and put in funding queues as discussed in Sections VI and VII.

(4) *Formal Application:* Top ranked pre-applicants will be invited to submit a formal application. As discussed in Section VIII paragraph (2) of this notice, USDA will require the owner to provide a Capital Needs Assessment (CNA) in order to determine the mix of tools to be offered to the applicant, perform additional eligibility review, and underwrite the proposal to determine financial feasibility. Where proposals are found to be ineligible or financially infeasible, owners will be informed and proposals lower in the queue will be considered.

(5) *Financial Feasibility:* Using the results of the CNA to help identify the need for resources and applicant provided information regarding anticipated or available third party financing, the Agency will determine the financial feasibility of each potential transaction, using restructuring tools available either through existing regulatory authorities or specifically authorized through this demonstration program.

Project financial feasibility is determined when a property can provide affordable, safe, decent, and sanitary housing for 20 years or the remaining term of the loan whichever is less, by using the authorities of this program while minimizing the cost to the Agency and without increasing rents for tenants, except when necessary to meet normal and necessary operating expenses. If the transaction is determined financially feasible by the Agency, the borrower will be offered a restructuring proposal, which will include the requirement that the borrower will execute, for recordation, a restrictive use covenant consistent with 7 CFR 3560.662. The restructuring proposal will be established in the form of the MPR Conditional Commitment (MPRCC).

MPR Agreements: If accepted by the borrower, the Agency and applicant will enter into a MPRCC. The applicant must also agree to restrict the property use pursuant to 7 CFR 3560.662 when the MPR transaction is closed. Any third party lender will be required to subordinate to the Agency's restrictive use covenant unless the Agency determines on a case-by-case basis that the lender refuses to subordinate and such refusal will not compromise the purpose of the MPR. The Agency may also request that the applicant sign an agreement that would require the owner to escrow reserve, tax, and insurance payments in accordance with all pertinent current and future Agency regulations.

General Requirements: The MPR transactions may be conducted with a stay-in owner (simple) or may involve a change in ownership (complex or portfolio sale). Any housing or related facilities that are constructed or repaired must meet the Agency design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, Section 515 multi-family housing must be managed in accordance with 7 CFR part

3560. Tenant eligibility will be limited to persons who qualify as a very low- or low-income household under Agency regulations or who are eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U.S. Department of Housing and Urban Development Section 8 assistance or Low Income Housing Tax Credit Assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR 3560.152.

Voluntary Community Market Rent Demonstration: In conjunction with this demonstration, Rural Development also announces the opportunity for all successful applicants to participate on a voluntary basis in a viability test of a 30 percent limitation on tenant rents, as proposed in Section 544(b)(7) of Saving America's Rural Housing Act of 2006, H.R. 5039, for post-restructured properties. Owners of properties in the Section 515 restructuring program may elect to participate in the ''community market rent'' demonstration which will allow an owner to set a rent above the approved basic rent for any unit not currently occupied by a tenant receiving Rural Development rental assistance. Eligible tenants for these units must have adjusted annual incomes sufficient to allow them to pay the community market rent using less than 30 percent of their adjusted income. Tenants would be allowed to occupy without paying overage, additional sums that would otherwise be required to bring their rent payment up to 30 percent of income. With Rural Development's consent, up to 50 percent of the difference between the basic rent and the new ''community market rent'' could be retained by the owner as an increased return.

For example, if the basic rent is $350, the owner could create a community market rent at, say, $410, and market the unit to tenants who could pay that rent at less than 30 percent of adjusted income. A percentage of the difference, $60.00 could be retained by the owner, as negotiated with Rural Development, up to $30.00.

Prior to implementation of the community market rent demonstration, Rural Development will issue guidance to successful applicants who have indicated an interest in participating in the demonstration providing further details with respect to the program.

II. Award Information

Public Law 110–5 makes funding available to the Secretary of Agriculture for Rural Development to provide the restructuring tools of the MPR demonstration. Approximately $8,900,000 in budget authority will be available during FY 2007. Additionally, up to $70,000,000 in Section 515 funding may be made available for properties selected to participate in the MPR. Based on an identical level of budget authority made available for the MPR last fiscal year, the Agency 2006 funded approximately $47,795,000 in deferred debt, $210,000 in grants, $280,000 in zero percent loans, $4,473,000 in bullet loans. The Agency anticipates the ability to revitalize approximately 200 properties (5,500 units) with the funds available during FY 2007. Once the funding levels for this program are determined, a subsequent notice will be published in the **Federal Register** announcing them. Funding levels may differ from above when necessary to assure that the Agency maximizes the value of the funds available and that all funds are used.

All funding must be approved no later than September 24, 2007 and obligated by the Agency not later than September 28, 2007. If funds available for the MPR are fully used before all properties approved under this NOFA are funded, the unfunded approved properties may receive priority for funding from future resources available for MFH revitalization if additional funds become available and the selected properties/owners meet any future eligibility criteria.

III. Eligibility Information

Applicants (and the principals associated with each applicant) must meet the following requirements:

(1) Eligibility under 7 CFR 3560.55; however, the requirements described in 7 CFR 3560.55(a)(5) pertaining to required borrower contributions and CFR 3560.55(a)(6) pertaining to required contributions of initial operating capital are waived for MPR proposals.

(2) That the project is needed in the market as evidenced by an average physical vacancy rate over the twelve months preceding the filing of the pre-application of no more than 10 percent for projects of 16 units or more and 15 percent for projects under 16 units. The Agency may consider and accept documentation submitted by the applicant that demonstrates the occupancy standard will be met once a restructuring is performed. The documentation must include a copy of a market study performed according to 7 CFR 3560.56(d)(2) and the guidance provided in HB–1–3560, Attachment 4–F. The cost of the market study will NOT be considered a part of the project expense.

(3) Ownership of and ability to operate the facility after the transaction is completed. (In the event of a transfer, the proposed transferee with an executed purchase agreement or other evidence of site control will be the applicant.)

(4) Compliance with any commitment to contribute funds to pay transaction costs as represented at the time of application for the MPR program.

(5) A CNA and Agency financial evaluation must demonstrate that utilization of the restructuring tools of the MPR program is financially feasible and necessary for the revitalization and preservation of the property for affordable housing. Eligibility for processing will be determined as of the date of the pre-application filing deadline. The Agency reserves the right to discontinue processing in the event that material changes in the applicant's status occurs any time after the initial determination.

IV. Equal Opportunity and Nondiscrimination Requirements

(1) Borrowers and applicants will comply with the provisions of 7 CFR 3560.2.

(2) All housing must meet the accessibility requirements found at 7 CFR 3560.60(d).

(3) All MPR participants must have on file a valid Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement.''

V. Authorities Available for MPR

MPR tools will be used in accordance with 7 CFR part 3560 and its associated handbooks (available in any Rural Development office). The program will be administered within the resources made available to the Agency through Pub. L. 110–5 for the preservation and revitalization of Section 515 financed properties. In the event that provisions of 7 CFR part 3560 conflict with this demonstration program, the provisions of the MPR will take precedence.

VI. Application and Submission Information

(1) The application submission and scoring process will be completed in two phases in order to avoid unnecessary effort and expense on the part of interested borrowers/applicants and to allow additional points to be added to applications that propose a transfer of a troubled project to an eligible owner.

The first phase is the pre-application process. The applicant must submit a complete pre-application by the deadline date under the ''**DATES**'' section of this Notice. The applicant's

submission will be classified complete when a ''pre-application'' is received by MFH for each MPR proposal the applicant wishes to be considered in the demonstration. In the event the MPR proposal involves either a project consolidation completed in accordance with 7 CFR 3560.410 or a portfolio sale only one pre-application for the proposal will be required so long as the proposal lists all the properties to be consolidated or purchased as a portfolio. The form to be used for the pre-application is ''MPR Pre-application'' and is attached at the end of this Notice. An electronic version of this form may be found on the internet at *http://www.rurdev.usda.gov/rd/nofas/index.html.*

Information must be provided, as indicated on the MPR pre-application, showing the breakdown of funding sources, type and probability of third party money, borrower names and identification numbers, project names and numbers, and property locations of all properties being consolidated and included in the transaction.

Additional information that must be provided with the pre-application, when applicable, includes:

(i) A copy of a Purchase agreement or other evidence of site control if a transfer is being considered.

(ii) Evidence of need for property if occupancy standards are not met, which could include a copy of a market study.

The second phase of the application process will be completed by the Agency based on Agency records and the pre-application information. Points as set forth below will only be assigned to eligible pre-applications. Additional points will be assigned when the proposal involves a transfer to a new eligible owner and the property is currently classified by the Agency as a troubled property; or to an eligible ''stay-in owner'' when the property is classified by the Agency as a troubled property AND there is an approved workout plan in place that was approved prior to January 1, 2007.

All eligible, complete, and timely-filed pre-applications will then be scored and ranked based on points received during this two-phase application process.

Further, the Agency will categorize each MPR proposal as being potentially Simple, Complex, or Portfolio Sale based on the information submitted on the pre-application and in accordance with the category description provided in Section I of this Notice.

(2) Pre-applications can be submitted either electronically or in hard copy. The Agency will record pre-applications received electronically by the actual date and time received in the website mail box. Hard copy pre-applications received on the deadline date will receive the close of business time of the day received as the receipt time. Assistance for filing electronic and hard copy pre-applications can be obtained from any Rural Development State Office.

The pre-application is stored in the form of a .pdf format and may be completed as a fillable form. The form contains a button labeled ''Submit by Email''. Clicking on the button will result in an e-mail containing a completed pre-application being sent to the Office of Rental Housing Preservation in Washington, DC for consideration.

Pre-application forms may be downloaded from the site given in Section VI, paragraph (1) above or obtained by contacting the State Office in the state the project is located. Hard copy pre-applications and electronic submittals should be submitted to the attention of Sandra L. Mercier, Senior Loan Specialist, Multi-Family Housing Office of Rental Housing Preservation-STOP 0782 (Room 1263–S), or Ed Duval, Chief, Operations Research and Systems Development Branch–STOP 0782 (Room 1263–S), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Avenue, SW., Washington, DC 20250–0781

Note: All documents must be received on or before the pre-application closing deadline to be considered complete and timely filed. Pre-applications that are incomplete as of the closing deadline will not be considered and will be returned to the applicant with no appeal rights.

VII. Selection Process

Pre-application ranking points will be based on information provided during the submission process and in Agency records. Points will be awarded as follows:

(1) *Contribution of third party funds.* Third party funds are those discussed in the second paragraph of Section I ''Funding Opportunities Description''. Points awarded are to be based on documented written evidence that the third party funds are available or they will be available by October 1, 2008 or closing, whichever is first. The maximum points awarded for this criterion is 25 points. These points will be awarded in the following manner:

(i) Owner contribution (these funds cannot be from project reserve or operating funds) sufficient to pay transaction costs. Transaction costs are defined as those soft costs required to complete the transaction and include, but are not limited to, the CNA, legal and closing costs, appraisal costs and filing/recording fees. The minimum contribution required to receive these points is $5,000 and will be required to be deposited in the property reserve account prior to closing—5 points, and

(ii) Evidence of intent that meets the approval of the Agency to obtain a commitment greater than $5,000 per unit from other sources—10 points . (An example of evidence to obtain a commitment might be an application for the Low Income Housing Tax Credit Program), or

(iii) A commitment of at least $3,000 to $5,000 per unit from other sources—15 points, or

(iv) A commitment greater than $5,000 per unit from other sources—20 points.

(2) *Age of project.* Since the age of the project and the date that the loan was made are directly related to physical needs, a maximum of 25 points will be awarded on the following criteria:

(i) Initial loans closed prior to December 21, 1979—25 points.

(ii) Initial loans closed on or after December 21, 1979, but before December 15, 1989—20 points.

(iii) Initial loans closed on or after December 15, 1989, but before October 1, 1991—15 points.

Note: For multiple property transactions, the closing date of the earliest loan will be used.

(3) *Troubled project points.* The Agency may award up to 25 additional points to facilitate the transfer and revitalization of troubled projects with an Agency classification of ''C'' or ''D'' according to HB 2–3560, Paragraph 9.7 (available at *http://www.rurdev.usda.gov/regs/hblist.html*). Troubled properties that are classified ''B'' and do not involve a transfer will also receive consideration. These projects may be troubled due to an act of nature or physical or financial deterioration or to correct management issues. Points will be awarded in the following manner:

(i) If the Agency servicing classification is C or D for less than 24 months—15 points.

(ii) If the Agency servicing classification is C or D for more than 24 months—20 points.

(iii) For Stay-in Owners only: If the Agency servicing classification is B as a result of a workout plan approved by the agency prior to January 1, 2007—25 points.

(4) *Prior Agency approvals.* The Agency will award up to 20 points for properties with CNAs already approved by the Agency. Points will be awarded for:

(i) CNAs approved after October 1, 2005 and *prior* to October 1, 2006—20 points.

(ii) CNAs approved *after* October 1, 2006 but before April 1, 2007—10 points.

(5) *Energy generation.* Applicants will be awarded 5 points if the proposal includes the installation of energy generation systems to be funded by a third party.

The proposal must include an overview of the energy generation system being proposed. Evidence that an energy generation system has been funded by a third party and that it has a quantifiable positive impact on energy consumption will be required.

(6) *Tenant service provision.* The Agency will award 10 points for applications that include new services provided by a non-profit organization, which may include a faith-based organization, or by a Government agency. Such services shall be provided at no cost to the project and shall be made available to all tenants. Examples of such services are transportation for the elderly, after-school day care services or after-school tutoring, etc.

The Agency will total the points awarded to each pre-application received within the timeframes of this Notice and rank each pre-application according to total score. If point totals are equal, the earliest time and date the pre-application was received by the Agency will determine the ranking. In the event pre-applications are still tied, they will be further ranked by giving priority to those pre-applications with the earliest Rural Development loan closing date.

Eligibility will then be confirmed on the 10 highest-scoring pre-applications in each State. If one or more of the 10 highest-scoring pre-applications is determined ineligible, (i.e. the applicant is a borrower that is not in good standing with the Agency or has been debarred or suspended by the Agency, etc.) the next highest-scoring pre-application will be confirmed for eligibility.

If one or more of the highest ranking pre-applications is a portfolio sale, then eligibility determinations will be conducted on all of the pre-applications associated with the portfolio sale. Should any of the pre-applications associated with the portfolio sale be determined ineligible, the overall eligibility of the portfolio sale will not be affected as long as the definition in Section I ''Funding Opportunities Description'', of ''portfolio sale'' is still met.

Once ranking has been established, the Agency will conduct a five-step process to select pre-applications for submission of formal applications. This process is needed to assure that the Agency can process the proposed transactions within available staffing resources, develop a representative sampling of revitalization transaction types, assure geographic distribution, and assure an adequate pipeline of transactions to use all available funding.

Step One: The Agency will review the eligible pre-applications, identify pre-applications as either Simple, Complex or Portfolio Sale and separate them by state.

Step Two: For portfolio sale transactions, the Agency will re-calculate an average score for each portfolio sale transaction and then score and separately rank the simple, complex and portfolio sale transactions.

Step Three: The Agency will select, for further processing, the top-ranked portfolio sale transactions until a total of $100,000,000 in potential debt deferral is reached. Portfolio sale transactions will be limited to one per State.

Step Four: The highest ranked complex transaction in each State will be selected for further processing, not to exceed 3 per State.

Step Five: For those states not having a portfolio transaction and at least two eligible complex transactions, additional projects will be selected from the highest ranking eligible pre-applications involving simple transactions in that state, seeking a minimum of 4 pre-applications for MPR transactions per state.

VIII. Processing for Selected Pre-applications

Those proposals that are ranked and then selected for further processing will be invited to submit a formal application on SF 424 ''Application for Federal Assistance.'' Those proposals that are rejected by the Agency will be returned to the applicant and the applicant will be given appeal rights pursuant to 7 CFR Part 11. In the event that a proposal is selected for further processing and the pre-applicant declines, the next highest ranked pre-application in that state will be selected. Applications can be obtained and completed on line. An electronic version of this form may be found on the internet at *http://forms.sc.egov.usda.gov/eforms/mainservlet* and can be submitted either electronically or in hard copy.

If a pre-application is accepted for further processing, the applicant will be expected to submit additional information needed to demonstrate eligibility and feasibility (such as a CNA), consistent with this NOFA and the appropriate sections of 7 CFR part 3560, prior to the issuance of a restructuring offer.

Rural Development will work with pre-applicants selected for further processing in accordance with the following steps:

(1) Based on the feasibility of the type of transaction that will best suit the project and the availability of funds, further eligibility confirmation determinations will be conducted by the designated Multi-Family Housing Revitalization Coordinators assigned by each Rural Development State Director with the assistance of the Office of Rental Housing Preservation.

(2) If one is not already available to the Agency, a CNA will be required and conducted in accordance with the requirements of 7 CFR 3560.103(c), HB 3–3560, Chapter 7, ''Guidance on the Capital Needs Assessment Process,'' and the CNA Statement of Work (available in any Rural Development State Office.) A CNA is prepared by a qualified independent contractor and is obtained to determine needed repairs and any necessary adjustments to the reserve account for long-term project viability. While the requirements of the CNA are described in the materials referenced above, at a minimum, to be considered acceptable, a CNA must include:

(i) A physical inspection of the site, architectural features, common areas and all electrical and mechanical systems,

(ii) An inspection of a sample of dwelling units;

(iii) Identify repair or replacement needs,

(iv) Provide a cost estimate of the repair and replacement expenses, and

(v) Provide at least a 20-year analysis of the timing and funding for identified needs which includes reasonable assumptions regarding inflation. The cost of the CNA will be considered a part of the project expense and may be paid from the ''project reserve'' with prior approval of the Agency. The Agency approval for participation in this program will be contingent upon the Agency's final approval of the CNA and concurrence in the scope of work by the owner. The Agency, in its sole discretion, may choose to obtain a CNA, at its expense, if it determines that doing so is in the best interest of the Government.

(3) Underwriting will be conducted by the designated Multi-Family Housing Revitalization Coordinator assigned by each Rural Development State Director with the assistance of the Office of Rental Housing Preservation. The feasibility and structure of each revitalization proposal will be

determined using this underwriting process and will include a determination of the restructuring tools that will minimize the cost to the Government consistent with the purposes of this NOFA. To help assure a balanced utilization of revitalization tools and the long-term economic viability of revitalized projects, the MPR underwriting guidelines include, but are not limited to the following:

(i) The maximum bullet loan is limited to no more than $5,000 per unit,

(ii) The total assistance provided from a revitalization grant, rehabilitation loan, and/or a bullet loan is limited to $10,000 per unit,

(iii) The maximum Section 515 one percent loan is limited to no more than $20,000 per unit,

(iv) Properties receiving tax credits are expected to have sufficient funding sources and generally will receive debt deferral only.

(4) Properties with more than 75 percent of the units receiving deep tenant subsidy such as Rural Development rental assistance or HUD-funded tenant subsidy will be supplemented with rehabilitation loans and Section 515 loans before grant and bullet loans are considered,

(5) Grants will be limited to $5,000 per unit,

(6) Any rent increases that may be necessary will not exceed 10 percent in any one year,

(7) The approved MPR transaction will include projected revenue sufficient to cover a 10 percent Operations and Maintenance increase in the second year after the transaction,

(8) Full return to owner will be budgeted pursuant to the Loan Agreement,

(9) Budgeted increases to reserve deposit will not exceed 3 percent per annum,

(10) The remaining reserve balance at the end of the 20-year analysis period should be at least 2.0 times the average annual needs, including inflation, over the 20-year analysis period.

These guidelines have been developed based on experience in the FY 2005 and FY 2006 Demonstrations. The Agency believes that these guidelines will be appropriate for typical transactions. However, the Agency reserves the right to waive any of the guidelines if, in the Agency's judgment, doing so would further the objectives of the Demonstration and is in the best interest of the Government.

The Agency expects that some of the transactions proposed by selected pre-applicants will prove to be infeasible. The applicant entity may be determined to be ineligible under Section III of this Notice. If a proposed transaction is determined infeasible or the applicant determined ineligible, the Agency will then select the next highest ranked project for processing.

Each MPR offer will be approved by the Revitalization Review Committee chaired by the Deputy Administrator for Multi-Family Housing or an agency-authorized delegate. Approved MPR offers will be presented to applicants who will then have up to 15 calendar days to accept or reject the offer in writing. Offers will expire after 15 days. The Agency will replace expired applications by selecting the next highest ranked project. Closing of MPR offers will occur within 90 days of acceptance by the applicant unless extended by the Agency.

IX. Funding Restrictions

Applicants will be selected in accordance with selection criteria and the five-step process identified in Section VII of this Notice. Once selected to proceed, the Agency will provide additional guidance to the applicant and request information and documents necessary to complete the underwriting and review process. Since the character of each application may vary substantially depending on the type of transactions proposed, information requirements will be provided as appropriate. Complete project information must be submitted as soon as possible but in no case later than 45 days from the date of Agency notification of the applicant's selection for further processing or September 1, 2007, whichever occurs first. Failure to submit the required information in a timely manner may result in the Agency discontinuing the processing of the request.

Funding under this NOFA will be obligated to selectees that finish the processing steps outlined above first within each of the 3 funding queues described in Section VII of this Notice and to result in a ratio as close as possible to 30 percent portfolio sale transactions, 50 percent complex transactions, and 20 percent simple transactions.

X. Application Review

A review committee will make recommendations for final decision regarding funding to the appropriate Rural Development State Director based on the selection criteria contained in this NOFA.

XI. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as a part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Dated: April 20, 2007

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E7–8148 Filed 4–27–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD MARCH 21, 2007 THROUGH APRIL 20, 2007

Firm	Address	Date petition accepted	Product
Romarc Corporation	*32 Appletree Lane, Plumsteadville, PA 18949.*	3/30/2007	*Sheet plastic and structural foam.*
Dakota Granite Company	*14964 484th Ave., Milbank, SD 57252*	4/13/2007	*Cut stone.*
Nisbet Oyster Co., Inc	*PO Box 338, 7081 Niawaukum St. Hwy 101, Bay Center, WA 98527.*	4/2/2007	*Shucked fresh oysters.*
TMI Industries, Inc	*PO Box 968, 25 Ware Road, Palmer, MA 01069.*	3/27/2007	*Machine braided and hand hooked rugs.*
Wirefab, Inc	*75 Blackstone River Road, Worcester, MA 01607.*	3/29/2007	*Custom steel wire products in hospitality markets.*
Lakeshore Technologies, Inc	*7536 Murray Drive, Cicero, NY 13039*	3/28/2007	*Medical imaging processing systems and cameras.*
Pecos Cantaloupe Shed, Inc	*2101 Bickley Avenue, Pecos, TX 79772*	4/19/2007	*Sale and marketing of cantaloupes.*
Liberty Hearth, Inc	*301 Locust Ave., Oakdale, NY 11769*	4/18/2007	*Frozen baked bagels.*
Foulke Family Farm	*P.O. Box 64, 12145 Elkins Rd., Monmouth, OR 97361.*	4/17/2007	*Hazelnuts in the shell.*
Dakota Lettering, Inc	3400 *South Sheldon Lane, Sioux Falls, SD 57105.*	4/18/2007	*Custom apparel designs with screen printing on fabric articles and embroidery advertising.*
Tiyoda Serec Corporation	*342 Compass Circle, Unit 2, N. Kingstown, RI 02852.*	4/18/2007	*Precision and industrial cleaning machinery.*
Snokist Growers	*12 West Mead, P.O. Box 1587, Yakima, WA 98907*–1587.	4/19/2007	*Canned pears.*
Eastman Hill Holdings, Inc	*70 Ingersoll Drive, Portland, Maine 04103*	4/19/2007	*Professional grade lawn and landscaping equipment.*
Software Services Group, Ltd. Dba ISODISC.	*7030 North 97th Plaza Circle, Omaha, NE 68122.*	4/19/2007	*Magnetic and optical discs.*
P.W. Minor & Son, Inc	*3 Treadeasy Avenue, Batavia, NY 14021–0678.*	4/19/2007	*Manufacture of Orthopedic Shoes.*
Wening Enterprises, Inc	*201 E. Industrial Drive, New Haven, MO 63068.*	4/19/2007	*Tractor trailer suspension parts and sunroofs.*

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in § 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 24, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. 07–2100 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket T–2–2007)

Foreign–Trade Zone 26 – Atlanta, Georgia, Application for Temporary/Interim Manufacturing Authority, Perkins Shibaura Engines LLC, (Diesel Engines), Griffin, GA

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by Georgia Foreign–Trade Zone, Inc., grantee of FTZ 26, requesting temporary/interim manufacturing (T/IM) authority within FTZ 26 at the Perkins Shibaura Engines LLC (Perkins) facility in Griffin, Georgia. The application was filed on April 24, 2007.

The Perkins facility (150 employees) is located at 325 Green Valley Road within the the Green Valley Industrial Park in Griffin (Site 6). In 2006, T/IM authority was approved for Perkins to manufacture compact diesel engines under FTZ procedures for the U.S. market and export (71 FR 16756, 4–4–2006). The approval included authority to assemble up to 30,000 engines annually using certain foreign and domestic material inputs for a two-year period (expires 2–21–2008).

Based on the FTZ Board's modification of the T/IM procedure in September 2006, the applicant is now requesting additional authority under T/IM procedures for the remainder of its two-year period to assemble up to 50,000 diesel engines (HTSUS 8408.90; 10 - 60 horsepower), with an expanded list of foreign–origin components. The additional foreign components that would be used in the FTZ assembly activity include: rubber tubes/pipes/hoses, reinforced or non–reinforced (HTSUS 4009.11, 4009.31, 4009.32, 4009.41); transmission belts (4010.31, 4010.32); flanges (7307.91); spring/lock washers (7318.21); cotter pins (7318.24); dowel pins and keys, pin springs (7318.29); cooling fans (8414.59); holders (8414.90); air filters (8421.31); gears, gearboxes, speed changers, torque converters, ball/roller screws (8483.40); generators (8511.50); ignition parts (8511.90); electrical switches (8536.50) and connectors (8544.42); and, process control instruments (9032.89) (duty rates: free – 5.8%). Perkins has also submitted a request for permanent FTZ manufacturing authority (which will be docketed with the Board separately),

which separately includes 62 additional component inputs.

FTZ procedures would exempt Perkins from Customs duty payments on the foreign components used in production for export to non–NAFTA countries. On shipments to the U.S. and to NAFTA markets, Perkins could elect the finished engine duty rate (free) for the foreign components used in production when the finished engines are entered for U.S. consumption from the zone. The application indicates that the company would also realize duty deferral and certain logistical/supply chain savings.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is May 30, 2007.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: pierre__duy@ita.doc.gov, or (202) 482–1378.

Dated: April 24, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–8198 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 17–2007

Foreign–Trade Zone 124 – Gramercy, LA, Application for Subzone Status, Candies Shipbuilders, L.L.C., (Shipbuilding)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Port of South Louisiana Commission, grantee of FTZ 124, requesting special–purpose subzone status for the shipbuilding facility of Candies Shipbuilders, L.L.C. (Candies), in Houma, Louisiana. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 20, 2007.

The Candies shipyard (45 acres) is located at 1100 Oak Street in Houma (Terrebonne Parish), Louisiana, about 45 miles southwest of New Orleans. The facility (139 employees) is used for the construction, fabrication, and repair of oceangoing vessels for domestic and international customers. Foreign components that may be used at the Candies shipyard (representing about 15% of finished vessel value) may include bulb flats, windows, doors and watertight doors, engines, winches, anchors, sanitary units, manholes, dynamic positioning systems, electronics, wiring sets and cable (duty rate range: free – 5.0%, *ad valorem*).

FTZ procedures would exempt Candies from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would not be required to pay applicable Customs duties on the foreign components, or it would be able to elect the duty rate that applies to finished oceangoing vessels (duty free) for the foreign components when the vessels are processed for Customs entry. The manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign–origin steel mill products (e.g., angles, pipe, plate), which requires that full Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 29, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 16, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 2710, 2 Canal Street, New Orleans, LA 70130; and, the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002.

For further information, contact Pierre Duy, examiner at: pierre__duy@ita.doc.gov, or (202)482–1378.

Dated: April 20, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–8201 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 18–2007)

Foreign–Trade Zone 110 – Albuquerque, New Mexico, Application for Subzone, Louisiana Energy Services, L.P., (Gas Centrifuge Production Equipment), Lea County, New Mexico

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the City of Albuquerque, grantee of FTZ 110, requesting special–purpose subzone status for the assembly and installation of gas centrifuge production equipment at the facility of Louisiana Energy Services, L.P. (LES), located in Lea County, New Mexico. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 20, 2007.

The LES facility (1,000 employees, 543 acres) is located at 275 Andrews Highway, in Lea County, New Mexico. The applicant is requesting authority for the assembly and installation of gas centrifuge production equipment for the enrichment of uranium during construction of the National Enrichment Facility. Components and materials sourced from abroad, representing some 99% of all parts, include: cascade valve frames, pipe work modules, connecting pipes and gas centrifuge parts, all designed as parts of machinery and apparatuses for isometric separation (duty rate 2.6%).

FTZ procedures would allow LES to defer duty on the parts of production equipment until they are incorporated into a finished gas centrifuge, tested and put into use. FTZ designation would further allow LES to utilize certain U.S. Customs and Border Protection procedures, such as weekly entry and direct delivery, resulting in increased efficiencies for its import shipments. The applicant is not requesting FTZ manufacturing authority for the enrichment of uranium, and enrichment activity would not occur in an activated FTZ area. The request indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 29, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 16, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:
U.S. Department of Commerce Export Assistance Center, 1100 St. Francis Drive, Santa Fe, NM 87504.
Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: April 20, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–8205 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 16–2007)

Foreign–Trade Zone 214 -- Lenoir County, North Carolina, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the North Carolina Global TransPark Authority, grantee of FTZ 214, requesting authority to expand its zone to include an additional site in Rocky Mount adjacent to the Durham Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 19, 2007.

FTZ 214 was approved on May 7, 1996 (Board Order 815, 61 FR 27048, 5/30/96) and expanded on August 14, 2003 (Board Order 1281, 68 FR 51965, 8/29/03). The general–purpose zone currently consists of two sites (1,205 acres) in the area: *Site 1* (1,170 acres) -- Kinston Regional Jetport complex in Lenoir County; and, *Site 2* (35 acres) -- warehouse facility of Kanban Logistics, Inc., 1114 Kingsboro Road, Rocky Mount.

The applicant is now requesting authority to expand the general–purpose zone to an additional site in Rocky Mount: *Proposed Site 3* (84 acres total) -- two warehouse facilities of Crown LSP Group, Inc., located at 400 English Road (Proposed Site 3A - 56 acres) and located at 1201 Thorpe Road (Proposed Site 3B - 28 acres). The site is owned by AGREDE, LLC. The site will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 29, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 16, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Office of Carolinas Gateway Partnership, 427 Falls Road, Rocky Mount, NC 27804; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Camille Evans at *Camille__Evans@ita.doc.gov or (202) 482–2350.*

Dated: April 19, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–8206 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC'') covering the period of review (''POR'') of November 1, 2005, through April 30, 2006.

On June 27, 2006, the Department initiated semi–annual new shipper reviews for Jinxiang Tianma Freezing Storage Co., Ltd. (''Tianma''), Shenzhen Xinboda Industrial Co., Ltd. (''Xinboda''), Shandong Wonderland Organic Food Co., Ltd. (''Wonderland''), Weifang Hongqiao International Logistics Co., Ltd. (''Hongqiao'').[1] Therefore, this review covers four companies.

We preliminarily determine that certain new shipper review companies have made sales in the United States at prices below normal value. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer–specific assessment rates are above *de minimis*.

EFFECTIVE DATE: April 30, 2007

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, 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) 482–2243.

SUPPLEMENTARY INFORMATION:

General Background

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994).

On May 18, May 24, May 26, and May 30, 2006, we received timely requests for new shipper reviews of

[1] *See Fresh Garlic from the People's Republic of China; Initiation of New Shipper Reviews*, 71 FR 38607 (July 7, 2006).

Xinboda,Wonderland, Hongqiao, and Tianma, respectively. On June 30, 2006, after initiating the reviews, the Department issued antidumping duty questionnaires to the four companies participating in the new shipper reviews. The Department subsequently issued supplemental questionnaires to all companies under review between September 2006 and February 2007.

Expansion of the POR

On April 23, 2007, we issued a memorandum extending the end of the POR from April 30, 2006, to May 4, 2006, to capture entries of two of the new shippers' merchandise into the United States market. *See Memorandum to the File from Javier Barrientos, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Expansion of the Period of Review in the New Shipper Reviews of Fresh Garlic from the People's Republic of China*, dated April 23, 2007.

Extension of Preliminary Results Deadline

On December 20, 2006, the Department published a notice extending the preliminary results time limits of these new shipper reviews to April 23, 2007. *See Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews*, 71 FR 76272 (December 20, 2006). The final results continue to be due 90 days after the publication of these preliminary results.

Surrogate Country and Surrogate Values

On November 20, 2006, and April 3, 2007, Petitioners submitted surrogate value comments.[2] To date, no other parties have submitted surrogate value or surrogate country comments on the record of this proceeding.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verifications of the sales and factors of production (''FOP'') for Xinboda[3], Wonderland[4], Hongqiao[5], and Tianma[6].

New Shipper Reviews Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Xinboda, Hongqiao, Wonderland, and Tianma for the new shipper reviews. We found that new shipper sales made by Xinboda, Hongqiao, Wonderland, and Tianma were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by the companies, and our verifications thereof, as well the companies' eligibility for a separate rate (*see* Separate Rates Determination section below) and the Department's preliminary determination that Xinboda, Hongqiao, Wonderland, and Tianma were not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that each of the above–named respondents has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of review, we are treating Xinboda's, Hongqiao's, Wonderland's, and Tianma's respective sales of subject merchandise to the United States as appropriate transactions for these new shipper reviews.[7]

Non–Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a Non–Market Economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the ''Act''), any determination that a foreign

[2] Petitioners in this proceeding are the Fresh Garlic Producers Association and its individual members.

[3] The verification of Xinboda's sales took place on March 12, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Case Analyst: Verification of Shenzhen Xinboda Industrial Co., Ltd. in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China*, dated April 23, 2007. The verification of the FOPs for Zhengzhou Dadi Garlic Industry Co., Ltd. (''Dadi''), Xinboda's producer of subject merchandise, took place from March 13, through March 14, 2007. Id.

[4] The verification of Wonderland's sales and FOPs took place from March 15, 2007 through March 16, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Irene Gorelik, Analyst, Office 9: Verification of the Sales and Factors Response of Shandong Wonderland Organic Food Co., Ltd. in the Antidumping New Shipper Review of Fresh Garlic from the People's Republic of China*, dated April 23, 2007.

[5] The verification of Honqiao's sales took place on March 19, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Case Analyst: Verification of Weifang Hongqiao International Logistics Co., Ltd. in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China*, dated April 23, 2007. The verification of the FOPs for Jinxiang Dingtai Garlic Product Co., Ltd. (''Dingtai''), Hongqiao's producer of subject merchandise, took place on March 20, 2007. *Id.*

[6] The verification of Tianma's sales and FOPs took place from March 21, through March 23, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Irene Gorelik, Analyst, Office 9: Verification of the Sales and Factors Response of Jinxiang Tianma Freezing Storage Co., Ltd. in the Antidumping New Shipper Review of Fresh Garlic from the People's Republic of China*, dated April 23, 2007.

[7] *See Memorandum from Irene Gorelik, Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Shandong Wonderland Organic Food Co., Ltd.*, dated April 23, 2007; *Memorandum from Javier Barrientos, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Weifang Hongqiao International Logistics Co., Ltd.*, dated April 23, 2007; *Memorandum from Irene Gorelik, Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Jinxiang Tianma Freezing Storage Co., Ltd.*, dated April 23, 2007; and *Memorandum from Javier Barrientos, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Shenzhen Xinboda Industrial Co., Ltd.*, dated April 23, 2007.

country is an NME country shall remain in effect until revoked by the administering authority. *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007).

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single 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 exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

A. *Absence of De Jure Control*

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Throughout the course of this proceeding, the new shipper companies (Xinboda, Hongqiao, Wonderland, and Tianma) have placed sufficient evidence on the record that demonstrate the absence of *de jure* control. The new shipper companies have placed on the record a number of documents to demonstrate absence of *de jure* control including the ''Foreign Trade Law of the People's Republic of China'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations.'' The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

B. *Absence of De Facto Control*

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

The Department conducted a separate–rates analysis for the new shipper companies under review: Hongqiao, Tianma, Wonderland, and Xinboda. Hongqiao, Tianma, and Xinboda reported that they are limited–liability companies owned by private investors. However, one new shipper review company, Wonderland, reported that it is wholly owned by a foreign entity. Therefore, an additional separate–rates analysis is not necessary to determine whether Wonderland's export activities are independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign–owned, and thus, qualified for a separate rate).

These companies have all asserted the following: (1) there is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; and (5) each is responsible for financing its own losses. The questionnaire responses of the new shipper companies (Hongqiao, Tianma, Wonderland, and Xinboda) do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Consequently, we preliminarily determine that Hongqiao, Tianma, Wonderland, and Xinboda have met the criteria for the application of a separate rate.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in *Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Javier Barrientos, Senior Analyst, Office 9: Surrogate Factor Valuations for the Preliminary Results of the New Shipper Reviews*, dated April 23, 2007 (''*Factor Valuation Memo*'').

As discussed in the ''Separate Rates'' section, the Department considers the PRC to be an NME country. The

Department has treated the PRC as an NME country in all previous antidumping proceedings. In accordance with 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. None of the parties to this proceeding contested such treatment. Accordingly, we treated the PRC as an NME country for purposes of these reviews and calculated NV, pursuant to section 773(c) of the Act, by valuing the FOPs in a surrogate country.

The Department determined that India, Sri Lanka, Indonesia, Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Request for a List of Surrogate Countries*, dated August 7, 2006. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process*, dated March 1, 2004. In this case, we have found that India and Egypt are both significant producers of comparable merchandise. As previously stated, only Petitioners submitted data with respect to surrogate factor values with Indian data. No parties submitted Egyptian data on the record for this proceeding. Moreover, since India has been the primary surrogate country in past segments, for these new shipper reviews, we will rely on Indian data with respect to surrogate factor valuations and surrogate financial ratios. Therefore, we find India to be a reliable source for surrogate values because India is at a similar level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. *See Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Analyst: Antidumping Duty New Shipper Reviews of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country*, dated April 23, 2007. Furthermore, we note that India has been the primary surrogate country in past segments and Petitioners submitted surrogate values based on Indian import data that are contemporaneous with the POR, which gives further credence to the use of India as a surrogate country.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price (''EP'') for sales to the United States for Hongqiao, Tianma, Wonderland, and Xinboda because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. For Hongqiao, Tianma, Wonderland, and Xinboda, each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. *See Factor Valuation Memo* for details regarding the surrogate values for movement expenses.

Normal Value

1. Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 4753 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (which cites to *Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 2).

In the *9th Review Final Results*, the Department recognized that there were serious discrepancies between the reported FOPs of the different respondents and that the standard FOP methodology might not be adequate to apply in future reviews.[8] In the tenth administrative review, the Department conducted a ''harvest verification'' of several garlic producers in the PRC, interviewing farmers, studying farming techniques, and reviewing standard PRC garlic production record–keeping.[9] In analyzing the questionnaire responses and ''harvest verification'' reports in the tenth administrative review, the Department determined that, to capture the complete costs of producing fresh garlic, the methodology of valuing the intermediate product, the fresh garlic bulb, would more accurately capture the complete costs of producing subject merchandise.[10] In the *10th Review Final Results*, we also stated that ''should a respondent be able provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV.'' *See 10th Review Final Results* at 26331; *see also Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews* 71 FR 71510 (December 11, 2006).

In the course of these reviews, the Department has requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Questionnaire responses

[8] *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) (''*9th Review Final Results*'').

[9] *See Memorandum to the File from Irene Gorelik, Analyst; New Shipper Reviews of Fresh Garlic from the People's Republic of China: Intermediate Input Methodology Memoranda from the 10th Administrative Review Final Results and 11th Administrative Review Preliminary Results*, dated April 23, 2007, in which the Department placed the Intermediate Input Methodology memos from the tenth and eleventh Administrative Reviews on the record of this proceeding, inclusive of the verification reports resulting from the ''harvest verification.''

[10] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews* 71 FR 26329 (May 4, 2006) (''*10th Review Final Results*''), and accompanying Issues and Decision Memorandum at Comment 1.

revealed, and subsequent verifications confirmed, that only Tianma had farming operations to grow fresh garlic.[11] Based on our analysis of the information on the record and for the reasons outlined in the *Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Irene Gorelik, Analyst, Office 9: New Shipper Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology*, April 23, 2007 (''*Intermediate Product Memo*''), we continue to believe that the sole company that grew fresh garlic, Tianma, was unable to accurately record and substantiate the complete costs of growing garlic during the POR.

Thus, in order to eliminate the distortions in our calculation of NV for all of the reasons identified above and described in the *Intermediate Product Memo*, we applied an ''intermediate–product valuation methodology'' to all companies. Using this methodology, we calculated NV by starting with a surrogate value for the garlic bulb (*i.e.*, the ''intermediate product''), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic. For a complete explanation of the Department's analysis, and for a more detailed analysis of these issues with respect to each respondent, *see Intermediate Product Memo*.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port in accordance with the decision in *Sigma Corporation v. United States, 117 F.3d 1401* (Fed. Cir. 1997). We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sale(s) as certified by the U.S. Federal Reserve Bank.

Garlic Bulb Value

In applying the intermediate input methodology, the Department sought foremost to identify the best available surrogate value for the fresh garlic bulb input to production, as opposed to identifying a surrogate value for garlic seed. Therefore, we have valued the fresh garlic bulb using prices for the ''super–A'' grade garlic bulb in India, as published by Azadpur Agriculture Produce Marketing Committee (''APMC'') in its ''Market Information Bulletin'' (the ''Bulletin'').[12] Azadpur APMC is the largest fruit and vegetable market in Asia and has become a ''National Distribution Centre'' for important Indian agricultural products such as garlic. We note that the ''super–A'' grade denotes a garlic bulb which is over 40 millimeters (''mm'') in diameter and that the respondents' subject merchandise is, on average, greater than 40 mm in diameter, as identified within the respondents' questionnaire responses. As the Department determined in past reviews, the price at which garlic is sold is heavily dependent upon physical characteristics, such as bulb size and number of cloves. *See 9th Review Final Results* at Comment 2; *see also 10th Review Final Results* at Comment 2. For these preliminary results, we find that the ''super–A'' data from Azadpur APMC is the best available and most appropriate information on the record to value the garlic bulb input, pursuant to section 773(c) of the Act.

To value the fresh garlic bulb in the last administrative review, the Department used information from the Agricultural Marketing Information Network (''Agmarknet'') database. The database on the Agmarknet website contains daily prices from APMCs throughout India and has information on prices and varieties of garlic sold in India, but does not contain information on the grade/size of the bulb. In the last administrative review, the Department concluded that the ''China'' variety bulb, found in the Agmarknet database, is reflective of the larger bulb used by the respondents in the production of subject merchandise. *See 10th Review Final Results* at Comment 2. The Department believes the Azadpur APMC to be a superior source of information for purposes of these reviews for the reasons stated below.

The Department's practice when selecting the ''best available information'' for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are: publicly available, product–specific, representative of a broad market average, tax–exclusive and contemporaneous with the POR. *See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

(1) The Bulletin is Publicly Available

We note that the Bulletin is published for public distribution on each trading day (six days per week) and contains daily information on agricultural products sold at the APMC. In addition, the Bulletin is available electronically upon request from Azadpur APMC. Thus, we find that the Bulletin is publicly available information.

(2) The Bulletin is Sufficiently Specific

With respect to garlic prices, the Bulletin contains count size–specific data such as the grade of the bulb and prices (minimum, maximum and modal) in rupees of the various grades of garlic. As we have explained in past cases, this is extremely important data for purposes of our analysis, as respondents' garlic bulb products/inputs are, on average, over 40mm in diameter, and most Indian garlic is not that large. ''super–A'' garlic, however, is defined to be that size. Thus, the Department finds the ''super–A'' garlic pricing information in the Bulletin to be more specific to the input in question than the Agmarknet data because it provides a surrogate value based on a quantifiable bulb size (grade) with which to value the intermediate product.

(3) The Bulletin reports a broad market average

As noted above, Azadpur APMC is a ''National Distribution Centre'' for agricultural products. A careful examination of the Bulletin shows that agricultural products from all over India are sold at Azadpur APMC, which claims to be the largest fruit and

[11] Specifically, Wonderland is a processor and exporter of fresh garlic that purchased whole garlic bulb and processed it for export. Both Hongqiao and Xinboda are exporters that purchased already processed garlic for export from their unaffiliated suppliers. Hongqiao and Xinboda's unaffiliated suppliers do not grow but purchase whole garlic and process it. Consequently, the FOPs provided by Wonderland, Xinboda's unaffiliated supplier and Hongqiao's unaffiliated supplier all begin with whole garlic bulb and not the factors that are used to grow whole garlic bulb.

[12] For information concerning this surrogate value, *see* Petitioners' November 20, 2006, and April, 3, 2007 submissions.

vegetable market (by quantity) in the world. *See* Azadpur APMC's website *www.apmcazadpurdelhi.com*. Thus, we find the Bulletin's ''super–A'' garlic prices to be representative of a broad market average.

Furthermore, there is no record evidence which suggests that the prices included in the Bulletin are inclusive of taxes or duties.

Adjustments for Contemporaneity and Other Matters

In selecting the best available and most appropriate surrogate value for the fresh garlic bulb, the Department considered all surrogate value comments submitted by Petitioners and have determined that certain adjustments are necessary.[13]

With respect to contemporaneity, we note that the Azadpur APMC data is not contemporaneous with the POR. We note that the record shows that data points for ''super–A'' garlic in the Azadpur Bulletin were not publicly recorded until May 2006 (a month after the POR). However, we are able to adjust the post–POR surrogate value of ''super–A'' garlic by deflating the data points, *i.e.*, we divided the average Wholesale Price Index (''WPI'') for the six months of the POR by the average WPI of the number of months for which we gathered data points for May - July 2006, and applied the resultant ratio to the average price of ''super–A'' garlic. The Department's methodology for deflation is described in detail in the *Factor Valuation Memo*. Thus, we believe such deflation addresses our concerns about the contemporaneity of the data.

With respect to the markets within India used by the Department, it is the Department's practice to use country–wide data instead of regional data when the former is available. *See Wuhan Bee Healthy Co., Ltd. v. United States*, Slip Op. 05–142 (CIT 2005), at 5. Thus, we have included all data points for sales of ''super–A'' garlic from seven Indian states in calculating a surrogate value for fresh garlic bulbs. *See Factor Valuation Memo* at 4.

In addition, the Department used a simple average rather than a weighted average of all ''super–A'' garlic prices to calculate the fresh bulb surrogate value because daily arrivals are not recorded on a size basis and we were unable to determine the weight of the ''super–A'' garlic versus the weight of the other grades of garlic.

Finally, the Department deducted a six percent market fee imposed by Azadpur AMPC on sales made at the APMC, as indicated on the APMC website.[14]

Because the Department is applying an ''intermediate–product valuation methodology, '' resulting in the valuation of factor inputs that begin with whole garlic bulb, the direct material, and other factors such as electricity, water, mesh bags, cartons, tape and plastic banding, where applicable, that are associated with processing whole garlic will be valued with surrogate data from India. Furthermore, Indian surrogate financial ratios will also be applied to all four new shipper companies. The sources and calculations for the surrogate factor valuations and surrogate financial ratios are described in full detail in the *Factor Valuation Memo*.

Preliminary Results of the Reviews

The Department has determined that the following preliminary dumping margins exist for the period November 1, 2005, through May 4, 2006:

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Produced by Jinxiang Dingtai Garlic Product Co., Ltd. and Exported by Weifang Hongqiao International Logistics Co., Ltd.	25.34 %
Produced and Exported by Jinxiang Tianma Freezing Storage Co., Ltd.	8.42 %
Produced and Exported by Shandong Wonderland Organic Food Co., Ltd.	5.24 %
Produced by Zhengzhou Dadi Garlic Industry Co., Ltd. and Exported by Shenzhen Xinboda Industrial Co., Ltd.	0.00 % (*de minimis*)

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (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. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) *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 importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of these new shipper reviews for

[13] Other than Petitioners, none of the four new shipper companies submitted surrogate value comments or data.

[14] We note that the Azadpur APMC Market Information Bulletin database also discusses unloading weighing fees. However, we do not believe that an adjustment is necessary in our calculations to reflect these fees. First, it is not clear that this charge is applied to all, or even most, farmers. Furthermore, this charge does not appear to be a tax or duty.

all shipments of subject merchandise from Hongqiao, Wonderland, Tianma, and Xinboda entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Tianma, produced and exported by Wonderland, produced by Dadi and exported by Xinboda, or produced by Dingtai and exported by Hongqiao, the cash–deposit rate will be that established in the final results of these reviews; (2) for subject merchandise exported by Hongqiao but not manufactured by Dingtai and for subject merchandise exported by Xinboda but not manufactured by Dadi, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Wonderland or Tianma, but manufactured by any other party, the cash deposit rate will be the PRC–wide rate (*i.e.*, 376.67 percent).

If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer–exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

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 this review period. 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.

These the new shipper reviews and this notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4) of the Department's regulations.

Dated: April 23, 2007.

David A. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E7–8195 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042307A]

New England Fishery Management Council; Skate Fishery Management Plan; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of initiation of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Skate Fishery Management Plan (FMP) and to prepare an EIS to analyze the impacts of any proposed management measures. The Council is also formally initiating a public process to determine the scope of alternatives to be addressed in the amendment and EIS. The purpose of this notification is to alert the interested public of the re-commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meetings in May, 2007. For specific dates and times of the scoping meetings, see **SUPPLEMENTARY INFORMATION.** Written scoping comments must be received on or before 5 p.m., local time, May 30, 2007.

ADDRESSES: The Council will take scoping comments at public meetings in Gloucester, MA, Narragansett, RI and Buzzards Bay, MA. For specific locations, see **SUPPLEMENTARY INFORMATION.** Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Please write on the envelope: ''Scoping Comments on Amendment 3 to the Skate FMP'';
- E-mail: *SkateScoping@noaa.gov*;
- Federal e-Rulemaking Portal: *http://www.regulations.gov*; or
- Fax: (978) 281–9135.

Requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. The scoping document is also accessible electronically via the Internet at *http://www.nefmc.org/skates/index.html*.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The Skate FMP was implemented in September 2003. The primary objectives of the Skate FMP are to: (1) Protect the overfished species of skates and increase their biomass to target levels specified in the FMP while preventing overfishing of the other skate species; and (2) collect information critical for improving knowledge of skate fisheries by species and for monitoring the status of skate fisheries, resources, and related markets, as well as the effectiveness of skates management approaches. The FMP includes reporting requirements to improve fishery information, prohibitions on overfished species, a trip limit for the skate wing fishery, and mechanisms for FMP monitoring and plan adjustments. Through the establishment of a ''baseline'' of management measures in other fisheries, the FMP recognizes the interactions of skates with groundfish, scallops, and monkfish fisheries. In 2006, winter skate was determined to be overfished. Therefore, under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Council must develop and implement a rebuilding plan for this resource.

Measures Under Consideration

The Council may consider a host of management measures to reduce skate mortality, improve reporting, cap or reduce landings, and/or reduce bycatch and discard mortality to prevent overfishing and rebuild overfished stocks. Measures that may be considered include, but are not limited to, a hard TAC for the directed skate fishery, annual catch limits and accountability measures, greater regulation of the fishery through days-at-sea limits, changes to skate possession limits, changes to exempted fisheries and closed areas, new gear regulations, and elimination of the baseline review process and proxy input controls.

It is possible that during the scoping process, other issues will be raised related to the purpose of this amendment, and if appropriate, those issues will be considered by the Council as well.

Scoping Process

All persons affected by or otherwise interested in skate management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) and/or by attending one of the scoping meetings. Scope consists of the range of actions, alternatives, and impacts to be considered. Alternatives include the following: Not amending the management plan (taking no action); developing an amendment that contains management measures such as those discussed in this notice; or other reasonable courses of action. Impacts may be direct, indirect, or cumulative.

This scoping process will also identify and eliminate from detailed analysis issues that are not relevant or feasible. When, after the scoping process is completed, the Council proceeds with the development of an amendment to the Skate FMP, the Council will prepare an EIS to analyze the impacts of the range of alternatives under consideration. The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the EIS.

Scoping Hearing Schedule

The Council will discuss and take scoping comments at the following public meetings:

1. *Tuesday, May 22, 2007, from 7 – 9 p.m.*; Gloucester City Hall, Kyrouz Auditorium, 9 Dale Avenue, Gloucester, MA 01930; telephone: (978) 281–9720.

2. *Wednesday, May 23, 2007, from 7 – 9 p.m.*; Narragansett Town Hall, 25 Fifth Avenue, Narragansett, RI 02882; telephone: (401) 789–1044.

3. *Thursday, May 24, 2007, from 7 – 9 p.m.*; Mass Maritime, 101 Academy Drive, Buzzards Bay, MA 02532; telephone: (508) 830–5000.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: April 24, 2007.

James P. Burgess,

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

[FR Doc. E7–8187 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042407C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Red Snapper Advisory Panel.

DATES: The Red Snapper AP meeting will convene at 8:30 a.m. on Tuesday, May 15, 2007 and conclude no later than 4 p.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 6401 Veterans Memorial Blvd., Metairie, LA 70003; telephone: (504) 885–5700.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Red Snapper AP will be convened to review and comment on Draft Amendment 27 to the Reef Fish Fishery Management Plan and Amendment 14 to the Shrimp Fishery Management Plan. This amendment contains potential management measures to modify the rebuilding plan for red snapper in order to end overfishing and recover this overfished stock. These measures would further reduce the directed red snapper harvest as well as bycatch from both the directed fishery and the shrimp fishery. Copies of the Amendment can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the Red Snapper AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Red Snapper AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: April 25, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–8143 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042507A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice.

SUMMARY: The New England Fishery Management Council(Council) will hold six public hearings to solicit comment on Draft Amendment 11 including a Draft Supplemental Environmental Impact Statement (DSEIS) to the Sea Scallop Fishery Management Plan (FMP).

DATES: Written public comments must be received on or before 5 p.m. EST, June 11, 2007. The meetings will be held in May, 2007. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public hearing document can be obtained by contacting the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

Meeting addresses: The meetings will be held in Hyannis, MA, Fairhaven, MA, Ellsworth, ME, Durham, NH, Newport News, VA and Manahawkin, NJ. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Written comments: Should be mailed to Patricia Kurkul, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the envelope ''Comments on Scallop Amendment 11''. Comments may also be sent via fax to (978)281–9135 or submitted via e-mail to *Scallop.Eleven@noaa.gov* with

''Comments on Scallop Amendment 11'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The agendas for the following six hearings are as follows: NEMFC staff will brief the public on the scallop amendment and the contents of the DSEIS prior to opening the hearing for public comments and the schedules are as follows:

Council Meetings: Locations, Schedules, and Agendas

1. *Wednesday, May 16, 2007 at 6 p.m.*; Radisson Hotel, 287 Iyannough Road, Hyannis, MA 02601; telephone: (508) 771–1700.

2. *Thursday, May 17, 2007 at 6 p.m.*; Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.

3. *Monday, May 21, 2007 at 6 p.m.*; Holiday Inn, US Route 1 & 3, Ellsworth, ME 04605; telephone: (207) 667–9341.

4. *Tuesday, May 22, 2007 at 6 p.m.*; UNH NE Conference Center, 15 Strafford Avenue, Durham, NH 03824; telephone: (603) 862–2801.

5. *Tuesday, May 29, 2007 at 6 p.m.*; Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd floor, Newport News, VA 23607; telephone:(757) 247–2247.

6. *Wednesday, May 30, 2007 at 6 p.m.*; Manahawkin Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050; telephone: (609) 481–6100.

Special Accommodations

These meetings are physically accessible to people withdisabilities. Requests for sign language interpretation orother auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**), at least 5 working days prior to the meeting date.

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

Dated: April 25, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–8146 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042407D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Allocation Committee (GAC) will hold a working meeting, which is open to the public.

DATES: The GAC meeting will be held Tuesday, May 15, 2007, from 8:30 a.m. until business for the day is completed. The GAC will reconvene Wednesday, May 16, 2007 and Thursday, May 17, at 8:30 a.m. each day until their business is completed.

ADDRESSES: The GAC meeting will be held at the Hilton-Vancouver Hotel, Hemlock-Oak Room, 301 W. 6th St., Vancouver, WA 98660; telephone: (360) 993–4500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GAC meeting is to consider draft alternatives, preliminary analyses, and other material for rationalizing the Pacific Coast limited entry groundfish trawl industry (trawl rationalization), and for allocating Pacific Coast groundfish stocks and stock complexes to the various Pacific Coast fishery sectors (intersector allocation). Trawl rationalization issues will be discussed by the GAC on Tuesday and Wednesday, May, 15–16; and intersector allocation issues will be discussed on Thursday, May 17. No management actions will be decided by the GAC. The GAC's role will be of development of recommendations and refinement of draft alternatives for analysis in two contemplated Environmental Impact Statements. The GAC recommendations will be provided for consideration by the Council at its June 2007 meeting in Foster City, CA.

Although non-emergency issues not contained in the meeting agenda may come before the GAC for discussion, those issues may not be the subject of formal GAC action during this meeting. GAC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GAC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 25, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–8144 Filed 4–27–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0212]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Dates: Consideration will be given to all comments received by May 30, 2007.

Title and OMB Number: ''Defense Security Service Industrial Security Review Data'' and ''Defense Security Service Industrial Security Facility Clearance Survey Data,'' OMB Control Number 0704–0427.

Type of Request: Extension.

Number of Respondents: Industrial Security Review Data—12,111 respondents. Industrial Security Facility Clearance Survey Data—1,761 respondents.

Responses per Respondent: 1.

Annual Responses: Industrial Security Review Data—12,111 respondents. Industrial Security Facility Clearance Survey Data—1,761 respondents.

Average Burden per Response: Industrial Security Review data.

Possessors of classified: 5.3 hours.

Non-Possessors of classified: 2 hours.

Industrial Security Facility Clearance Survey Data: 2 hours.

Annual Burden Hours: Industrial Security Review Data—39,999 hours.

Industrial Security Facility Clearance Survey Data—3,522 hours.

Needs and Uses: The conduct of an Industrial Security Review and/or Industrial Security Facility Security Survey assists in determining whether a contractor is eligible to establish its facility security clearance and/or retain its participation in the National Industrial Security Program (NISP). It is also the basis for verifying whether contractors are appropriately implementing NISP security requirements. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

In accordance with Department of Defense (DoD), 5220.22–R, ''Industrial Security Regulation,'' Defense Security Service is required to maintain a record of the results of surveys and security reviews. Documentation for each survey and/or security review will be compiled addressing areas applicable to the contractor's security program. Portions of the data collected will be stored in databases. All data collected will be handled and marked, ''For Official Use Only.''

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 23, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2091 Filed 4–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–12]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6475.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–12 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 24, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800 APR 2 0 2007

In reply refer to:
I-07/000189

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-12, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Korea for defense articles and services estimated to cost $55 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: Korea

(ii) **Total Estimated Value**:

Major Defense Equipment*	$51 million
Other	$ 4 million
TOTAL	$55 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: 102 All-Up-Round AIM-9X SIDEWINDER Missiles, Organizational and Intermediate-Level Maintenance AIM-9X spares; Section-Level shipping missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support.

(iv) **Military Department**: Navy (AJR)

(v) **Prior Related Cases, if any**: FMS Case AIL, $35 million

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached.

(viii) **Date Report Delivered to Congress**: APR 2 0 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea – AIM-9X Sidewinder Missiles

The Government of Korea has requested a possible sale of 102 AIM-9X Sidewinder Missiles; Organizational and Intermediate-Level Maintenance AIM-9X spares; 26 Section-Level Shipping containers; Organizational and Intermediate-Level training; and AIM-9X missile and support equipment; and publications. The estimated cost is $55 million.

The proposed sale will enhance South Korea's defensive capabilities and increase interoperability with United States (U.S.) and multi-national forces supporting coalition operations. The country already has these weapon systems in its inventory, and will have no difficulty absorbing these items.

The proposed sale of this equipment and support will not affect the basic military balance in the region. The sale of the Sidewinder AIM-9X missile system is being addressed in conjunction with the planned sale of additional F-15K fighter aircraft. AIM-9X procurement will significantly enhance the Korean Air Force's current air-to-air intercept capability to equal capabilities within their region of operations. Sales of the AIM-9X have recently been approved for other customers within the region.

The prime contractor will be Raytheon Systems Corporation, Tucson, Arizona. Although the purchaser generally requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U. S. Government personnel in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-9X represents a substantial increase in missile acquisition and kinematics performance over previous AIM-9 variants. The missile includes a high off bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Joint Helmet Mounted Cueing System. The software algorithms are the most sensitive portions of the AIM-9X missile. The software continues to be modified during the testing phase in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released. Sensitive and/or classified (up to Secret) elements of the AIM-9X missiles include equipment/hardware, and software, and classified portions of operational performance. Maintenance training documentation is unclassified up to and including missile sectionalization training.

2. The external view of the AIM-9X Sidewinder Missile is Unclassified and is not sensitive. The seeker/guidance and control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Specifically, the infrared seeker sensitivity is a significant improvement over the previous AIM-9 variants. Manuals and technical documents for the AIM-9X that support the ability to integrate with aircraft sensors are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon systems effectiveness or could be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–2094 Filed 4–27–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–11 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 24, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

APR 2 0 2007

In reply refer to:
I-07/000191

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Korea for defense articles and services estimated to cost $372 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) **Prospective Purchaser:** Korea

(ii) **Total Estimated Value:**

Major Defense Equipment*	$360 million
Other	$ 12 million
TOTAL	$372 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 150 SM-2 Block IIIB Tactical STANDARD missiles, 60 SM-2 Block IIIA Tactical STANDARD missiles with MK 13 Mod 0 canisters, spares, 1 inert Block IIIB Tactical STANDARD missile, Intermediate-Level Maintenance activity section-level shipping containers, test equipment hardware/software upgrades, test and support equipment, supply support, training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support.

(iv) **Military Department:** Navy (AJP)

(v) **Prior Related Cases, if any:**
FMS case AHU - $124 million -10Oct00
FMS case AJA - $ 67 million - 09Jun05
FMS case AJI - $ 76 million – pending

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** APR 20 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea – SM-2 BLOCK IIIB STANDARD Missiles

The Government of Korea has requested a possible sale of 150 SM-2 Block IIIB Tactical STANDARD missiles, 60 SM-2 Block IIIA Tactical STANDARD missiles with MK 13 Mod 0 canisters, spares, 1 inert Block IIIB Tactical STANDARD missile, Intermediate-Level Maintenance activity section-level shipping containers, test equipment hardware/software upgrades, test and support equipment, supply support, training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support . The estimated cost is $372 million.

The proposed sale will enhance South Korea's defensive capabilities and increase interoperability with US and multi-national forces supporting coalition operations. The country already has these missiles in its inventory, and will have no difficulty absorbing these items.

The prime contractor will be Raytheon Systems Company of Tucson, Arizona. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

Implementation of this proposed sale will require the assignment of U.S. Government or contractor representatives for six months to assist in the installation, testing, training, and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-11

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The possible sale of SM-2 Block IIIB STANDARD missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile hardware guidance section and target detection device are classified Secret. The warhead, rocket motor, steering control section, safe and arming device, auto-pilot battery unit, and telemeter are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, kinematics information, Intermediate Maintenance Activity (IMA)-level maintenance, and flight analysis procedures.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–2095 Filed 4–27–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–17 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 24, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

In reply refer to:
I-07/003383

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-17, concerning the Department of the Navy's proposed Letters(s) of Offer and Acceptance to Turkey for defense articles and services estimated to cost $105 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with the principles set forth in subsection 620C(b) of that Act as codified in section 2373 of title 22, United States Code.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d)

Transmittal No. 07-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 65 million
Other	$ 40 million
TOTAL	$105 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 100 MK-54 Lightweight All-Up-Round Warshot Torpedoes, 50 containers, required equipment platform and auxiliary upgrades and modifications, kits, support equipment, exercise hardware, maintenance facility upgrades, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, training equipment, U.S. Government (USG) and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Navy (LAC)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: APR 2 0 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey – MK-54 Lightweight All-Up Round Warshot Torpedoes

The Government of Turkey has requested a possible sale of 100 MK-54 Lightweight All-Up-Round Warshot Torpedoes, 50 containers, required equipment platform and auxiliary upgrades and modifications, kits, support equipment, exercise hardware, maintenance facility upgrades, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, training equipment, U.S. Government (USG) and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $105 million.

Turkey is a political and economic power in Europe and the eastern Mediterranean, and a partner of the United States in ensuring peace and stability in those regions. It is vital to the U.S. national interest to assist our North Atlantic Treaty Organization (NATO) ally in developing and maintaining a strong and ready self-defense capability that will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives.

The proposed sale of torpedoes will materially assist the Turkish Naval Forces Command (TNFC) in NATO, United Nations, and coalition operations such as United Nations Interim Force in Lebanon and BLACKSEAFOR in the Black Sea and Eastern Mediterranean regions.

Turkey intends to use the MK-54 torpedo on numerous platforms including Class Ship Frigates, SH 70B Sea Hawk Helicopters, and Sea Patrol Aircraft already in-country. The Turkish Naval Forces Command has significant experience with modern weapon systems, particularly the MK-46 Mod 5A(S) torpedo, the direct predecessor to the MK-54 and a torpedo of similar complexity and capability. The MK-54 torpedo was designed to be easily integrated into the upgrade path of the MK-46 torpedo and uses the same maintenance/support equipment and infrastructure with minimal upgrades. Turkey maintains a robust MK-46 program, which it intends to upgrade to support the MK-54 torpedo. Accordingly, the TNFC will be capable of integrating, employing, and maintaining the MK-54 torpedo. The torpedo will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, and as embodied in the Letter of Offer and Acceptance.

This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The prime contractor will be Raytheon Company Integrated Defense Systems of Keyport, Washington. Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require assignment of U.S. Government and contractor representatives to Turkey on a temporary basis for program technical/management oversight and support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 07-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MK-54 is a conventional torpedo that can be launched from surface ships, helicopters, and fixed wing aircraft. The MK-54 is an upgrade to the MK-46 torpedo, which is currently in-service in over twenty countries including Turkey and the United States. The MK-54's increased capabilities entails replacement of the torpedo's sonar and guidance and control systems with modern technology. The new guidance and control system uses a mixture of commercial-off-the-shelf and custom-built electronics. The new sonar system is the same design as is used on the United States Navy's MK-50 torpedo. The warhead, fuel tank, and propulsion system from the MK-46 torpedo are re-used in the MK-54 configuration with minor modifications. The MK-54 is highly effective against modern diesel and nuclear submarines. It has advanced logic that allows it to detect and prosecute threat submarines operating in challenging littoral environments. It is also effective in the presence of advanced acoustic countermeasures that may be deployed by threat submarines. Currently the MK54 does not have the capability to attack surface ships.

2. There is no sensitive technology in the MK-54 or its support and test equipment. The assembled MK-54 torpedo and several of its individual components are classified Confidential. The MK-54 operational software is classified as Secret as is any hardware upon which the software has been installed. Turkey has not requested nor will it be provided with the source code for the MK-54 operational software. The MK-54 has a feature referred to as "Memory Scuttle" that erases the operational software at the conclusion of any practice firing so that the software will not be compromised if the torpedo is not recovered after the exercise firing.

3. Possession of the MK-54 torpedoes and associated equipment should not lead to any vulnerability disclosures as this country has been a longstanding North Atlantic Treaty Organization ally and has safely maintained a large inventory of MK-46 torpedoes.

UNCLASSIFIED

CERTIFICATION PURSUANT TO SECTION 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163, State Department Delegation of Authority No. 293-1, and a State Department Delegation of Authority signed March 12, 2007, I hereby certify that the furnishing to Turkey of 100 MK-54 Lightweight All-Up-Round Warshot Torpedoes, 50 containers, required equipment platform and auxiliary upgrades and modifications, kits, support equipment, exercise hardware, maintenance facility upgrades, software development/integration, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, training equipment, U.S. Government (USG) and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support is consistent with the principles contained in Section 620C(b) of the Act.

This certification will be made part of the notification to Congress under Section 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John Rood

John C. Rood
Assistant Secretary of State
International Security and Nonproliferation

UNCLASSIFIED

[FR Doc. 07–2097 Filed 4–27–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 07–21]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 07–21 with attached transmittal and policy justification.

Dated: April 24, 2007.

L.M. Bynum,

ODS Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

APR 2 0 2007

In reply refer to:
I-07/003854

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 07-21, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost $65 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 07-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) **Prospective Purchaser:** Israel

(ii) **Total Estimated Value:**

Major Defense Equipment*	$60 million
Other	$ 5 million
TOTAL	$65 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 3,500 MK-84 (Tritonal) general purpose bomb units, testing, support equipment, spares and repair parts, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department:** Air Force (AMV)

(v) **Prior Related Cases, if any:**
FMS case AMI - $12 million - 25Jul06
FMS case YET - $22 million - 9Sep02
FMS case YEQ - $34 million - 9Feb00

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** None

(viii) **Date Report Delivered to Congress:** APR 20 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - MK-84 (Tritonal) General Purpose Bombs

The Government of Israel has requested a possible sale of 3,500 MK-84 (Tritonal) general purpose bomb units, testing, support equipment, spares and repair parts, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $65 million.

Israel's strategic position makes it vital to United States' interests throughout the Middle East. Our policy has been to promote Middle East peace, support Israeli commitment to peace with other regional Arab countries, enhance regional stability and promote Israeli readiness and self-sufficiency. It is vital to the U.S. national interest to assist Israel in developing and maintaining a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

Israel has already integrated the MK-84 into its aircraft combat systems. It will have no difficulty absorbing these additional bombs into its armed forces.

The prime contractor will be General Dynamics, Garland, Texas. There are no known offset agreements in connection with this proposed sale.

Implementation of this sale will not require the assignment of any additional U. S. Government personnel in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 07–2098 Filed 4–27–07; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Thursday, June 21, 2007, from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004

FOR FURTHER INFORMATION CONTACT: Major Travis Watson, TRICARE Management Activity, Pharmaceutical Operations Directorate, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone 703–681–2890, fax 703–681–1940, or e-mail at *baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the Uniform Formulary as reflected in the recommendations of the DOD Pharmacy and Therapeutics (P&T) Committee coming out of that body's meeting in May 2007. The P&T Committee information and subject matter concerning drug classes reviewed for that meeting are available at *http://pec.ha.osd.mil.* Any private citizen is permitted to file a written statement with the advisory panel. Statement must be submitted electronically to *baprequests@tma.osd.mil* no later than June 14, 2007. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour will be reserved for public comments, and speaking times will be assigned only to the first twelve citizens to sign up at the meeting, on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes.

Dated: April 24, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–2096 Filed 4–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

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 Visitors Marine Corps University (hereafter referred to as the Board of Visitors).

The Board of Visitors, pursuant to 10 U.S.C. 7102(e), is a non-discretionary Federal advisory committee established to provide independent advice and recommendations on matters pertaining to all aspects of the academic and administrative policies of the Marine Corps University.

While the statute is silent on the criteria and number of committee members, the Secretary of Defense, in consultation with the Secretary of the Navy, has determined that no more than sixteen members will be appointed to the Board of Visitors. The Department of Defense, to achieve a balanced membership, will include a cross-section of experts and eminent authorities in the field of education and the fields of study at the Marine Corps University.

The terms of office for those members appointed by the Secretary of Defense shall be for four years and their appointments are renewed on an annual basis. The President of the Board of Visitors shall be appointed for a two-year term through a vote of the voting membership. Members of the Board of Visitors, 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. with the exception of travel and per diem for official travel, the members shall serve without compensation.

The Board of Visitors shall meet at the call of the Designated Federal officer, in consultation with the Board of Visitors President and the Commanding General, Marine Corps Combat Development Command. 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 Visitors' meetings and subcommittee meetings.

The Board of Visitors is authorized to establish subcommittees and workgroups, as necessary and consistent with its mission. Board of Visitors subcommittees and workgroups shall operate under the provisions of Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976, and other appropriate Federal regulations.

Board of Visitors subcommittees and workgroups shall not work independently of the Board of Visitors and shall report all their recommendations and advice to the Board of Visitors for full deliberation and discussion. Board of Visitors subcommittees and workgroups have no authority to make decisions on behalf of the Board of Visitors and may not report directly to the Department of Defense or any Federal officers or employees who are not members of the Board of Visitors.

Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the members of the Board of Visitors. Written statements may be submitted at any time to the Board of Visitors' Designated Federal Officer or in response to the stated agenda of a planned meeting.

The contact information for the Designated Federal Officer for the Board of Visitors Marine Corps University can be obtained from the GSA's FACA Database: *https://www.fido.gov/facadatabase/public.asp.*

FOR FURTHER INFORMATION CONTACT: Contact Frank Wilson, Committee Management Officer for the Department of Defense, 703–601–2554.

Dated: April 25, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2113 Filed 4–26–07; 10:22 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2007–0007]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 30, 2007.

Title, Form, and OMB Number: Civil Aircraft Certificate of Insurance, DD Form 2400; Civil Aircraft Landing Permit, DD Form 2401; Civil Aircraft Hold Harmless Agreement, DD Form 2402; OMB Control Number 0701–0050.

Type of Request: Extension.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Annual Responses: 3,600.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,800.

Needs and Uses: The collection of information is necessary to ensure that the security and operational integrity of military airfields are maintained; to identify the aircraft operator and the aircraft to be operated; to avoid competition with the private sector by establishing the purpose for use of military airfields; and to ensure the U.S. Government is not held liable if the civil aircraft becomes involved in an accident or incident while using military airfields, facilities, and services.

Affected Public: Individuals or households; Business or other-for-profit; Not-for-profit institutions.

Frequency: On Occasions.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions

from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contract information.

DoD Clearance Officer; Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 2209–2133.

Dated: April 23, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–2092 Filed 4–27–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Navy Atlantic Fleet Training in the Navy Cherry Point Range Complex and Notice of Public Scoping Meetings

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and Executive Order 12114, the Department of Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS)/Overseas EIS to evaluate the potential environmental consequences associated with naval training operations in the Navy Cherry Point (CP) Range Complex. The Navy proposes to support current and emerging training and research, development, test, and evaluation (RDT&E) operations in the Navy CP Range Complex by: (1) Maintaining baseline operations at current levels; (2) increasing training operations from current levels as necessary to support the Fleet Readiness Training Plan (FRTP); (3) accommodating mission requirements associated with force structure change; and (4) implementing enhanced range complex capabilities. The EIS/OEIS study area is the Navy CP Range Complex which consists of surface and subsurface operating areas (OPAREAs), special use airspace (SUA), and instrumented ranges. The Navy CP Range Complex encompasses: 18,617 nm^2 of offshore surface and subsurface OPAREA; 12,529 nm^2 of deep ocean area greater than 100 fathoms (600 feet); and 18,966 nm^2 of SUA (warning area). No land ranges or facilities are included within the study area for this EIS/OEIS. The focus of the EIS/OEIS is the exercises and other actions in the ocean environment. Issues associated with land-based ranges will be assessed separately by the U.S. Marine Corps.

The scope of actions to be analyzed in this EIS/OEIS includes current and proposed future Navy training and RDT&E within Navy-controlled operating areas, airspace, and instrumented ranges. It also includes proposed Navy-funded range capabilities enhancements, including infrastructure improvements, which support range complex training and RDT&E. Activities that involve the use of active sonar are conducted in the Navy CP Complex; however, those potential effects are being analyzed in detail in a separate document, the Atlantic Fleet Active Sonar Training EIS/OEIS. That separate sonar EIS/OEIS addresses active sonar use as a whole by the Atlantic Fleet in the eastern Atlantic Ocean (including waters that are part of the Navy CP Complex), and in the Gulf of Mexico. The results of that sonar EIS/OEIS will be incorporated into the Navy CP Range Complex EIS/OEIS to account for active sonar effects that could occur within the geographic area of the Navy CP Range Complex.

Dates and Addresses: Two public scoping meetings will be held, one in Morehead City, North Carolina and one in Wilmington, North Carolina, to receive oral and written comments on environmental concerns that should be addressed in the Navy CP Range Complex EIS/OEIS. Public scoping meetings will be held at the following dates, times, and locations: May 16, 2007, from 5 p.m. to 8 p.m. at West Carteret High School, 4700 Country Club Road, Morehead City, North Carolina, and May 17, 2007, from 5 p.m. to 8 p.m. at New Hanover High School, 1307 Market Street, Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: Kelly Knight, Naval Facilities Engineering Command Atlantic, (757) 322–4398.

SUPPLEMENTARY INFORMATION: The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas. For that reason, Title 10 U.S.C. 5062 directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, OPAREAs and airspace where they can develop and maintain skills for wartime missions and conduct RDT&E of naval weapons systems. As such, Navy ranges, OPAREAs, and airspace must be maintained and/or enhanced to accommodate necessary training and testing activities in support of national security objectives.

The purpose of the proposed action is to: Achieve and maintain Fleet readiness using the Navy CP Range Complex to support current, emerging, and future training and RDT&E operations; expand warfare missions; and upgrade/modernize existing range capabilities to enhance and sustain Navy training and testing.

The need for the proposed action is to provide combat capable forces ready to deploy worldwide in accordance with Title 10 U.S.C 5062. Specifically, maintain current levels of military readiness by training and testing in the Navy CP Range Complex; accommodate future increases in operational training tempo in the Navy CP Range Complex and support the rapid deployment of naval units or strike groups; achieve and sustain readiness in ships and squadrons so that the Navy can quickly surge significant combat power in the event of a national crisis or contingency operation and consistent with FRTP; support the testing and training needed for new aircraft, vessels, weapons systems and missions; and maintain the long-term viability of the Navy CP Range Complex while protecting human health and the environment.

Three alternatives will be evaluated in the EIS/OEIS including: (1) The No Action Alternative comprising baseline operations and support of existing range capabilities; (2) Alternative 1 comprising the No Action Alternative plus additional operations, expanded warfare missions, accommodation of force structure changes including training and RDT&E resulting from the introduction of new vessels, aircraft, weapons systems and missions, and the implementation of enhancements to range infrastructure; and (3) Alternative 2, comprising Alternative 1 plus additional increases in training, and implementation of enhancements that will optimize training throughput in support of future contingencies. The EIS/OEIS will evaluate the environmental effects associated with: Airspace; noise; range safety; water resources; air quality; biological resources, including threatened and endangered species; land use;

socioeconomic resources; infrastructure; and cultural resources. The analysis will include an evaluation of direct and indirect impacts, and will account for cumulative impacts from other naval activities in the Navy CP Range Complex. No decision will be made to implement any alternative until the EIS/OEIS process is completed and a Record of Decision is signed by the Assistant Secretary of the Navy (Installations and Environment).

The Navy is initiating the scoping process to identify community concerns and local issues to be addressed in the EIS/OEIS. Federal agencies, State agencies, local agencies, and interested persons are encouraged to provide oral and/or written comments to the Navy to identify specific issues or topics of environmental concern that should be addressed in the EIS/OEIS. Written comments must be postmarked by June 12, 2007 and should be mailed to: Naval Facilities Engineering Command, Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia, 23508–1278, Attention: Ms. Kelly Knight.

R.K. Giroux,

Captain (Sel), Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–8188 Filed 4–27–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 29, 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 25, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Safe and Drug Free Schools

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Alcohol, Other Drug, and Violence Prevention Survey of American College Campuses.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,050.

Burden Hours: 875.

Abstract: This survey's purpose is to determine the state of alcohol and other drug abuse and violence prevention in higher education and assess current and emerging needs of institutions of higher education and their surrounding communities.

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 3322. 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. E7–8203 Filed 4–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; Technology and Media Services for Individuals With Disabilities—Institute on Technology Effectiveness for Children With Disabilities: Web-Supported Instructional Approaches; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327W.

Dates:

Applications Available: April 30, 2007.

Deadline for Transmittal of Applications: May 30, 2007.

Deadline for Intergovernmental Review: July 30, 2007.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities—Institute on Technology Effectiveness for Children with Disabilities: Web-Supported Instructional Approaches.

Background

On September 26, 2006, we published a notice in the **Federal Register** (71 FR 56133) inviting applications for new awards under the Research on Technology Effectiveness and Implementation for Children with Disabilities: Web-Supported Instructional Approaches competition. We received several applications for grants under the competition; however, we did not receive any fundable applications. To clarify our intent and improve future applications, we changed the background section and priority requirements and are reissuing the notice inviting applications under a new title, Institute on Technology Effectiveness for Children with Disabilities: Web-Supported Instructional Approaches.

A number of projects funded by the Office of Special Education Programs (OSEP) have developed and tested World Wide Web-supported approaches to improve educational results for children with disabilities. In some cases, these projects have used generally available Web resources (e.g., newspaper sites, museum sites, and search engines). In other cases, the projects have developed specialized Web sites (e.g., simulation of learning environments, discussion boards, and strategy reminders) to improve student learning.

Web-supported educational approaches have a number of potential benefits for students with disabilities. Web-based instruction is distinct from other forms of instruction because of the availability of multiple types of media (e.g., text, video, graphics, and audio), the possibility of real time remote collaboration and communication, the access it provides to vast quantities of information, and the ability for students to participate in global classrooms. The Web also can support varied learning strategies and activities that can be designed to address different student needs. For example, it can provide supports to compensate for learning difficulties, sensory impairments, and academic skill deficits.

Research on the benefits of Web-supported approaches for students with disabilities is limited. There also is little information about whether Web-based resources that provide access for one population of students creates accessibility barriers for others (e.g., graphic features may not be accessible to students with visual impairments; hyper-linked resources or graphic organizers may increase intellectual demands and create barriers for students with cognitive disabilities). Finally, the effectiveness of Web-supported instruction when widely used in typical educational environments has not been fully explored.

Priority

This priority supports an institute to conduct a systematic program of research on the use of Web-supported instructional approaches to improve access to, and participation and progress in, the general curriculum for students with disabilities. In carrying out its research, the institute must apply the principles of universal design (i.e., design of products that will be usable by children with different disabilities, to the greatest extent possible, with minimal need for additional adaptations).

In their applications, applicants must—

(a) Propose an operational definition of Web-supported instruction and include the key features to be used in a program of research;

(b) Describe the applicant's access to existing Web-supported instructional materials that will allow the institute to proceed quickly with the research without substantial time devoted to additional development;

(c) Propose instructional approaches and products to be examined; these approaches and products must represent a range of features of Web-supported instruction relevant to the education of students with disabilities; and

(d) Present a plan to conduct a program of research to answer the following questions: (1) Do the Web-supported instructional approaches and products identified in (c) improve learning of academic content for students with disabilities in educational settings with typical resources and levels of teacher support? (2) What characteristics of Web-supported instruction facilitate or impede access to, and learning of, academic content for students with disabilities? (3) What student characteristics (e.g., disability, age/grade level, technology skills) and contextual factors (e.g., teacher training, hardware resources, student groupings) influence the effectiveness of Web-supported instruction?

This plan may focus on specific academic content areas or student ages, but, at a minimum, must address research questions separately for each of the following populations: students with learning disabilities, students with mental retardation, students with visual impairments or blindness, students with hearing impairments or deafness, students with emotional disturbance, and students with physical disabilities.

The research is intended to test causal relationships and must employ rigorous experimental designs using randomized assignment to determine treatment effects.

Applicants must fully describe instruments and methodologies and provide a power analysis to document that available sample sizes and methodologies are sufficient to produce the precision needed to yield conclusive findings. Experimental research may be supplemented with qualitative or non-experimental methodologies, provided sufficient rigor is maintained.

The majority of the research must be conducted in educational environments using typical resources and levels of teacher support.

Once funded, the institute must—

(a) Establish a technical review board to review its operational definition of Web-supported instructional approaches and its research plans, and identify any needed improvements.

(b) Revise the institute's operational definition of Web-supported instructional approaches and its research plan in accordance with comments from the technical review board and input from the Department of Education (Department).

(c) Conduct the program of research called for in its plan, as revised, taking appropriate steps to ensure that the research is rigorous and objective. Toward this end, the institute must

maintain communication with the Department and the technical review board to identify needed corrective actions.

(d) Disseminate findings to appropriate audiences. The institute must submit reports for publication in peer-reviewed professional journals and for presentation at professional conferences, and must post reports on a Web site that meets a government or industry-recognized standard for accessibility.

(e) Formulate and disseminate research-based guidelines for the development and use of the Web to support instruction and to improve access to, and participation and progress in, the general curriculum for students with disabilities.

(f) Budget for a three-day Project Directors' meeting and a two-day Technology Innovation meeting, each in Washington, DC, during each year of the project.

(g) Budget five percent of the grant amount annually to support emerging needs as identified jointly through consultation with the OSEP project officer.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:* General Requirements—

(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327W.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 30, 2007.

Deadline for Transmittal of Applications: May 30, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements in this notice.*

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Deadline for Intergovernmental Review: July 30, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted

electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Institute on Technology Effectiveness for Children with Disabilities: Web-Supported Instructional Approaches competition—CFDA number 84.327W is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Institute on Technology Effectiveness for Children with Disabilities: Web-Supported Instructional Approaches competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.327, not 84.327W).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it. If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on

whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327W), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.327W), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327W), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:*

Treating a Priority as Two Separate Competitions: In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving the results for children with disabilities. Data on these measures will be collected from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., room 4092, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7373.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print,

audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 25, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–8185 Filed 4–27–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Safe and Drug-Free Schools and Communities Advisory Committee

AGENCY: Department of Education, Office of Safe and Drug-Free Schools.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of The Safe and Drug-Free Schools and Communities Advisory Committee. The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Monday, May 14, 2007. Time: 2 p.m., EST.

ADDRESSES: The Committee will meet by telephone conference call.

FOR FURTHER INFORMATION CONTACT: Catherine Davis, Executive Director, The Safe and Drug-Free Schools and Communities Advisory Committee, Room 1E110B, 400 Maryland Avenue, SW., Washington, DC, telephone: (202) 205–4169, e-mail: *OSDFSC@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339, Monday through Friday between the hours of 8 a.m. and 8 p.m., Eastern Standard Time.

SUPPLEMENTARY INFORMATION: The Safe and Drug-free Schools and Communities Advisory Committee is authorized by Section 4124 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001. The Committee was established to provide advice to the Secretary on Federal, State, and local programs designed to create safe and drug-free schools, and on issues related to crisis planning. The purpose of this meeting is to continue discussion on the findings and recommendations on three topics given to the Committee by the Secretary of Education: The Safe and Drug-Free Schools and Communities State Grants Program, the Unsafe School Choice Option, and data requirements under the Safe and Drug-Free Schools and Communities Act. The Committee also will discuss the format of the final report to the Secretary of Education due June 30, 2007.

There will not be an opportunity for public comment during the May 14th meeting. However, the public may listen to the conference call by calling 800–473–8796, Conference ID: 6264012. Individuals who need accommodations for a disability in order to listen to the meeting may access a TYY line by calling 800–473–8796, Conference ID: 6264012.

Request for Written Comments: We invite the public to submit written comments relevant to the focus of the Advisory Committee. We would like to receive written comments from members of the public no later than April 30, 2007. **ADDRESSES**: Submit all comments to the Advisory Committee using one of the following methods: 1. Internet. We encourage the public to submit comments through the Internet to the following address: *OSDFSC@ed.gov.* 2. Mail. The public also may submit comments via mail to Catherine Davis, Office of Safe and Drug-Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

Records are kept of all Committee proceedings and are available for public inspection at the staff office for the Committee located at the U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202 between the hours of 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/federegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Raymond Simon,

Deputy Secretary, U.S. Department of Education.

[FR Doc. E7–8145 Filed 4–27–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0712; FRL–8307–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Magnetic Tape Coating Facilities (Renewal); EPA ICR Number 1135.09; OMB Control Number 2060–0171

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 30, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–

OECA–2006–0712, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006 (71 FR 58853), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0712, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is located in the EPA Headquarters Library, Room 3334, and is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit, or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically, or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Magnetic Tape Coating Facilities (Renewal).

ICR Numbers: EPA ICR Number 1135.09, OMB Control Number 2060–0171.

ICR Status: This ICR is scheduled to expire on June 30, 2007. Under OMB regulations, the Agency may continue to conduct, or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct, or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register**, or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal is being submitted for the NSPS for Magnetic Tape Coating Facilities (40 CFR part 60, subpart SSS), which was proposed on January 22, 1986, and promulgated on October 3, 1988. The affected entities also are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified 40 CFR part 60, subparts SSS. This standard applies to each coating operation and each piece of coating mix preparation equipment commencing construction, modification, or reconstruction after the date of proposal. Owners and operators of magnetic tape coating facilities subject to NSPS must notify EPA of construction, reconstruction, anticipated and actual startup dates, and results of performance tests. Records of performance test results, shutdowns, and malfunctions must be maintained. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 95 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, or provide information to, or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit, or otherwise disclose the information.

Respondents/Affected Entities: Magnetic tape coating facilities.

Estimated Number of Respondents: 8.

Frequency of Response: Initially, on occasion, quarterly and semi-annually.

Estimated Total Annual Hour Burden: 2,017.

Estimated Total Annual Cost: $215,776, which is comprised of $33,600 in capital and startup costs, $52,800 in operation and maintenance costs, and $129,376 in labor costs.

Changes in the Estimates: There is no change in the total estimated hourly burden or annual capital, start-up or O&M costs currently identified in the OMB Inventory of Approved ICR Burdens. There was an adjustment made to accurately reflect the number of responses per year, which modified the number of hours per response from 88 to 95 hours per response.

Dated: April 19, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–8165 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0713; FRL–8307–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request EPA; NESHAP for Pharmaceuticals Production (Renewal); ICR Number 1781.04; OMB Control Number 2060–0358

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request

(ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 30, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0713, to (1) EPA online using www.regulations.gov (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marcia B. Mia, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–7042; fax number: 202–564–0038; e-mail address: *mia.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006 (71 FR 58853), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0713, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit, or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically, or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to www.regulations.gov.

Title: NESHAP for Pharmaceuticals Production (Renewal).

ICR Numbers: EPA ICR Number 1781.04; OMB Control Number 2060–0358.

ICR Status: This ICR is scheduled to expire on June 30, 2007. Under OMB regulations, the Agency may continue to conduct, or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct, or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pharmaceuticals Production was proposed on April 2, 1997, and promulgated on September 21, 1998. These standards apply to facilities in pharmaceuticals facilities that are major sources of hazardous air pollutants (HAP). The affected facilities encompass all pharmaceuticals manufacturing operations that include process vents, storage tanks, equipment components, and wastewater systems commencing construction, or reconstruction after the date of that proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart GGG. HAP emissions are the pollutants regulated under this subpart.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners, or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and in general, are required of all sources subject to NESHAP. This information is used by the Agency to identify sources subject to the standards to insure that the maximum achievable control technologies are being applied.

Any owner, or operator subject to the provisions of this part will maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State, or local authority. In the event that there is no such delegated authority, the reports are sent directly to the United States Environmental Protection Agency (EPA) regional office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 177 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit, or otherwise disclose the information.

Respondents/Affected Entities: Pharmaceuticals facilities that are major sources of hazardous air pollutants (HAP).

Estimated Number of Respondents: 100.

Frequency of Response: Initially, Semi-annually and on occasion.

Estimated Total Annual Hour Burden: 163,371.

Estimated Total Annual Cost: $14,901,733, which consists of no Capital/Startup costs, $415,800 in Operations and Maintenance Costs, and $14,485,933 in Labor Costs associated with this ICR.

Changes in the Estimates: There is an increase of 5,192 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The increase in burden is due

to adjustments. Burden items were added to the ICR which were previously omitted, and the burden associated with some items was increased to be consistent with more recently approved ICRs for similar source categories.

Dated: April 19, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–8166 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0707; FRL–8307–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for the Graphic Arts Industry (Renewal), EPA ICR Number 0657.09, OMB Control Number 2060–0105

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 30, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0707, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006 (71 FR 58853), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0707, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for the Graphic Arts Industry (Renewal).

ICR Numbers: EPA ICR Number 0657.09, OMB Control Number 2060–0105.

ICR Status: This ICR is scheduled to expire on September 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal is being submitted for the NSPS for the Graphic Arts Industry (40 CFR part 60, subpart QQ), which were promulgated on November 8, 1982. These standards apply to the following: each publication rotogravure printing press (not including proof press) commencing construction, modification or reconstruction after the date of proposal (October 28, 1980). Owners and operators of facilities subject to NSPS must notify EPA of construction, reconstruction, anticipated and actual startup dates, and results of performance tests. Records of performance test results, shutdowns, and malfunctions must be maintained. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 37 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Graphic arts facilities are potentially affected.

Estimated Number of Respondents: 19.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 1,718.

Estimated Total Annual Cost: $108,663, which includes $0 annualized Capital Startup costs, $0 annualized Operation and Maintenance costs, and $108,663 annualized Labor costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: April 19, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–8167 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0709; FRL–8307–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Incinerators (Renewal) EPA ICR Number 1058.09, OMB Control Number 2060–0040

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 30, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0709, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006 (71 FR 58853), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0709, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Incinerators (Renewal).

ICR Numbers: EPA ICR Number 1058.09, OMB Control Number 2060–0040.

ICR Status: This ICR is scheduled to expire on September 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal is being submitted for the NSPS for Incinerators (40 CFR Part 60, Subpart E), which were promulgated on July 25, 1977. These standards apply to incinerators that charge more than 45 metric tons per day (50 tons per day) of solid waste for the purpose of reducing the volume of the waste. Solid waste is defined as refuse that is more than 50 percent municipal wastes. Owners and operators of incinerators subject to NSPS must notify EPA of construction, reconstruction, anticipated and actual startup dates, and results of performance tests. Records of performance test results, shutdowns, and malfunctions must be maintained. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Incinerators.

Estimated Number of Respondents: 82.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 8,393.

Estimated Total Annual Cost: $735,926 which includes $0 annualized Capital Startup costs, $205,000 annualized Operation and Maintenance (O&M) costs, and $530,926 annualized Labor Costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: April 19, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–8169 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2006–0706; FRL–8307–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities (Renewal), EPA ICR Number 1604.08, OMB Control Number 2060–0110

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 30, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0706, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2006 (71 FR 58853), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2006–0706, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is located at in the EPA Headquarters Library, Room 3334, and is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities(Renewal).

ICR Numbers: EPA ICR Number 1604.08, OMB Control Number 2060–0110.

ICR Status: This ICR is scheduled to expire on July 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal is being submitted for the NSPS for Secondary Brass and Bronze Production (40 CFR part, subpart M), Primary Copper Smelters (40 CFR part 60, subpart P), Primary Zinc Smelters (40 CFR part 60, subpart Q), Primary Lead Smelters (40 CFR part 60, subpart R), Primary Aluminum Reduction Plants (40 CFR part 60, subpart S), and Ferroalloy Production Facilities (40 CFR part 60, subpart Z. The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified 40 CFR part 60, subparts M, P, Q, R, S and Z. Owners and operators of affected facilities subject to NSPS must notify EPA of construction, reconstruction, anticipated and actual startup dates, and results of performance tests. Records of performance test results, shutdowns, and malfunctions must be maintained. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 169 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Secondary brass and bronze production facilities, primary copper/zinc/lead smelters, primary aluminum reduction plants and ferroalloy production facilities.

Estimated Number of Respondents: 18.

Frequency of Response: Initially and semi-annually.

Estimated Total Annual Hour Burden: 4,914.

Estimated Total Annual Cost: $442.450 which includes $0 annualized capital startup costs, $131,600 in annualized Operation and Maintenance costs (O&M), and $310,850 annualized labor costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: April 12, 2007.

Robert Gunter,

Acting Director, Collection Strategies Division.

[FR Doc. E7–8181 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–8307–6]

California State Motor Vehicle Pollution Control Standards; Request for Waiver of Federal Preemption; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted Greenhouse Gas Emission (GHG) regulations for passenger cars, light-duty trucks and medium-duty passenger vehicles beginning with the 2009 model year (MY). By letter dated December 21, 2005, CARB submitted a request that EPA grant a waiver of preemption under section 209(b) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) for these regulations. This notice announces that EPA has scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has scheduled a public hearing concerning CARB's request on May 22, 2007, beginning at 9 a.m. Any party planning to present oral testimony should notify EPA by May 15, 2007, expressing its interest. Any party may submit written comments by June 15, 2007.

ADDRESSES: EPA will make available for in person inspection, at the Air and Radiation Docket and Information Center, written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is EPA–HQ–OAR–2006–0173. Parties wishing to present oral testimony at the public hearing should provide notice to David Dickinson at the address noted below. We plan to hold the public hearing at EPA Headquarters in Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, e-mail address: *Dickinson.David@EPA.GOV*. EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (*http://www.epa.gov/otaq/*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled ''Regulations.'' This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary website: (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

For Obtaining and Submitting Electronic Copies of Comments:

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0173, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: dickinson.david@epa.gov.*
- *Fax:* (202)343–2804.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0173. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID No EPA–HQ–OAR–2006–0173.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail.

The *http://www.regulations.gov* web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. *Docket:* All documents in the

docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

SUPPLEMENTARY INFORMATION:

(A) Background and Discussion

Section 209(a) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7543(a), provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). The Administrator must grant a waiver unless he finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if, for example, there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[1]

CARB's December 21, 2005, letter to the Administrator notified EPA that the CARB Board had adopted its GHG regulations at a public hearing on September 23–24, 2004 and subsequently California's Office of Administrative Law approved the regulatory action on September 15, 2005. The amendment and adoption of regulations can be found at title 13, California Code of Regulations (CCR), sections 1900, 1961 and 1961.1.

Please provide comment as to whether (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act. Within the context of these statutory criteria we also request comment on the following: (1) Given that the regulations referenced in the December 21, 2005, request letter relate to global climate change, should that have any effect on EPA's evaluation of the criteria, and if so, in what manner; (2) whether the United States Supreme Court's decision, issued on April 2, 2007 (549 U.S. _____(2007)), regarding the regulation of emissions of greenhouse gases from new motor vehicles under Title II of the Clean Air Act, is relevant to EPA's evaluation of the three criteria, and if so, in what manner; and (3) whether the Energy Policy and Conservation Act (EPCA) fuel economy provisions are relevant to EPA's consideration of this petition or to CARB's authority to implement its vehicle GHG regulations.

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

The Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing(s) to obtain a copy of the transcript at their own expense. EPA will keep the record open until June 15, 2007. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: April 24, 2007.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E7–8168 Filed 4–27–07; 2:09 pm]

BILLING CODE 6560–50–P

[1] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet the state and the Federal requirements with the same test vehicle in the course of the same test. See, e.g., 43 FR 32182 (July 25, 1978).

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0936; FRL-8124-5]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition

number (PP) of interest, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 7E7193	EPA-HQ-OPP-2007-0223
PP 6E7137	EPA-HQ-OPP-2007-0234
PP 6E7139	EPA-HQ-OPP-2007-0234
PP 7F7181	EPA-HQ-OPP-2007-0275
PP 6F7159	EPA-HQ-OPP-2007- 0280

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C.

346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Exemptions from Tolerance

1. *PP 7E7193*. (Docket ID number EPA–HQ–OPP–2007–0223). Keller and Heckman LLP, 1001 G St., NW., Suite 500 West, Washington, DC 20001, proposes to establish an exemption from the requirement of a tolerance for residues of the 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl) amino]-monosodium salt, polymer with ethenol and ethenyl acetate (CAS no. 107568-12-7) in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Bipin Gandhi, telephone number: (703) 308-8380; e-mail address: *gandhi.bipin@epa.gov*.

2. *PP 7F7181*. (Docket ID number EPA–HQ–OPP–2007–0275). E. I. DuPont de Nemours and Company, DuPont Crop Protection, 1090 Elkton Road, Newark, DE 19711, proposes to establish an exemption from the requirement of a tolerance for residues of chlorantraniliprole, 3-bromo-N-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide in or on food and feed commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. Contact: Kable (Bo) Davis, telephone number: (703) 306-0415; e-mail address: *davis.kable@epa.gov*.

New Tolerances

1. *PPs 6E7137* and *PP 6E7139*. (Docket ID number EPA–HQ–OPP–2007–0234). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance for residues of the fungicide fluazinam in or on food commodities in *PP 6E7137*: Vegetable, legume, edible podded, subgroup 6A, except pea at 0.15 parts per million (ppm); Brassica, leafy greens, subgroup 5B at 0.02 ppm; Brassica, head and stem, subgroup 5A at 0.01 ppm; and turnip, tops at 0.02 ppm. IR-4 also proposes to establish a tolerance for residues of fluazinam and its metabolite AMGT in or on food commodities: Bushberry subgroup 13B; berry, aronia; blueberry, lowbush; currant, buffalo; guava, chilean; barberry, European; cranberry, highbush; honeysuckle; jostaberry; Juneberry; lingonberry; currant, native; salal; and buckthorn, sea at 4.5 ppm. IR-4 proposes to establish a tolerance for residues of fluazinam in or on food commodities in *PP 6E7139*: Ginseng at 3.0 ppm; bean, dry at 0.01 ppm; and pea and bean, succulent shelled, subgroup 6B, except pea at 0.02 ppm. An analytical method using gas chromatography with electron capture detection (GC-ECD) for the determination of fluazinam residues on beans (snap, lima, and dry), Brassica crops (broccoli, cabbage and mustard greens), ginseng and blueberry has been developed and validated. Contact: Shaja R. Brothers, telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*.

2. *PP 6F7159*. (Docket ID number EPA–HQ–OPP–2007–0280). Bayer CropScience, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the insecticide clothianidin in or on food commodities: Beet, sugar, root at 0.02 ppm; beet, sugar, tops at 0.04 ppm; and beets, sugar, molasses at 0.06 ppm. In plants and plant products, the residue of concern parent clothianidin can be determined using high performance liquid chromatography (HPLC) with electrospray tandem mass spectrometry (MS/MS) detection. In an extraction efficiency testing, the plant residues method has also demonstrated the ability to extract aged clothianidin residue. Although the plant residues LC-MS/MS method is highly suitable for enforcement method, an L C-Ultraviolet (UV) method has also been developed which is suitable for enforcement monitoring purposes in all relevant matrices. Contact: Kable (Bo) Davis, telephone number: (703) 306-0415; e-mail address: *davis.kable@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 16, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–8180 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0199; FRL-8124-7]

S-Abscisic Acid, (S)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid for Use in or on Grapes; Notice of Filing to Establish a Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0199 and the pesticide petition number (PP), by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0199. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0031; e-mail address: *pfeifer.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing notice of the filing of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

New Exemption from Tolerance

PP 7G7202. Valent Biosciences Corporation, 870 Technology Way, Libertyville, IL 60048, proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide, S-Abscisic Acid; (S)-5-(1-hydroxy-2,6,6-trimethyl-4-oxo-1-cyclohex-2-enyl)-3-methyl-penta-(2Z,4E)-dienoic Acid, in or on food commodity grapes. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed

additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 18, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–8179 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting Schedule Change; Open Commission Meeting, April 25, 2007

April 25, 2007.

The Federal Communications Commission previously announced its intention to hold an Open Meeting on Wednesday, April 25, 2007 at 9:30 a.m. The meeting has been postponed until 6:45 p.m. The prompt and orderly conduct of the Commission's business requires this change and no earlier announcement was practicable.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on April 26, 2007.

[FR Doc. 07–2119 Filed 4–26–07; 12:47 pm]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notices

DATE AND TIME: Thursday, May 3, 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.

Advisory Opinion 2007–05: Erik Iverson by counsel, Donald F. McGahn, II.

Advisory Opinion 2007–06: Libertarian Party of Indiana by Todd Singer, Treasurer.

Notice of Proposed Rulemaking on Hybrid Ads.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–2138 Filed 4–26–07; 2:57 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

A Public Health Action Plan To Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Times and Dates: 11:30 a.m.–12:30 p.m., Wednesday, June 27, 2007.

Place: Hyatt Regency Bethesda, Bethesda, Maryland, One Bethesda Metro Center (7400 Wisconsin Ave), Bethesda, Maryland, USA 20814; Tel: 1–301–652–2000; Fax: 1–301–652–4525).

Status: Open to the public, limited only by the space available.

Purpose: To present the annual report of progress by Federal agencies in accomplishing activities outlined in A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues) and solicit comments from the public regarding the annual report. The Action Plan serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters To Be Discussed: The agenda will consist of welcome and introductory comments, an executive summary, and brief reports in four focus areas: Surveillance, Prevention and Control, Research, and Product Development. The meeting will then be open for general discussion.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsement of specific commercial products.

The Action Plan, Annual Report, and meeting agenda are available at *http://www.cdc.gov/drugresistance.* The public meeting is sponsored by the CDC, FDA, and NIH in collaboration with seven other Federal agencies and departments that were involved in developing and writing A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues).

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted for subsequent review by the Task Force. Written comments and suggestions from the public are encouraged and should be received by the contact person or email listed below prior to the opening of the meeting or no later than the end of July 2007.

Persons anticipating attending the meeting are requested to send written notification to the contact person below by June 21, 2007, including name, organization (if applicable), address, phone, fax, and e-mail address.

Contact Person for More Information: Marsha A. Jones, Office of Antimicrobial Resistance, CCID/CDC, Mailstop A–07, 1600 Clifton Road, NE., Atlanta, GA 30333; telephone 404–639–4111; fax 404–639–7444.

Dated: April 23, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E7–8158 Filed 4–27–07; 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 2007–R–05

Correction: This notice was published in the **Federal Register** on April 9, 2007, Volume 72, Number 67, page 17555. The meeting was originally scheduled as a teleconference. In lieu of a

teleconference, the SEP will now convene at the Doubletree Hotel, 3342 Peachtree Road, NE., Atlanta, GA 30326.

Date and Time: 8:30 a.m.–3 p.m., May 10, 2007.

Contact Person for More Information: Juliana Cyril, M.P.H., PhD, 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 25, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–8248 Filed 4–27–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed projects:

Title: Supporting Healthy Marriage (SHM) Project: Control Services Survey.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is conducting a demonstration and evaluation called the Supporting Healthy Marriage (SHM) Project. Supporting Healthy Marriage is designed to inform program operators and policymakers of the most effective ways to help low-income married couples strengthen and maintain healthy marriages. In particular, the project will measure the effectiveness of marriage education programs by randomly assigning eligible volunteer couples to SHM program groups and control groups.

In order to conduct a strong test of the SHM program, the researchers must understand whether marriage education services similar to SHM are readily accessible to control group members elsewhere in the communities where SHM is offered. To measure the difference between services received by the program group and control group, the evaluator will administer a brief survey to participants in each SHM demonstration pilot site. The purpose of this survey is to identify the kinds of services that participants have received over the last six months, either from the SHM program or from other agencies in the community. This survey will allow the research team to determine whether there is a sufficient differential between the services received by the participants in the program group and those in the control group to constitute a strong test of the SHM intervention.

Respondents: Low-income married couples with children.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SHM Control Services Survey	808	1	.17	137.4

Estimated Total Annual Burden Hours: 137.4.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 23, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–2090 Filed 4–27–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0215]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Applications for Food and Drug Administration Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Valid or Will Not Be Infringed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written electronic comments on the collection of information by May 30, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the OMB control number 0910–0513. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated NDAs Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed (OMB Control Number 0910–0513)—Extension

FDA is requesting that OMB revise and extend approval under the PRA for the information collection contained in the final rule entitled ''Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed'' (68 FR 36676, June 18, 2003) (the June 2003 final rule).

Section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)(1)) requires all NDA applicants to file, as part of the NDA, ''the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture[,] use, or sale of the drug.'' Section 505(c)(2) of the act imposes a similar patent submission obligation on holders of approved NDAs when the NDA holder could not have submitted the patent information with its application. Under section 505(b)(1) of the act, we publish patent information after approval of an NDA application in the list entitled ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (the Orange Book). If patent information is submitted after NDA approval, section 505(c)(2) of the act directs us to publish the information upon its submission.

The June 2003 final rule clarified the types of patent information that must and must not be submitted to FDA as part of an NDA, an amendment, or a supplement. The June 2003 final rule also required persons submitting an NDA, an amendment, or a supplement, or submitting information on a patent after NDA approval, to make a detailed patent declaration using required forms (Form FDA 3542a and Form FDA 3542).

Certain sections of the June 2003 final rule regarding the application of 30-month stays on approval of certain abbreviated new drug applications (ANDAs) and certain other NDAs, known as 505(b)(2) applications, submitted under the act, were superseded by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173), signed December 8, 2003. The affected sections of the regulations issued in the June 2003 final rule—under part 314 (21 CFR part 314), §§ 314.52(a)(3) and 314.95(a)(3)—were revoked by the technical amendment to the June 2003 final rule, published in the **Federal Register** of March 10, 2004 (69 FR 11309). Accordingly, FDA's request to extend approval under the PRA for the collection of information contained in the June 2003 final rule is revised to exclude the revoked sections of the regulations, §§ 314.52(a)(3) and 314.95(a)(3), and certain sections of the regulations, §§ 314.50(i)(1)(i) and 314.94(a)(12), which were included in the estimated annual reporting burden to describe an information collection burden associated with the revoked sections of the regulations.

The reporting burden for submitting an NDA, an amendment, or supplement in accordance with § 314.50(a) through (f), and (k) has been estimated by FDA and the collection of information has been approved by OMB under OMB control number 0910–0001, most recently until May 31, 2008, (70 FR 35099, June 16, 2005). In addition, the reporting burden associated with the previously-referenced §§ 314.50(i)(1)(i) and 314.94(a)(12), regarding patent certification requirements for 505(b)(2) applications and ANDAs also has been estimated and included within the collection of information approved by OMB under OMB control number 0910–0001. We are not re-estimating these approved burdens in this document. Only the reporting burdens associated with patent submission and listing in the final rule are estimated in this document.

The information collection reporting requirements are as follows:

Section 314.50(h) requires that an NDA, an amendment, or a supplement contain patent information described under § 314.53.

Section 314.53 requires that an applicant submitting an NDA, an amendment, or a supplement, except as provided in § 314.53(d)(2), submit on FDA Forms 3542 and 3542a, the required patent information described in the section.

Compliance with the information collection burdens under §§ 314.50(h) and 314.53 consists of submitting with an NDA, an amendment, or a supplement (collectively referred to as ''application'') the required patent declaration(s) on Form FDA 3542a for each ''patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product'' (§ 314.53(b)). Such patents claim the drug substance (active ingredient), drug product (formulation and composition), or method of use. If a patent is issued after the application is filed with FDA but before the application is approved, the applicant must submit the required patent information on Form FDA 3542a as an amendment to the application, within 30 days of the date of issuance of the patent.

Within 30 days after the date of approval of an application, the applicant must submit Form FDA 3542 for each patent that claims the drug substance (active ingredient), drug product (formulation and composition), or approved method of use for listing in the Orange Book. In addition, for patents issued after the date of approval of an application, Form FDA 3542 must be submitted within 30 days of the date of issuance of the patent.

In the **Federal Register** of June 2, 2006 (71 FR 32099), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment from the Pharmaceutical Research and Manufacturers of America (PhRMA). The comment stated, generally, that FDA underestimated the resources required to satisfy the collection of information. Further, the comment

suggested that the information collection burden could be reduced by clarifying several questions in FDA Forms 3542a and 3542, and deleting or revising questions in these forms that appear, to the comment, to serve no statutory purpose. In the following section of this document, FDA describes the comments submitted by PhRMA, and our responses (the word ''Response'' appears in parentheses before our response).

First, the comment stated that the information collection burden associated with FDA Forms 3542a and 3542 was underestimated ''in part because completion of each form may involve personnel from legal, patent, regulatory, medical, and scientific divisions within a company.''

(Response) FDA published for public comment its initial estimate of this collection of information in the proposed rule published in the **Federal Register** of October 24, 2002 (67 FR 65448 at 65458 and 65459). This estimate of the information collection burden was revised through the rulemaking process and further described in the preamble to the June 2003 final rule (68 FR 36676 at 36698 and 36699). In connection with the request that OMB extend approval for the collection of certain information described in the June 2003 final rule, FDA updated, unbundled, and revised its estimate of the burden associated with the collection of information on FDA Forms 3542a and 3542 to 20 hours and 5 hours, respectively. This proposed revision was based on FDA's experience and other information. The comment provides no data to support its statement that the burden was underestimated, and does not propose any alternative estimate. Accordingly, FDA declines to revise its estimate. We note, however, that clarifications and revisions to FDA Forms 3542a and 3542 described in this document would be expected to reduce the overall burden associated with this collection of information.

Second, the comment stated that question 4 on FDA Forms 3542a and 3542 ''requires completion of the form on a claim-by-claim basis.'' The comment further contended that ''[t]his is not authorized under the statute, it serves no statutory purpose, and it significantly increases the burden on applicants.'' In the alternative, the comment requested that FDA amend question 4.2 to ''specifically allow an applicant to list together multiple claims for the same or related labeled indications.''

(Response) FDA addressed comments related to listing individual patent claims for method-of-use patents in the response to comments 7 and 11 in the preamble to the June 2003 final rule. In the June 2003 final rule, we explained that the ''specific method-of-use claims are essential to our review because sections 505(j)(2)(A)(viii) and 505(b)(2)(B) of the act allow ANDA and 505(b)(2) applicants to file statements which assert that the method-of-use patent does not claim a use for which the applicant is seeking approval [a ''section viii statement'']. The ANDA or 505(b)(2) applicant does not have to seek approval for all uses approved for the reference listed drug'' (68 FR 36676 at 36685). A method of use may be omitted for ANDA labeling if it is protected by exclusivity or a listed patent (§ 314.94(a)(8)(iv)). We further stated: ''Thus, the claim-by-claim listing of method-of-use patents will permit ANDA and 505(b)(2) applicants to assess whether they are seeking approval for a use claimed in the listed patent, and thus determine whether to submit a patent certification or a section viii statement. Additionally, we can verify that the certification or statement is correct, and that only the appropriate methods of use are included in the proposed labeling for the ANDA or 505(b)(2) drug product'' (68 FR 36676 at 36685).

In the alternative, PhRMA requested that FDA amend question 4.2 to ''specifically allow an applicant to list together multiple claims for the same or related labeled indications.'' FDA agrees, consistent with our regulations at § 314.53(b)(1), that an applicant may list together multiple patent claims for each pending or approved method of use. However, each pending or approved method of use must be separately identified and therefore will require separate listing(s) of method of use information in section 4 of FDA Forms 3542a and 3542. Therefore, if a patent claims one or more methods of use that apply to a pending application or approved product, each pending or approved method of use would need to be listed separately along with the patent claim number(s) for the patent claim(s) for the pending or approved method of use. A single Form FDA 3542a or Form FDA 3542, as appropriate, may be used to list a patent claiming more than one method of use, provided that each method of use is listed separately along with the patent claim number(s) for the patent claim(s) for the pending or approved method of use. This regulatory approach accomplishes the statutory objective of providing adequate information to permit ANDA and 505(b)(2) applicants to file statements which assert that the method-of-use patent does not claim a use for which the applicant is seeking approval.

FDA that the instructions and text of section 4 on FDA Forms 3542a and 3542 may warrant clarification in light of the text of the regulations at § 314.53(b)(1). FDA's regulations on submission of patent information state, in pertinent part: ''The applicant shall *separately identify each pending or approved method of use* and related patent claim'' (§ 314.53(b)(1) (emphasis added)). Section 4 of FDA Forms 3542a and 3542 states: ''Sponsors must submit the information in section 4 *separately for each patent claim* claiming an approved method of using the approved drug product. For each method of use claim referenced, provide the following information* * *'' (emphasis added). Currently, some applicants list multiple patent claims together for each separately identified pending or approved method of use. FDA is revising FDA Forms 3542a and 3542 to clarify that this is an acceptable practice and conform the text of these Forms to our existing regulations. The text of Section 4 of these Forms is being revised to delete the word ''separately'' from the first sentence of text and add other clarifying text. FDA also is adding clarifying text to the information and instructions for these Forms.

Third, the comment questioned the specific statutory purpose for requiring a sponsor to ''link'' the method of use claimed by the patent to language identifying the use in the approved (or, with respect to Form FDA 3542a, the proposed) labeling for the drug product.

(Response) FDA previously has explained the basis for requiring a description of each individual method of use for which a patent is submitted for listing, and identification of the corresponding language found in the labeling of the approved NDA that corresponds to that method of use. As discussed in more detail in the June 2003 final rule, this approach provides for effective implementation of the patent certification and ''section viii statement'' provisions of the act by enabling ANDA and 505(b)(2) applicants, and FDA, ''to assess whether the ANDA or 505(b)(2) applicant is seeking approval for a use the sponsor states is claimed in the listed patent, and thus determine whether the applicant must submit a patent certification or may submit a section viii statement under section 505(b)(2)(B) or 505(j)(2)(A)(viii) of the act'' (68 FR 36676 at 36682). A ''section viii statement'' refers to a statement under section 505(b)(2)(B) or 505(j)(2)(A)(viii)

of the act asserting that a listed method of use patent does not claim a use for which the applicant is seeking approval. In addition, information regarding the approved labeling corresponding to a listed method of use patent assists FDA in determining which labeling should be omitted when a 505(b)(2) application or ANDA includes a ''section viii statement'' indicating that it is not seeking approval for the use claimed in the patent.

Fourth, with reference to section 4.2b of Form FDA 3542, the comment questioned the need for a sponsor to provide a proposed ''Use Code'' describing the approved indication or method of use for inclusion in the Orange Book. The comment stated that inclusion of ''Use Codes'' is not required by the act, and noted that ''although FDA has suggested that requiring NDA applicants to supply use codes is necessary to assist generic applicants, the agency also stated that a generic applicant should not rely on the information concerning method of use patents provided by the NDA applicant, but should conduct an independent review and evaluation of the relevant patent(s) and approved labeling'' (citing the June 2003 final rule, 68 FR 36676 at 36683 and 36685). Further, the comment stated that FDA has ''provided no guidance to innovators on appropriate content of 'use codes''' and such information may be duplicative of other information provided in the form.

(Response) As discussed in the previous response, section 505(b)(2)(B) and 505(j)(2)(A)(viii) of the act permit a 505(b)(2) and ANDA applicant, respectively, to assert that a listed method of use patent does not claim a use for which the applicant is seeking approval. FDA has consistently required that a 505(b)(2) or ANDA applicant filing a section viii statement must ''carve out'' from the proposed labeling, the labeling protected by the listed patent (see 68 FR 36676 at 36682). The regulatory requirement that an applicant provide a ''use code'' for method of use patents listed in the Orange Book facilitates the implementation of the certification and section viii statement provisions of the act (see section 701 of the act (21 U.S.C. 371)). Accordingly, the use code should contain adequate information, within the 240-character limitation of FDA's database system, to assist 505(b)(2) and ANDA applicants in determining whether a listed method of use patent claims a use for which the 505(b)(2) or ANDA applicant is not seeking approval and thus has been carved out of the proposed labeling.

Fifth, the comment states that ''Question 2 requires unnecessary information relating to patents that claim polymorphs.'' The comment contends that ''[t]he fact that a properly listed patent may also claim other forms is irrelevant * * * it is *only* if the patent claims only a different form that the agency needs to ask applicants to certify that the substance is, nevertheless, the 'same.''' The comment suggests that subquestion 2.2 should be revised accordingly to state: ''Does the patent claim *only* a drug substance that is a polymorph of the active ingredient in the pending NDA, amendment, or supplement?''

(Response) FDA's regulations at §§ 314.53(c)(2)(i)(M)(*2*) and 314.53(c)(2)(ii)(N)(*2*) require information on whether the patent claims a polymorph that is the same active ingredient that is described in the pending application or supplement. This requirement is described at section 2.2 of Forms 3542a and 3542. The revision that you have proposed would require revision of FDA's regulations. In continuing to implement Title XI of the MMA, FDA plans to initiate a rulemaking to amend certain regulations regarding 505(b)(2) applications and ANDAs to facilitate compliance with and efficient enforcement of the act. FDA will further consider your request for clarification and revision to the regulations in the context of that rulemaking.

Sixth, the comment questioned the need for indicating in subsection 2.7 and 3.3 of FDA Forms 3542a and 3542 whether the product claimed in a product-by-process patent is novel. The comment stated that this information is not required by the act and the ''same listing criteria used for other product patents should apply to patents that include product-by-process claims.'' The comment further noted that ''including the term 'novel' in the form plunges FDA into complicated issues of patent law, which it has said repeatedly are beyond its expertise.''

(Response) In subsection 2.7 and 3.3 of FDA Forms 3542a and 3542, we require applicants to indicate whether the product claimed in the product-by-process patent is novel to help ensure that process patents are not submitted for listing (see June 2003 final rule, 68 FR 36676 at 36686). FDA's regulations at §§ 314.53(c)(2)(i)(L) and 314.53(c)(2)(ii)(M) codify this requirement. The June 2003 final rule and questions on FDA Forms 3542a and 3542 were intended to clarify which patents must and must not be submitted for listing, and avoid situations in which applicants may inadvertently submit patents that do not meet the statutory and regulatory requirements. We disagree with the comment's suggestion that inclusion of the term 'novel' in FDA Forms 3542a and 3542 ''plunges FDA into complicated issues of patent law.'' FDA's patent listing role remains ministerial. As discussed in the preamble to the June 2003 final rule, FDA ''will not evaluate a patent to assess whether the declaration is accurate or whether the patent has been appropriately submitted for listing. * * * We will, however, review the declaration for completeness and to determine that the information given by the NDA applicant or holder or patent owner indicates that the patent is eligible for listing'' (68 FR 36676 at 36687).

Seventh, the comment requested clarification of subsection 1f of FDA Forms 3542a and 3542, which states ''Is the patent referenced above a patent that has been submitted previously for the approved NDA or supplement referenced above.''

(Response) In the preamble to the June 2003 final rule, FDA discussed, in response to comment 12, its requirement for information on whether the patent being submitted has been submitted previously for the NDA or supplement referenced in the declaration. FDA stated: ''We require information on whether the patent being submitted has been submitted previously for the NDA or supplement referenced in the declaration. For example, an earlier listed patent may have included several method-of-use claims but only one method of use previously approved and submitted. A second method of use may be approved in a supplement and must be submitted for listing. Such information will assist the Orange Book staff with its administrative listing responsibilities'' (68 FR 36676 at 36686). FDA will further consider your request for clarification in the context of the rulemaking referenced previously.

Eighth, the comment suggested that FDA clarify that the ''purpose of questions 2.1, 3.1, and 4.1 [on Forms 3542a and 3542] is simply to differentiate the types of claims that appear in the patents in questions (i.e., drug substance, drug product, or method of use). In other words, question 2.1 should be answered 'yes' only if the patent contains 'drug substance' claims. Question 3.1 should be answered 'yes' only if the patent contains drug product claims. Question 4.1 should be answered 'yes' only if the patent contains method of use claims.''

(Response) FDA's regulations at § 314.53(c)(2) set forth reporting requirements for submission of patent information. These regulations require

the submission of information and verification of patent information to ensure not only that the patent contains drug substance, drug product, or method of use claims, but that the patent claims the drug substance, drug product, or method of using the drug product for which approval is sought or has been granted. The clarification that you have requested would require revision of FDA's regulations. FDA will further consider your request for clarification and revision to the regulations in the context of the rulemaking referenced previously.

Finally, the comment stated that the submission of FDA Forms 3542a and 3542 with submission and upon approval, respectively, of an NDA supplement is redundant where the information has not changed since the form last was filed, imposes a burden on sponsors, and serves no statutory purpose.

(Response) FDA's regulation at § 314.53(b)(1) requires any applicant who submits to FDA a supplement to an approved application that meets the criteria of § 314.53(d)(2) to submit FDA Forms 3542a and 3542, as appropriate. The revision that you have proposed would require revision of FDA's regulations. FDA will further consider your request for clarification and revision to the regulations in the context of the rulemaking referenced previously.

FDA estimates that the collection of information resulting from these regulations is as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Form FDA 3542a	114	3.2	365	20	7,300
Form FDA 3542	96	3.2	308	5	1,540
Total					8,840

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–8141 Filed 4–27–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0155]

Defining and Implementing Quality in Clinical Investigations: From Design to Completion; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop cosponsored with the Drug Information Association (DIA) entitled ''Defining and Implementing Quality in Clinical Investigations: From Design to Completion.'' The purpose of the public workshop is to solicit constructive information on identifying attributes of quality in clinical investigations, approaches to quality from design to completion, and methods for measuring quality and ensuring data integrity during the conduct of clinical investigations. The public workshop will discuss the definition of quality, mechanisms for implementing quality in clinical investigations, and methods to improve the accuracy and reliability of collected data, which will enhance human subject protection. FDA also is requesting comments on these topics.

Dates and Time: The public workshop will be held on May 10 and May 11, 2007, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Washington Marriott Hotel, 1221 22d St. NW., Washington, DC 20037.

Contact Person: Kathleen Donner, DIA, 215–293–5810, FAX: 215–442–6199, or e-mail: *Kathleen.Donner@diahome.org*.

Registration: Registration will be accepted by mail, fax, or e-mail until May 10, 2007, and also onsite. Mail, fax, or e-mail your registration information (including name, title, firm name, address, telephone, and fax numbers) to the contact person (see *Contact Person*). You may also register online at *www.diahome.org* (''Educational Offerings,'' keyword 07013). (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) There is a registration fee for the workshop: $1,165.00 for industry, $475.00 for charitable nonprofit organizations or academia, and $200.00 for Federal Government employees. The registration fees will be used to cover costs of the workshop, including program materials and food.

If you need special accommodations due to a disability, please contact Kathleen Donner (see *Contact Person*) at least 7 days in advance.

Comments: The deadline for submitting comments regarding this public workshop is July 10, 2007.

Interested persons may submit written or electronic comments 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*. 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.

SUPPLEMENTARY INFORMATION: The purpose of the public workshop entitled ''Defining and Implementing Quality in Clinical Investigations: From Design to Completion'' is to solicit constructive information on identifying attributes of quality in clinical investigations, approaches to quality from design to completion, and methods for measuring quality and ensuring data integrity during the conduct of clinical investigations.

Over time, clinical investigations have evolved dramatically. In particular, clinical investigations are no longer primarily conducted at a single center; the use of electronic recordkeeping in the studies has increased dramatically; and the conduct of clinical investigations has become more complex. The public workshop will address the challenges of and potential solutions for maintaining quality during the conduct of clinical investigations to protect human subjects. The following

topics will be discussed: (1) The definition of quality, (2) mechanisms for implementing quality in clinical investigations, and (3) methods to improve the accuracy and reliability of collected data. As part of the Human Subject Protection/Bioresearch Monitoring Initiative (*http://www.fda.gov/oc/initiatives/criticalpath/*), this public workshop will help improve the safe conduct of clinical investigations and maximize efficiency in clinical investigations without compromising quality.

Dated: April 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–8137 Filed 4–27–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–07–8001]

Memorandum of Understanding Between the National Cancer Institute and the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the National Cancer Institute (NCI), part of the National Institutes of Health of the Department of Health and Human Services. The purpose of this MOU is to establish a formal collaboration between FDA and NCI regarding proteomics science and technology to accelerate proteomics technology development and application in clinical settings. FDA and NCI intend to collaborate in areas involving proteomics such as: Sample collection, preparation, storage and processing; bioinformatics and data analysis; discovery and validation of biomarkers; and surrogate biomarkers of cancer development and drug response, including standardization among technology platforms and assay standards development.

DATES: The agreement became effective April 5, 2007.

FOR FURTHER INFORMATION CONTACT: Francis Kalush, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0996, e-mail: *francis.kalush@fda.hhs.gov*.

or Henry Rodriguez, Office of the Director, (MSC–2580), National Cancer Institute, 31 Center Dr., rm. 10A52, Bethesda, MD 20892, 301–496–1550.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: April 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

NATIONAL CANCER INSTITUTE

AND THE

U.S. FOOD AND DRUG ADMINISTRATION

National Cancer Institute – Food and Drug Administration

Memorandum of Understanding for Proteomics

The National Cancer Institute (NCI) and the Food and Drug Administration (FDA), within the United States Department of Health and Human Services agree that it is in the interests of both agencies to develop a partnership that leverages each agency's core expertise and resources. This partnership is intended to facilitate new science and technology initiatives to advance domestic and international public health through the development of targeted therapies based on patient proteomic profiles, ultimately decreasing death and suffering due to cancer and improving public health. Proteomics involves the study of proteins and their functions, and proteomics can be instrumental in discovery of biomarkers, including cancer markers. Although each agency has a unique mission, the NCI and FDA have mutual interests in understanding the molecular biology of cancer—NCI as the U.S. government's principal agency for cancer research and training, and FDA in promoting the public health by efficiently reviewing clinical research and product submissions. It is within the scope of these interests, as they pertain to proteomics technologies and proteomics applications in clinical cancer diagnostics and cancer therapeutics development, that this memorandum of understanding (MOU) is developed.

1. PURPOSE, BACKGROUND, AND SCOPE

The purpose of this MOU is to create a framework to foster scientific and programmatic collaborations. The collaborations envisioned by this MOU involve proteomics science and technology applications such as instrument/technology validation, informatics, biological sample preparation, diagnostics, and discovery and validation of biomarkers for cancer development, therapeutics, and response. This MOU sets forth the basic principles under which the agencies intend to work together to foster partnership in: research and education; the exchange of ideas, information, and data; the development and use of proteomics technologies that may be used by the NCI and other sponsors in clinical applications..

Achievements in science and technology now require a higher level of integration, particularly in the development of interdisciplinary research teams. As outlined next, the programmatic strengths and interests of the NCI and FDA in the areas of molecular biology, technology development, protein chemistry, analytical validation and clinical trials designs offer the opportunity for synergy that will accelerate proteomics technology development and application in clinical settings.

NCI Programs:

The NCI has recently launched the Clinical Proteomics Technology Initiative for Cancer (CPTI) to specifically address limitations and challenges in applying clinical proteomics to alleviate the cancer burden. The CPTI supports research, training, data collections and analysis, technology assessment, and other programs with respect to understanding and

analyzing the field of proteomics in order to improve technological capabilities in early detection, diagnostics, prevention, therapeutic monitoring, and treatment of cancer. The NCI has identified the development of high impact technologies to support cancer research as a priority area. The CPTI program will advance the field of proteomics to allow data and results to be compared and compiled to better understand changes in the proteome as they are reflected in cancer.

FDA Programs:

The FDA has launched the Critical Path Research Initiative to identify, develop, and apply state-of-the-art genomics and proteomics technologies to product characterization and clinical analytical design for faster, more predictable development and regulatory approval of safe and effective innovative medical products for cancer to enhance public health.

The FDA's Office for In Vitro Diagnostic Devices Evaluation and Safety (OIVD) in the Center for Devices and Radiological Health (CDRH) reviews premarket submissions for in vitro diagnostics, monitors their postmarket performance, and takes compliance actions when necessary. The development of appropriate measurement methods, standard protocols, and analysis platforms is essential for the integration into clinical settings of new technologies and molecular-based diagnostics.

The FDA's Center for Biological Evaluation and Research (CBER) ensures the safety, purity, potency, and effectiveness of biological products, including vaccines, blood and blood products, and cells, tissues, and gene therapies applicable to the prevention, diagnosis, and treatment of human diseases or conditions. Proteomics technologies are intrinsically related to the development and monitoring of therapies for safety, potency and efficacy, and will facilitate the availability of critical medical therapies to save lives and improve human health. CBER monitors numerous attributes of a product from development to postmarketing, and regulatory scientists at CBER are engaged in the Critical Path research and regulatory applications of proteomics technologies.

The FDA's Center for Proteomics and Center for Toxicoinformatics within the National Center for Toxicological Research (NCTR) conduct research in support of the FDA's current and future regulatory needs. The Center for Proteomics currently has a research emphasis in the development of mass spectrometry-based proteomic methods as well as in the development of proteomic informatics tools to aid in data analysis (in collaboration with the Center for Toxicoinformatics). The Center for Toxicoinformatics continues development of technologies to incorporate, manage, and analyze data from proteomic experiments to improve sponsor data submission channels.

This MOU is intended to enable and encourage the sharing of knowledge between FDA and NCI programs to solve complex problems in the area of each agency's mission. The parties agree to collaborate to develop strategic plans, set priorities, and leverage expertise, as appropriate, from multiple sources, including the private sector.

Projects undertaken pursuant to this MOU are intended to facilitate the transfer of science, technology, and engineering discoveries developed through the CPTI to clinical settings by working with the expertise of the FDA in product characterization, and analytical and clinical validation. Important areas of mutual interest include the application of proteomics technologies to disease diagnostics, product characterization, safety assessment, and therapeutic monitoring. Both agencies depend on the reproducibility of results to ensure accurate clinical applications. In order for the field of proteomics to advance and move into clinical settings, both agencies would benefit from exchanges of information on analytical and clinical validation of proteomic technologies, proteomic data submission requirements, and the subsequent results and interpretations of such data.

2. AUTHORITY

This MOU is authorized under Section 301 of the Public Health Service Act which authorizes NIH to cooperate with public authorities and scientific institutions and Section 903 of the Federal Food, Drug, and Cosmetic Act. This MOU is also consistent with FDA's statutory charge to foster collaboration with other science-based agencies to enhance the scientific and technical expertise available to the FDA in the conduct of its duties with respect to the development, clinical investigation, evaluation, and postmarket monitoring of emerging medical therapies.

3. COLLABORATION

The parties intend to collaborate in areas involving proteomics, including: sample collection, preparation, storage, and processing, bioinformatics and data analysis, diagnostic assay development, and discovery and validation of biomarkers and surrogate biomarkers of cancer development and drug response, including standardization among technology platforms and assay standards development.

a. Coordination and cooperation may include but is not limited to the specific areas identified below:
    i. Development of best practices for data submission and analysis parameters for use by proteomics data repositories
    ii. Development of joint educational material and programs in which NCI and FDA detail the current best practices for proteomics technologies and applications
    iii. Formation of NCI, FDA, academic, industry and other government agency partnerships to improve proteomics standard operating procedures
    iv. Use of facilities, software, algorithms, and data repositories
    v. Cooperation to facilitate and enhance extramural research and development activities by either agency
    vi. Cooperation through the exchange of agency expertise, scientific and technical information, data, and publications

vii. Joint publicity of mutually reinforcing activities, publications, and research results, including hyperlinks to each others' programs on their websites
viii. Mutual assistance in program planning, and in the review of research development projects and proposals
ix. Inclusion of representatives from each agency in workshops, working groups, seminars, and other related activities.
x. Joint educational seminars and workshops to make the scientific community aware of the research in applied and clinical proteomics, reduce redundant studies, and improve the efficiency of technology validation
xi. Educational seminars by FDA for NCI , its funded institutions, and other stakeholders on the current requirements, parameters, and concerns in regulatory data submissions for products based on proteomics data.

b. To pursue the collaboration described above, the parties agree to use the following framework for implementing collaborations:
   i. Both the NCI and FDA will identify coordinators to implement and manage this MOU. The Director of the NCI's Clinical Proteomic Technologies Initiative for Cancer and the Director of the FDA's Office for In Vitro Diagnostic Devices Evaluation and Safety in the Center for Devices and Radiological Health, or their designees, will be the primary representatives to coordinate the activities from their respective agencies for the purposes of this MOU. The coordinators shall meet on a regular basis to discuss activities conducted under the MOU, review all aspects of implementation, and plan future directions of programmatic interaction and cooperation, and report to signatories annually.
   ii. Concepts or ideas for developing collaborations or activities involving joint projects or integrated approaches to conducting science or technology development will be presented by submission of concepts to the coordinators of the MOU.
   iii. Representatives from each agency will meet quarterly to review progress and address new opportunities for collaboration. Technical and programmatic working groups made up of NCI and FDA employees may be assembled to make formal recommendations for collaboration.
   iv. Industry and scientific organizations' representatives for relevant proteomic technologies may interact with each agency in accord with regulations and guidance issued by each agency.

c. Cost and funding
   i. None of the activities outlined above involves the exchange of funds between NCI and FDA.
   ii. The NCI and FDA agree that this MOU does not commit either agency to make specific levels of financial or personnel support or to provide specific laboratory or office space for programs relevant to this MOU. The provision of such support will be based upon available resources and provided in accordance with the law.

4. INFORMATION-SHARING, TECHNOLOGY TRANSFER AND INTELLECTUAL PROPERTY

The parties shall share and disclose information in compliance with applicable laws and regulations. Implementing agreements may address particular information exchange or disclosure issues more specifically

5. CONTACTS

Notices or formal communications pursuant to this MOU should be sent to:

For FDA: Francis Kalush, Ph.D
OIVD, CDRH
2098 Gaither Rd
HFZ-440
Rockville, MD. 20850
Telephone: (240) 276-0996

For NCI: Henry Rodriguez., Ph.D., M.B.A.
Office of the Director, NCI
31 Center Drive
MSC 2580 - Room 10A52
Bethesda, MD 20892
Telephone: (301) 496-1550

6. DURATION OF MOU, MODIFICATIONS, AND TERMINATION

This MOU, when agreed to by the Parties, will have an effective date from the date of the last to sign and will remain in effect for five (5) calendar years from the effective date, unless modified by the mutual agreement of the parties upon sixty days notice in writing. Either party may terminate this MOU at any time provided a 90-day advance written notice is provided to the other agency and appropriate steps are taken to ensure an orderly termination of joint activities.

AGREED TO:

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 4/27/07
Signature of authorized representative Date

Janet Woodcock, M.D.
Deputy Commissioner and Chief Medical Officer,
U.S. Food and Drug Administration (FDA)

NATIONAL CANCER INSTITUTE

BY: _____ 04/04/07
Signature of authorized representative Date

Anna Barker, Ph.D.
Deputy Director for Strategic Scientific Initiatives and Partnerships
National Cancer Institute

BY: _____ 04-05-07
Signature of authorized representative Date

John E. Niederhuber, M.D
Director, National Cancer Institute
National Institutes of Health

EFFECTIVE DATE

This MOU is effective on the date of the last to sign.

[FR Doc. 07–2106 Filed 4–27–07; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–23]

Notice of Availability of the Draft Environmental Impact Statement for the Development of Vista Village (formerly Cedar Grove) Affordable Housing in Tahoe Vista, Placer County, CA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that Placer County, CA makes available to the public for comment the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) for the development of Vista Village (formerly Cedar Grove) Affordable Housing in Tahoe Vista, Placer County, CA. Placer County prepared the DEIS/DEIR under its authority as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4 and under its authority as lead agency in accordance with the California Environmental Quality Act (CEQA). This project is subject to the Tahoe Regional Planning Agency (TRPA) regulations for the preparation of an Environmental Impact Statement (EIS). This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. HUD Community Development Block Grant (CDBG) and HOME Investment Partnership funds will be used for the development of affordable housing. The purpose and need for this project is to provide affordable workforce housing in order to sustain the existing economy and meet the housing needs of the North Tahoe area, as outlined in the document.

DATES: *Comments Due Date:* Comments must be received within 45 days from the date this notice is published. Written comments on the DEIS/DEIR should be addressed to the individual named below under the heading **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: Several public comment meetings will be held during the comment period in order to ensure public participation. The first Placer County public meeting will be held at a special meeting of the Placer County Planning Commission on April 26, 2007, at 11:15 a.m. The public meeting will be held at the following location: Granlibakken Resort, 625 Granlibakken Road, Tahoe City, CA 96145, For the time see the Placer County Web site.

TRPA will hold several public meetings on Vista Village. The first one will be: May 9, 2007, at the TRPA Advisory Planning Committee, at the TRPA Office, 128 Market Street, Stateline, NV 89449.

The second meeting will be: May 23, 2007, at the TRPA Governing Board, at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, CA 96143.

FOR FURTHER INFORMATION CONTACT:

Joanne Auerbach, Placer County NEPA Certifying Officer, Housing Program Coordinator, Placer County Redevelopment Agency, 3091 County Center Dr., Suite 260, Auburn, CA 95603, Phone: 530/745–3167, FAX: 530/745–3152, E-mail: *jauerbac@placer.ca.gov* or;

Maywan Krach, Assistant Technician, Environmental Coordination Services, Community Development Resources Center, 3091 County Center Drive, Suite 190, Auburn, CA 95603, Phone: 530/745–3132, FAX: 530/745–3003, E-mail: *cdraecs@placer.ca.gov.*

The DEIS/DEIR/DEIS is available on the Internet and can be viewed or downloaded at: *http://www.placer.ca.gov* or *http://www.trpa.org*

Copies of the DEIS/DEIR/DEIS are also available for review or viewing at the following locations:

Placer County Planning Department, Community Development Resource Center, 3091 County Center Drive, Auburn, CA 95603.

Placer County Planning Department, Tahoe Office, 565 West Lake Boulevard, Tahoe City, CA 96145.

Kings Beach Public Library, 301 Secline Street, Kings Beach, CA 96148.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a draft EIS was published in the **Federal Register** on October 21, 2005, under the name of Cedar Grove Affordable Housing Project. The proposed action is a proposal by Pacific West Communities to develop approximately 12.2 acres in the Tahoe Vista area of Placer County for an affordable housing complex. The project site is located on the Kings Beach 7.5-minute U.S.G.S. topographic quadrangle map, north of State Route 28 and west of National Avenue in Tahoe Vista, California. The site is currently undeveloped, forested land with dense stands of pine, fir, and cedar. Adjacent properties to the east and west have been developed for residential housing. The North Tahoe Regional Park is directly north of the project site, and the Mourelatos resort is to the south.

This project would require a TRPA Plan Area Statement (PAS) Amendment for the Tahoe Estates PAS 021 Special Area 6. Alternative A, B, and C would also require an amendment to the Tahoe Vista Community Plan for the annexation of the land.

This is a combined document—an EIR under the CEQA Guidelines, an EIS under NEPA and HUD's at 24 CFR Part 58, and an EIS under TRPA's Code of Regulations.

Multiple alternatives were identified and discussed via the scoping process. After preliminary review, five alternatives were considered for full evaluation. They are:

Alternative A—152 Units

Coverage Ratio: 41.7%

Population: 400 (Assuming 1 person/bedroom)

Alternative B—144 Units

Coverage Ratio: 50.0% for 96 units of affordable

Coverage Ratio: 30.0% for 48 units of moderate

Population: 368 (Assuming 1 person/bedroom)

Alternative C—132 Units

Coverage Ratio: 38.6%

Population: 364 (Assuming 1 person/bedroom)

Alternative D—72 Units

Coverage Ratio: 30%

Population: 276 (Assuming 1 person/bedroom)

Rental Units: 64, affordable to 50–80% of Area Median Income

For Sale Units: 8, affordable to Moderate Income (120% of Area Median Income)

Alternative E—No Project

No Action. If nothing were done, no additional affordable housing would be built. The project site would remain vacant.

Actions common to all alternatives, except E, include traffic, water, sewer, wastewater, transit, noise and scenic quality.

The DEIS/DEIR addresses the following environmental issues: hydrology and water quality, soils and geology, air quality, noise, transportation, vegetation, wildlife and scenic resources, cultural resources, land use, growth inducement, land capacity and coverage, public services, public utilities and affordable housing.

None of these rise to a level that they can not be mitigated. Without counting Alternative E (No Action), the Environmentally Recommended Alternative is D.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: April 17, 2007.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E7–8138 Filed 4–27–07; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–02]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2006

AGENCY: Office of Native American Programs, Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2006 (FY2006) Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this year's award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the ICDBG Program awards, contact the Area Office of Native American Programs (ONAP) serving your area or Deborah M. Lalancette, Office of Native Programs, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone (303) 675–1600. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY2006 awards announced in this notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on March 8, 2006, (71 FR 11728). Applications were scored and selected for funding based on the selection criteria in that notice and Area ONAP geographic jurisdictional competitions.

The amount appropriated in FY2006 to fund the ICDBG was $59,400,000. $3,970,000 of this amount was retained to fund imminent threat grants in FY2006. In addition, a total of $2,108,587 in carryover funds from prior years was also available. The allocations for the Area ONAP geographic jurisdictions, including carryover, are as follows:

Eastern/Woodlands	$6,722,067
Southern Plains	12,199,013
Northern Plains	7,109,840
Southwest	21,193,809
Northwest	3,516,489
Alaska	6,807,369
Total	$57,548,587

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 85 awards made under the various regional competitions in Appendix A to this document.

Dated: March 28, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Appendix A

FY 2006 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS

Name of applicant	Amount funded	Project description
Nottaweseppi Huron Band of Potawatomi, Inc., Dan Green, Grants Writer, 2221 1½ Mile Rd., Fulton, MI 49052, 616–249–0159.	$600,000	Community Center, Phase II.
Lac du Flambeau Band of Lake Superior Chippewa Indians, Emerson Coy, Grants Writer, P.O. Box 67, 602 Peace Pipe Rd., Lac Du Flambeau, WI 54538, 715–588–4252.	$600,000	Construction/replacement of two wells & pump houses.
White Earth Band of the Minnesota Chippewa, Michael Triplett, Grants Writer, P.O. Box 418, White Earth, MN 56359, 218–983–3285.	$600,000	Pow Wow Grounds infrastructure.
Ho-Chunk Nation, Jeff Hendricks, Grant Writer, W9814 Airport Rd., PO Box 667, Black River Falls, WI 54615, 715–284–9343.	$600,000	Blue Wing Elder Center Project.
Pokagon Band of Potawatomi Indians, Tim Fenderbosch, Grants Planner, PO Box 180, 58620 Sink Rd., Dowagiac, MI 49047, 269–782–6323.	$432,067	Tribal Complex Infrastructure Project.
Poarch Band of Creek Indians, Robert McGee, Grants Writer, 5811 Jack Springs Rd., Atmore, AL 36502.	$600,000	Community Cultural Education Center.
Red Cliff Band of Lake Superior Chippewas, Jeff Benton, Grants Planner, 88385 Pike Rd., Hwy 13, Bayfield, WI 54814, 715–779–3700 x234.	$500,000	Walking Shield.
Upper Sioux Community, Audrey Fuller, Planner, 2511 565th St., Granite Falls, MN 56241, 612–309–5708.	$390,000	Construction of ambulatory care clinic.
Fond du Lac Band of Lake Superior Chippewa, Jason Holliday, Grants Writer, 1720 Big Lake Rd., Cloquet, MN 55720, 218–878–2625.	$600,000	Fond du Lac LEED Building Pilot Project.
Grand Traverse Band of Ottawa & Chippewa Indians, Tara Bailey, Grants Writer, 2605 N. West Bayshore Dr., Suttons Bay, MI 49682, 231–534–7449.	$600,000	Elders Complex Improvements.
Menominee Indian Tribe of WI, Jeremy Weso, Planner, W2908 Tribal Office Loop Rd., Keshena, WI 54135, 715–799–5154.	$600,000	Menominee Museum Cultural Center.
Red Lake Band of Chippewa Indians of MN, Dawn Huseby, Grants Writer, PO Box 574, Red Lake, MN 56671, 218–679–3341.	$600,000	Boys & Girls Club Construction.
Absentee-Shawnee Tribe, Governor Larry Nuckolls, 2025 South Gordon Cooper Drive, Shawnee, OK 74801, (405) 275–4030.	$240,000	Absentee Shawnee Housing, Energy Star Rehabilitation.

FY 2006 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Name of applicant	Amount funded	Project description
Chickasaw Nation, Governor Bill Anoatubby, PO Box 1548, Ada, OK 74821, (580) 436–7216.	$800,000	Day Care Center.
Choctaw Nation, Chief Gregory E. Pyle, PO Drawer 1210, Durant, OK 74702, (580) 924–8280.	$800,000	Hugo Wellness Center.
Citizen Potawatomi Nation, Chairman John A. Barrett, 1601 South Gordon Cooper Drive, Shawnee, OK 74801, (405) 275–3121.	$800,000	Citizen Potawatomi Nation, Small Ambulatory Health Clinic.
Eastern Shawnee Tribe, Chief Charles Enyart, PO Box 350, Seneca, MO 64865, (918) 666–2435.	$800,000	Family and Children's Services Building.
Kaw Nation, Chairman Guy Munroe, PO Box 50, Kaw City, OK 74641, (580) 269–2552.	$800,000	Kaw Nation Education and Learning Center.
Miami Tribe, Chief Floyd Leonard, PO Box 1326, Miami, OK 74355, (918) 542–1445.	$800,000	Myaamia Wellness Center.
Ottawa Tribe, Chief Charles Todd, PO Box 110, Miami, OK 74355, (918) 540–1536	$800,000	Housing Rehabilitation.
Pawnee Nation, President Ronald Rice, PO Box 470, Pawnee, OK 74058, (918) 762–3621.	$800,000	Pawnee Health and Community Services Center.
Ponca Tribe, Chairman Dan Jones, 20 White Eagle Dr., Ponca City, OK 74601, (580) 762–8104.	$64,586	Storm Shelters.
Ponca Tribe, Chairman Dan Jones, 20 White Eagle Dr., Ponca City, OK 74601, (580) 762–8104.	$733,371	Cultural Center.
Prairie Band Potawatomi Nation, Chairman Tracy Stanhoff, 16281 Q Road, Mayetta, KS 66509, (785) 966–2255.	$800,000	Water Treatment Facility.
Quapaw Tribe, Chairman Donna Mercer, PO Box 765, Quapaw, OK 74363, (918) 542–1853.	$762,335	Quapaw Elderly Activity Center.
Sac and Fox of OK, Principal Chief Elizabeth Kay Rhoads, Route 2, Box 246, Stroud, OK 74079, (918) 968–3526.	$800,000	Historic Preservation and Cultural Resources Community Center.
Seneca-Cayuga Tribe, Chief Paul Spicer, PO Box 1283, Miami, OK 74355, (918) 542–6609.	$798,721	Wellness Center.
Shawnee Tribe, Chairman Ron Sparkman, PO Box 189, Miami, OK 74355, (918) 542–2441.	$800,000	Community Center.
United Keetoowah Band of Cherokee Indians, Chief George Wickliffe, PO Box 746, Tahlequah, OK 74465–0746, (918) 456–5126.	$800,000	Civil Defense Station.
Native Village of Venetie, Eddie Frank, First Chief, 110 Woodyard Road, Venetie, AK 99781, 907–849–8212.	$423,000	Construct 2 single-family homes.
Arctic Village, Margorie Gemmill, First Chief, P.O. Box 69, Arctic Village, AK 99722, 907–587–5523.	$400,000	Construct 2 single-family homes.
Curyung Tribal Council, Thomas Tilden, First Chief, P.O. Box 216, Dillingham, AK 99576, 907–842–2384.	$500,000	Construct 10 single-family homes.
Native Village of Pilot Point, Victor Seybert, President, P.O. Box 449, Pilot Point, AK 99649, 907–797–2208.	$500,000	Health Clinic.
Native Village of Tuntutuliak, Nick David, President, P.O. Box 8086, Tuntutuliak, AK 99680, 907–256–2128.	$234,290	Health Clinic.
Tlingit Haida Central Council, Corrine Garza, Chief, 9097 Glacier Highway, Juneau, AK 99801, 907–463–7107.	$429,364	Fund start-up of 20 micro-enterprises.
Hughes Village, Jeff Weltzin, Grant Preparer, 103 Front St., Hughes, AK 99745, 907–456–3794.	$481,850	Solid Waste landfill.
St. Paul Island, Robert Melovidor, President, P.O. Box 86, St. Paul Island, AK 99660, 907–546–3221.	$500,000	Rehab 10 homes.
Village of Kotlik, Reynold Okitkun, President, P.O. Box 20210, Kotlik, AK 99620, 907–899–4326.	$289,643	Health Clinic.
Native Village of Goodnews Bay, Bavilla Merritt, President, P.O. Box 50, Goodnews Bay, AK 99589, 907–967–8930.	$400,000	Health Clinic.
Native Village of Perryville, Gerald Kosbruk, President, P.O. Box 101, Perryville, AK 99648, 907–853–2203.	$500,000	Health Clinic.
Village of Atmautluak, Peter Jenkins, President, P.O. Box 6568, Atmautluak, AK 99559.	$500,000	Rehab 10 homes.
Orutsararmiut Native Village, Flora Orlun, Executive Director, P.O. Box 927, Bethel, AK 99559, 907–543–2608.	$149,222	Street Improvements.
Akiachak Native Community, George Peter, President, P.O. Box 70, Akiachak, AK 99551, 907–825–4626.	$500,000	Construct Tribal Services and Housing Building.
Native Village of Akutan, Dan Duame, Executive Director, P.O. Box 89, Akutan, AK 99553, 907–563–2146.	$500,000	Construct 4 single-family homes.
Akiak Native Community, Sheila Williams, Tribal Administrator, P.O. Box 52127, Akiak, AK 99552, 907–765–7112.	$500,000	Water/sewer Expansion.
Ak-Chin Indian Community, Anita Avila, Grants Specialist, 42507 W. Peters & Nall Rd., Maricopa, AZ 85239, (520) 568–1064.	$605,000	Library Wing Construction.
Bear River Band of Rohnerville Rancheria, Bruce Merson, Tribal Housing Director, 27 Bear River Drive, Loleta, CA 95551, (707) 407–6617.	$604,131	New Housing Construction.
Bishop Paiute Tribe, Robert Vance, Grant Coordinator, 50 Tu Su Lane, Bishop, CA 93514, (760) 872–4356.	$605,000	Head Start & Community Center.
Cocopah Indian Tribe, Michael Reed, CEO, Cocopah Housing & Development, County 15, Avenue G, Somerton, AZ 85350, (928) 627–8863.	$600,000	Rehab of 12 Rental Units.

FY 2006 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Name of applicant	Amount funded	Project description
Colorado River Indian Tribes, Rick Ench, Tribal Planner, Route 1, Box 23–B, Parker, AZ 85344, (928) 669–1301.	$825,000	Juvenile Shelter Home Facility.
Dry Creek Rancheria Band of Pomo Indians, Barb Pegg, Housing Manager, 190 Foss Creek Circle, Healdsbury, CA 95448, (707) 473–2178.	$605,000	Childcare Facility.
Hopi Tribe, Daniel Honanie, President, Moenkopi Developers Corp., 1 Main St., P.O. Box 123, Kykotsmovi, AZ 86039, (928) 606–2680.	$2,200,000	Hotel/Conference Center.
Hualapai Indian Tribe, Salena Siyuja, Grants & Contracts Manager, P.O. Box 179, Peach Springs, AZ 86434, (928) 769–2216.	$825,000	Social Services Center/Safe House.
Karuk Tribe of California, Erin Hillman, Grants Writer, P.O. Box 1016, Happy Camp, CA 96039, (530) 493–1600, ext. 2017.	$605,000	Cultural Center.
Mesa Grande Band of Mission Indians, Mark Romero, Chairperson, P.O. Box 267, Santa Ysabel, CA 92070, (760) 782–3818.	$604,800	Community Education Center.
Moapa Band of Paiute Indians, Bill Cornelius, Acting Tribal Administrator, P.O. Box 340, Moapa, NV 89025, (702) 865–2787.	$605,000	Multi-Purpose Community Building.
Navajo Nation, Chavez John, Supervisor, Dept. of Community Development, P.O. Box 9000, Window Rock, AZ 86515, (928) 871–6539.	$4,002,951	Power lines/Waterlines Extensions.
Ohkay Owingeh, Les King, Project Manager, P.O. Box 1099, San Juan Pueblo, NM 87566, (505) 747–0700.	$605,000	Road Improvements.
Pueblo of Nambe, Irene Tse-Pe, Tribal Administrator, Route 1, Box 117–BB, Santa Fe, NM 87506, (505) 455–2036.	$329,981	New Housing Development.
Pueblo of Sandia, Charles Padilla, Program Manager, 481 Sandia Loop, Bernalillo, NM 87004, (505) 771–5064.	$605,000	Water System Improvements.
Quartz Valley Reservation, Kurt Simon, Tribal Administrator, 13601 Quartz Valley Road, Fort Jones, CA 96032, (530) 468–5907.	$605,000	Gymnasium Expansion.
Robinson Rancheria of Pomo Indians, Yolanda Lathem, Community Development Representative, 1545 East Hwy 20, Nice, CA 95454–4015, (707) 275–0527, ext. 13.	$514,250	Purchase and Installations of 6 Manufactured Homes.
Robinson Rancheria of Pomo Indians, Yolanda Lathem, Community Development Representative, P.O. Box 4015, Nice, CA 95454–4015, (707) 275–0527, ext. 13.	$56,784	
San Pasqual Band of Mission Indians, Don Calac, Housing Director, P.O. Box 365, Valley Center, CA 92082, (760) 749–3200.	$605,000	Water Waster Improvements.
San Xavier District, Kelly Moyes, Grants Manager, 2018 W. San Xavier Road, Tucson, AZ 85746, (520) 573–4005.	$621,123	Rehab 21 Units.
Santa Ysabel Band of Diegueno Indians, Michelle Baay, Housing Director, P.O. Box 130, Santa Ysabel, CA 92070, (760) 765–0845.	$605,000	New Housing Construction, 6 Units.
Wahoe Tribe of Nevada & California, Debby Carlson, Grants & Contracts Manager, 919 Highway 395 South, Gardnerville, NV 89410, (775) 265–4191.	$605,000	Multi-Purpose Community Center.
White Mountain Apache Tribe, Byron McNeil, Community Development Manager, P.O. Box 700, Whiteriver, AZ 85941, (928) 338–2464.	$2,750,000	Expansion of Detention Center.
Yurok Tribe, Peggy O'Neill, Tribal Planner, P.O. Box 1027, Klamath, CA 95548, (707) 482–1350.	$604,789	Recreation & Community Center.
Burns Paiute Tribe, Chester Dean, Tribal Chairman, 100 Pasigo Street, Burns, OR 97720, (541) 573–2088.	$500,000	Housing Rehabilitation.
Southern Puget Sound Inter-Tribal Housing Authority (For Hoh Tribe), Dave Bell, Executive Director, SE 11 Squaxin Drive, Shelton, WA 98584, (360) 426–4641.	$435,750	Housing Rehabilitation.
Tulalip Tribe, Stanley Jones, Tribal Chairman, 6700 Totem Beach Road, Tulalip, WA 98271, (360) 651–4500.	$300,000	Public Facilities and Improvements.
Kalispel Tribe of Indians, Glen Nenema, Chairman, PO Box 39, Usk, WA 99180, (509) 445–1147.	$290,895	Public Facilities and Improvements.
Squaxin Island Tribe, James Peters, Executive Director, 10 SE Squaxin Drive, Shelton, WA 98584, (360) 426–9781.	$500,000	Housing Rehabilitation.
Klamath Tribes, Allen Foreman, Tribal Chairman, 501 Chiloquin, Chiloquin, OR 97624, (541) 783–2219.	$489,844	Public Facilities and Improvements.
Confederated Tribes of the Grand Ronde Community of Oregon, Chris Mercier, Tribal Chairman, 9615 Grand Ronde Road, Grand Ronde, OR 97347, (503) 879–2250.	$500,000	Public Facilities and Improvements.
Coeur d'Alene Tribe, Chief Allan, Tribal Chairman, 850 A Street, PO Box 408, Plummer, ID 83851, (208) 686–1800.	$500,000	Housing Rehabilitation.
Chippewa Cree Tribe, John Houle, Tribal Chairman, R.R. #1, P.O. Box 544, Box Elder, MT 59521, (406) 395–4478.	$900,000	Public Facility.
Crow Tribe of Indians, Carl Venne, Tribal Chairman, P.O. Box 159, Crow Agency, MT 59022, (406) 638–3715.	$1,100,000	Housing Rehabilitation.
Ho-Chunk Community Development Corporation, Judi Meyer, Executive Director, P.O. Box 264, Walthill, NE 68067, (402) 846–5353.	$900,000	Housing Rehabilitation.
Lower Brule Sioux Tribe, Michael Jandreau, Tribal Chairman, 187 Oyate Circle, Lower Brule, SD 57548, (605) 473–5561.	$900,000	Housing Rehabilitation.
Ponca Tribe of Nebraska, Larry Wright, Tribal Chairman, P.O. Box 288, Niobrara, NE 68760, (402) 438–9222.	$609,840	Public Facility.
Three Affiliated Tribes, Marcus Wells, Jr., Tribal Chairman, 404 Frontage Road, New Town, ND 58763, (701) 627–4781.	$900,000	Public Facility.

FY 2006 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Name of applicant	Amount funded	Project description
Turtle Mountain Band of Chippewa, David Brien, Tribal Chairman, P.O. Box 900, Belcourt, ND 58316, (701) 477–2639.	$900,000	Housing Rehabilitation.
Ute Mountain Ute Tribe, Manuel Heart, Tribal Chairman, P.O. Box 52, Towaoc, CO 81334, (970) 565–3751.	$900,000	New Housing Construction.

[FR Doc. E7–8140 Filed 4–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4966–N–04]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointment of Michael Flynn as a member of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–3000.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–1381 (this is not a toll-free number).

Dated: April 4, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–8191 Filed 4–27–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Home in Sarasota County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and Habitat Conservation Plan (HCP). Patrick McShane and Martha Dey (Applicants) request an ITP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate taking about 0.31 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging and sheltering habitat incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Sarasota County, Florida (Project). The destruction of 0.31 acre of foraging and sheltering habitat is expected to result in the take of one family of scrub-jays. The Applicants' HCP describes the mitigation and minimization measures proposed to address the effects of the Project on the Florida scrub-jay.

DATES: We must receive your written comments on the ITP application and HCP on or before May 30, 2007.

ADDRESSES: See the Public Comments Solicited section below for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing to: South Florida Ecological Services Field Office, Attn: Permit number TE146270–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at the South Florida Ecological Services Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**), telephone: 772/562–3909, ext. 232.

SUPPLEMENTARY INFORMATION: If you wish to comment on the ITP application and HCP, you may submit comments by any one of several methods. Please reference permit number TE146270–0 in such comments. You may mail comments to the Service's South Florida Ecological Services Office (see **ADDRESSES**). You may also e-mail your comments to *trish_adams@fws.gov*. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the South Florida Ecological Service Office (see **ADDRESSES**).

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, 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.

Residential construction for the McShane and Dey HCP will take place within Section 34, Township 39, Range 22, North Port, Sarasota County, Florida, at Pilgrim Road, Lot 9, Block 2026 of the 44th Addition to Port Charlotte Subdivision, Florida. This lot is within scrub-jay occupied habitat.

The lot encompasses about 0.31 acre, and the footprint of the home, infrastructure, and landscaping precludes retention of scrub-jay habitat on this lot. In order to minimize take onsite the Applicants propose to mitigate for the loss of 0.31 acre of scrub-jay habitat by contributing a total of $36,106.98 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, will have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species

and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 et seq.). If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Authority: This notice is provided pursuant to section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: April 24, 2007.

Paul Souza,

Field Supervisor, South Florida Ecological Services Field Office.

[FR Doc. E7–8159 Filed 4–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Safe Harbor Agreement and Application for an Enhancement of Survival Permit for the Attwater's Prairie Chicken, Northern Aplomado Falcon, Whooping Crane, and Black Lace Cactus for Activities on Private Lands in All or Portions of Aransas, Austin, Colorado, Galveston, Goliad, Refugio, and Victoria Counties, TX (Grazing Lands Conservation Initiative)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: The Coastal Prairie Coalition, Grazing Lands Conservation Initiative (GLCI) (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (Act) of 1973, as amended. The requested permit, which is for a period of 99 years, includes a draft Safe Harbor Agreement (Agreement) for the endangered Attwater's prairie chicken (*Tympanuchus cupido attwateri*), the endangered Northern aplomado falcon (*Falco femoralis septentrionalis*), the endangered Whooping crane (*Grus Americana*), and the endangered black lace cactus (*Echinocereus reichenbachii* var. *albertii*) in all or portions of Aransas, Austin, Colorado, Galveston, Goliad, Refugio, and Victoria counties, Texas. We invite public comment.

DATES: To ensure consideration, written comments must be received on or before May 30, 2007.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the draft Agreement or other related documents may obtain a copy by written or telephone request to the Field Supervisor, Corpus Christi Ecological Services Field Office, c/o Texas A&M University at Corpus Christi, 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas 78412–5837, (361) 994–9005. The documents will also be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Service's Corpus Christi office. Comments concerning the draft Agreement or other related documents should be submitted in writing to the Field Supervisor at the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o Texas A&M University at Corpus Christi, 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas 78412–5837. Please refer to permit number TE–151746–0 when submitting comments. All comments received, including names and addresses, will become a part of the official administrative record and may be made available to the public.

Public 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.

FOR FURTHER INFORMATION CONTACT: Mary Orms at the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o Texas A&M University at Corpus Christi, 6300 Ocean Drive, Unit 5837, Corpus Christi, Texas 78412–5837 (361–994–9005; Fax 361–994–8262, or *Mary_Orms@fws.gov*)

SUPPLEMENTARY INFORMATION: The Applicant has applied to the Service for a section 10(a)(1)(A) enhancement of survival permit for the endangered Attwater's prairie chicken, the endangered Northern aplomado falcon, the endangered Whooping crane, and the endangered black lace cactus in all or portions of Aransas, Austin, Colorado, Galveston, Goliad, Refugio, and Victoria counties, Texas for a period of 99 years.

Background

The Applicant plans to implement conservation measures designed to promote the recovery of covered species on enrolled private lands located in the counties listed above. The conservation measures will improve and maintain healthy productive grasslands, reduce brush canopy, modify plant composition, promote growth of or enhance the detection and/or palatability of desired foods, increase prey base, facilitate the accumulation of fine fuels for prescription burning, provide additional habitat, provide upland freshwater supplies, and aid in dispersal of covered species among various protected habitats, providing a measure of insurance against losses due to demographic or genetic factors and catastrophic events. The Agreement is expected to provide a net conservation benefit for the Attwater's prairie chicken, Northern aplomado falcon, Whooping crane, and black lace cactus. Due to the programmatic nature of this Agreement, baseline conditions will be determined at the time of enrollment. Baseline conditions for most properties enrolled under the Agreement are anticipated to be zero. Where participating properties are determined to have an environmental baseline greater than zero, these areas shall be described in the Certificate of Inclusion (CI) and Prairie Management Agreement, with detailed descriptions and/or maps showing the locations of existing habitat or populations attached to the CI and Prairie Management Agreement.

The Agreement will provide certainty to the Applicant relative to future property-use restrictions in the event that any of the covered species should be taken on their land as a result of implementation of the proposed conservation measures.

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subject to increased property use restrictions if

their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property.

Section 9 of the Act prohibits take of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities.

Christopher T. Jones,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. E7–8164 Filed 4–27–07; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Big Branch Marsh National Wildlife Refuge in St. Tammany Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service, announce that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Big Branch Marsh National Wildlife Refuge is available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a CCP for each national wildlife refuge. This Draft CCP, when final, will describe how we intend to manage Big Branch Marsh National Wildlife Refuge over the next 15 years.

DATES: To ensure consideration, we must receive your comments no later than May 30, 2007.

ADDRESSES: Send your comments or requests for more information to: Charlotte Parker, Natural Resource Planner, 61389 Highway 434, Lacombe, LA 70445; Telephone: 985/882–2029. The Draft CCP/EA may be accessed and downloaded from the Service's Internet Web site: *http://southeast.fws.gov/planning/* under ''Draft Documents.''

SUPPLEMENTARY INFORMATION: Big Branch Marsh National Wildlife Refuge was established in 1994 and is presently comprised of approximately 18,600 acres of coastal marsh and pine forested wetlands. The purposes of the refuge are to: Provide habitat for a natural diversity of wildlife associated with the marsh of the refuge; provide wintering habitat for migratory waterfowl; provide nesting habitat for wood ducks; provide habitat for non-game migratory birds; and provide opportunities for public outdoor recreation, such as hunting, fishing, hiking, bird watching, and environmental education and interpretation, whenever they are compatible with the purposes of the refuge.

Significant issues addressed in the Draft CCP/EA include: Managing threatened and endangered species, species of concern, targeted species, and other species of Federal responsibility; conserving habitats native to the Lake Pontchartrain Basin; improving refuge visitor programs; increasing public outreach; providing formal environmental education programs; protecting archaeological and historical sites on the refuge; and, purchasing the remaining land inholdings within the established acquisition boundary of the refuge.

Three management alternatives are considered in the Draft CCP/EA. Alternative A continues current management, with no new actions to improve or enhance existing programs. Alternative B, the proposed alternative, emphasizes management of natural resources based on maintaining and improving wetland habitats, monitoring targeted flora and fauna representative of the Lake Pontchartrain Basin, and providing quality public use programs and wildlife-dependent recreational activities. Alternative C focuses on expanding public use activities to the fullest extent possible while conducting only mandated resource protection.

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations. All comments received become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act NEPA (40 CFR 1506(f)), and Departmental and Service policies and procedures.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 13, 2007.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E7–8162 Filed 4–27–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: This notice publishes the approval of the extension of agreement between the Northern Cheyenne Tribe and the State of Montana concerning Class III gaming, with the incorporated amendments.

EFFECTIVE DATE: April 30, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

This amendment extends the term of the compact for 10 years, increases the number of gaming machines, the maximum jackpot on gaming machines and the prize limit on Class III poker, for the Northern Cheyenne Tribe.

Dated: April 19, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–8134 Filed 4–27–07; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to Approved Tribal-State Compact.

SUMMARY: This notice publishes the Approval of the Tribal-State Compact for Class III Gaming between the Spokane Tribe and the State of Washington.

EFFECTIVE DATE: April 30, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Compact effective today authorizes Class III gaming, sets limits for the size and scope of gaming for the Spokane Tribe and clarifies the state's regulatory role.

Dated: April 19, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–8136 Filed 4–27–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Final Environmental Impact Statement for the General Management Plan, Castillo de San Marcos National Monument

SUMMARY: The National Park Service (NPS) announces the availability of the Final Environmental Impact Statement (FEIS) for the General Management Plan (GMP) for Castillo de San Marcos National Monument, Florida. This document will be available for public review pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and NPS policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making). The authority for publishing this notice is 40 CFR 1506.6.

The document provides a framework for management, use, and development of the historic site by the NPS for the next 15 to 20 years. The document describes four management alternatives, including a No-Action Alternative and the NPS's preferred alternative. The anticipated environmental impacts of those alternatives are also analyzed. Public comment on the draft plan was considered when preparing the final document.

DATES: The NPS will execute a Record of Decision no sooner than 30 days following the Environmental Protection Agency's notice in the **Federal Register**.

ADDRESSES: Copies of the FEIS and GMP are available from the Superintendent, Castillo de San Marcos National Monument, 1 South Castillo Drive, St. Augustine, Florida 32084; telephone: 904–829–6506. An electronic copy of the document is available on the Internet at *http://parkplanning.nps.gov/*.

FOR FURTHER INFORMATION CONTACT: Contact the Superintendent, Castillo de San Marcos National Monument, at the address and telephone number shown above or David Libman at 404–562–3124, extension 685.

The responsible official for the FEIS is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW, 1924 Building, Atlanta, Georgia 30303.

Dated: March 9, 2007.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. E7–8151 Filed 4–27–07; 8:45 am]

BILLING CODE 4312–75–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 14, 2007. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 15, 2007.

J. Paul Loether,

Chief National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Arkansas County

Gillett Jail, Old, 207 Main St., Gillett, 07000440

Benton County

Pea Ridge Commercial Historic District, (Benton County MRA) Pickens St. roughly beT. Greene St. and Davis St. and Curtis Ave. roughly bet. Pike St. and Macintosh St., Pea Ridge, 07000445

Desha County

Dumas Commercial Historic District, South Main St. bet. Choctaw and Waterman Sts., Dumas, 07000446

Independence County

Ruddell Mill Site, Address Restricted, Batesville, 07000434

Jackson County

Tuckerman Water Tower, (New Deal Recovery Efforts in Arkansas MPS) South End of Front St., Tuckerman, 07000443

Jefferson County

Central Texas Gravel Locomotive #210, 1700 Port Rd., Pine Bluff, 07000442 DODX Guard Car #G–56, 1700 Port Rd., Pine Bluff, 07000441

Wabash Alloys Locomotive, 1700 Port Rd., Pine Bluff, 07000444

Miller County

Beech Street Brick Street, Beech St. bet. 14th and 24th Sts., Texarkana, 07000438

Pulaski County

South Main Street Commercial Historic District, South Main St. from 12th St. to 17th St., Little Rock, 07000435

South Main Street Residential Historic District, South Main St. from 19th St. to 24th St., Little Rock, 07000436

Sebastian County

Arkansas 22, Old, Barling Segment, (Arkansas Highway History and Architecture MPS) Mayo Rd, Barling, 07000439

Yell County

Mickles Bridge, (Historic Bridges of Arkansas MPS) Spanning the Petit Jean R., 0.25 mi. N of AR 10 and approx. one mi. W of Yell County Rd. 49, Mickles, 07000437

DISTRICT OF COLUMBIA

District of Columbia

Grant, Ulysses S., School, (Public School Buildings of Washington, DC MPS) 2130 G St. NW, Washington, 07000447

Hayes, Rutherford B., School, (Public School Buildings of Washington, DC MPS) 5th and K Sts. NE, Washington, 07000449

Uline Ice Company Plant and Arena Complex, 1132, 1140, and 1146 3rd St. NE, Washington, 07000448

ILLINOIS

Cook County

Building at 399 West Fullerton Parkway, 399 W. Fullerton Ave., Chicago, 07000456

Rees, Harriet F., House, 2110 S. Prairie Ave., Chicago, 07000458

Steuben Club, The, 188 W. Randolph St., Chicago, 07000457

Ford County

Dunnan—Hampton House, 511 W. Pells St., Paxton, 07000455

Logan County

Hoblit House, 505 N. College Ave., Lincoln, 07000454

McHenry County

Geister, Christian, House, 302 S. Main St., Algonquin, 07000453

IOWA

Dickinson County

Antlers Hotel, 1703 Hill Ave., Spirit Lake, 07000452

Ringgold County

Beaconsfield Supply Store, 1621 Main St., Beaconsfield, 07000451

LOUISIANA

Calcasieu Parish

Muller's Department Store (Boundary Increase), 619 Ryan St., Lake Charles, 07000433

MINNESOTA

Dakota County

Holz Family Farmstead, 4665 Manor Dr., Eagan, 07000459

St. Louis County

Stuntz Bay Boathouse Historic District, At the northern of Stuntz Bay Rd., Breitung Township, 07000460

MISSOURI

Pulaski County

Osage Hills School, 1110 Glenwood S, Kirkwood, 07000462

St. Louis Independent City

General American Life Insurance Company National Headquarters, 706 Market St., St. Louis (Independent City), 07000461

Lowell School, 1409 E. Linton, St. Louis (Independent City), 07000464

Watcher Motor Car Company Building, (Auto-Related Resources of St. Louis, Missouri MPS) 2600–2614 Nebraska Ave., St. Louis (Independent City), 07000463

MONTANA

Fergus County

Hogeland, Abraham and Mary Walton, House, (Lewistown MRA) 620 W. Montana St., Lewistown, 07000465

PENNSYLVANIA

Adams County

Horner House and Barn, 20 Horner Rd., Cumberland Township, 07000468

Delaware County

Chester Waterside Station of the Philadelphia Electric Company, 2501 Seaport Dr., Chester, 07000467

Washington County

Wright, Enoch, House, 815 Venetia Rd., Peters Township, 07000466

[FR Doc. E7–8124 Filed 4–27–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Amsted Industries, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Amsted Industries. Inc.*, Civil Action No. 1:07–cv–00710. On April 18, 2007, the United States filed a Complaint alleging that the acquisition by Amsted Industries (''Amsted'') of the end-of-car cushioning assets (''EOCCs'') of FM Industries (''FMI''), a subsidiary of Progress Rail Services Holding Corporation, violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2. The proposed Final Judgment, filed at the same time as the Complaint, requires Amsted to divest without compensation all FMI intangible assets and all FMI tools and patterns used for imparting the shape, form, or finish to EOCCs. The proposed Final Judgment also requires Amsted to license royalty free and in perpetuity certain Amsted intangible assets and to make available all Amsted tools and patterns used for imparting the shape, form, or finish to EOCCs. Finally, the proposed Final Judgment requires Amsted to release market participants from restrictive covenants, as well as to notify the United States of future transactions.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Clerk Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: 202–307–0924).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Plaintiff, v. Amsted Industries, Inc., Two Prudential Plaza, 180 North Stetson Street, Suite 1800, Chicago, IL 60601, Defendant. Case No. 1:07–CV–00710. Judge: Bates, John D. Deck Type: Antitrust. Date Stamp: April 18, 2007.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief against defendant Amsted Industries, Inc. (''Amsted'') to remedy the harm to competition caused by Amsted's acquisition of FM Industries (''FMI''). The United States alleges as follows:

I. Nature of Action

1. Prior to Amsted's acquisition of FMI on December 1, 2005, the two firms vigorously competed with each other to sell new and reconditioned end-of-car cushioning units (''IEOCCs'') to railroads throughout the United States.

2. Amsted's acquisition of FMI has reduced the number of new EOCC suppliers from two to one, resulting in a merger to monopoly. The transaction also has reduced the number of reconditioned EOCC suppliers from three to two. Amsted's acquisition of FMI consolidated 90 percent of all EOCC sales in the United States.

3. The transaction has substantially lessened competition in the design, manufacture, and sale of new and reconditioned EOCCs and has created a monopoly in the design, manufacture, and sale of new EOCCs. As a result, prices for new and reconditioned EOCCs have increased and likely will continue to increase, the quality of EOCCs likely will decline, innovation relating to EOCCs likely will decline, and services currently offered in the EOCC markets have become and will continue to be less favorable to railroad customers. The United States, through this suit, asks the court to declare the defendant's conduct illegal and to restore the benefits of competition that were lost as a result of the transaction.

II. Jurisdiction and Venue

4. The United States brings this action against defendant Amsted under Section 15 of the Clayton Act, 15 U.S.C. 25, as

amended, to prevent and restrain Amsted from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2.

5. Defendant designs, manufactures, and sells new and reconditioned EOCCs in the flow of interstate commerce. Defendant's activities in designing, manufacturing, and selling EOCCs substantially affect interstate commerce. This Court has subject matter jurisdiction over this action and over the defendant pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

6. Venue is proper in this district pursuant to 28 U.S.C. 1391(c). Defendant has consented to venue and personal jurisdiction in this judicial district.

III. Parties to the Transaction

7. Amsted is a Delaware corporation with its principal place of business in Chicago, Illinois. Amsted's EOCC sales in the United States are made through its wholly owned subsidiary, ASF-Keystone. ASF-Keystone is a Delaware corporation with its principal place of business in Granite City, IL. Amsted is a diversified manufacturer of industrial components for the railroad, vehicular, and construction markets. Amsted's products include a range of railroad car parts, including couplers, side frames, bolsters, draft gears, and EOCCs. In 2005, Amsted had approximately $2.5 billion in sales. Amsted's EOCC manufacturing facility is located in Camp Hill, PA. Amsted's new and reconditioned EOCCs are shipped to customers throughout the United States and account for approximately $22 million in sales.

8. Progress Rail Services Holding Corporation (''Progress Rail'') is a Delaware corporation with its principal place of business in Albertville, AL and is a wholly owned subsidiary of Caterpillar, Inc., a Delaware corporation. Progress Rail is one of the largest suppliers of new and reconditioned railroad car parts, rail and trackwork components, and railroad car repair services to the railroad industry in the United States. Progress Rail has manufacturing facilities in 23 states, Canada, and Mexico. In 2005, Progress Rail had approximately $1.2 billion in sales.

9. Progress Rail's EOCC sales in the United States were made through its wholly owned subsidiary, FMI, formerly a Texas corporation with its principal place of business and EOCC manufacturing facility in Fort Worth, TX. FMI shipped new and reconditioned EOCCs to customers throughout the United States. In 2005, FMI had sales of approximately $24 million.

IV. The Transaction

10. On December 1, 2005, Amsted and Progress Rail completed an asset swap by which Progress Rail conveyed to Amsted its wholly owned subsidiary, FMI. On April 25, 2006, Amsted dismantled FMI by firing its employees and disposing of virtually all FMI plant equipment through an auction.

V. Trade and Commerce

A. The Relevant Product Markets

11. All freight cars undergo considerable stress from ''longitudinal'' forces, or forces exerted along the length of the train. During transit, freight cars are subjected to alternating longitudinal forces called draft and buff forces. Draft forces are pulling forces caused by train acceleration when freight cars are stretched or pulled apart. Buff forces are compressive forces caused by train deceleration when freight cars are pushed together. Freight cars also undergo considerable stress during switching and coupling at train depots. In order for a railroad to connect one freight car to another, it must collide the cars at significant speed. The impacts sustained during switching and coupling, like draft and buff forces, can cause serious damage to sensitive cargo inside a freight car.

12. All freight cars are equipped with some type of energy absorption device to mitigate the effects of draft, buff, and coupling stresses. The most common device is a draft gear, which provides the minimum protection required for safe railroad operation. Draft gears rely on friction between two steel plates to absorb and dissipate the energy created by longitudinal forces impacting the freight car. Another type of device is commonly referred to as an ''elastomeric device.'' Elastomeric devices are lightweight and low cost, but they are not suitable for all applications as they return much of the absorbed energy back into the draft system.

13. Railroads must use EOCCs, a specialized energy absorption device, when transporting sensitive cargos on freight cars. These shock absorbing devices use hydraulics (e.g., pressurized nitrogen gas and oils) to minimize longitudinal forces by absorbing and dissipating the maximum buff, draft, and coupling forces experienced during transit. By reducing and absorbing the forces exerted on freight cars, EOCCs ensure that sensitive cargo is not damaged during transit. Each EOCC unit consists of a piston, shaft, cylinder, end bells, and a rod that attaches the piston to the freight car coupler. Each EOCC-equipped freight car requires two EOCCs, one at each end of the freight car.

14. Other energy absorption devices, such as draft gears and elastomeric devices, do not provide the necessary level of cushioning required by customers shipping sensitive goods on freight cars. EOCCs therefore are critical components for freight cars carrying sensitive commodities, such as steel coils, automobile products, electronics, lumber, and paper products. Railroads and new freight car builders do not consider the price or availability of draft gears or elastomeric devices when soliciting prices for EOCCs from prospective suppliers.

15. Though sensitive cargos can be transported by ''intermodal'' freight cars with articulated connectors, railroads cannot substitute intermodal transportation for freight cars equipped with EOCCs. Intermodal freight cars are specially designed railcars that allow standard cargo containers to be stacked for rail transport. The cars must travel in groups connected by a ''slackless'' articulated coupling system. The coupling system transfers longitudinal forces to the ends of the intermodal group, protecting the containers from damage. Intermodal freight cars with articulated connectors do not provide sufficient cushioning for sensitive commodities, cannot physically transport certain sensitive commodities (such as automobiles and certain lumber products), and are subject to additional costs and operational constraints. When soliciting prices for EOCCs from prospective suppliers, railroad customers do not consider the cost or availability of transporting goods using intermodal freight cars.

16. Accordingly, railroad customers can use only freight cars equipped with EOCCs to carry certain sensitive goods and cannot substitute draft gears, elastomeric devices, or intermodal transport for EOCCs on freight cars.

17. Railroad customers use either new or reconditioned EOCCs when equipping freight cars. However, customers building new freight cars almost always are required to use only new EOCCs in construction. Thus, customers building new freight cars would be unable to substitute reconditioned EOCCs in building new cars.

18. Similarly, customers servicing older freight cars that have been in service for more than a decade almost always choose reconditioned EOCCs because the cost of reconditioned units is substantially lower than the cost of

new units. Thus, customers are unlikely to substitute new EOCCs for reconditioned EOCCs for use on older freight cars.

19. A small but significant increase in the price of new EOCCs would not cause purchasers to substitute draft gear, elastomeric devices, intermodal cars, or reconditioned EOCCs so as to make such a price increase unprofitable. Accordingly, the design, manufacture, and sale of new EOCCs is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

20. A small but significant increase in the price of reconditioned EOCCs would not cause purchasers to substitute draft gear, elastomeric devices, intermodal cars, or new EOCCs so as to make such a price increase unprofitable. Accordingly, the design, manufacture, and sale of reconditioned EOCCs is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

B. The Relevant Geographic Market

21. All EOCCs in the United States are designed, manufactured, and sold in the United States. Amsted sells, and FMI sold, EOCCs to customers located throughout the United States.

22. The United States is the relevant geographic market for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

C. Anticompetitive Effects

23. Before Amsted's acquisition of FMI, the markets for EOCCs were highly concentrated. For new EOCCs, the merging entities were the only two suppliers. For reconditioned EOCCs, the market was limited to three suppliers, and the merging parties had a combined market share of over 80%. The markets became substantially more concentrated following the acquisition. Using the Herfindahl-Hirschman Index (''HHI''), an explanation of which appears in Appendix A attached hereto, the transaction resulted in a post-merger concentration of over 7000 (an increase of over 2700) in the market for reconditioned EOCCs, while the consolidation in the market for new EOCCs resulted in a monopoly.

24. Amsted and FMI directly constrained each other's prices, limiting overall price increases for new and reconditioned EOCCs despite significant materials cost increases. Before the transaction, Amsted created forecasts that contemplated significant price increases resulting from the merger. These price increases were aimed at achieving certain margin targets each year that would result in total additional profits of over $17 million during the first three years following the acquisition. According to the forecasts, achieving this goal would require an overall price increase of 4% in 2006, 10% in 2007, and 5% in 2008, beyond increases in costs.

25. Amsted pricing data shows that Amsted raised prices substantially following its acquisition of FMI. For new EOCCs, customers who did not have the pricing protection of long-term contracts paid on average approximately 14% more in February 2006 than they did in November 2005. For reconditioned EOCCs, customers without long-term contracts paid an average increase of approximately 5% during the same time period.

26. Purchasers of new and reconditioned EOCCs in the United States benefitted from the vigorous and aggressive competition between Amsted and FMI through lower prices, higher quality, more innovation, and better service. Without the competitive constraint of head-to-head competition from FMI, Amsted has had and will continue to have the ability to exercise market power by raising prices, lowering product quality, decreasing services, and lessening product innovation.

27. The acquisition by Amsted of FMI has removed a significant competitor in the already highly concentrated new and reconditioned EOCC markets. The resulting substantial increase in concentration and loss of competition has denied EOCC customers the benefits of competition, in violation of Section 7 of the Clayton Act and Section 2 of the Sherman Act.

D. Entry Into the Production and Sale of New and Reconditioned EOCCs

28. Entry into the design, manufacture, and sale of new or reconditioned EOCCs will not be timely, likely, or sufficient to counter the anticompetitive effects of the transaction. A new entrant to either market would require certifications and approvals from the Association of American Railroads (''AAR''), including facility certification and design certification for each EOCC model to be manufactured or reconditioned. Additionally, the AAR requires that a new entrant undergo a conditional approval period during which production is monitored and significantly limited.

29. It is essential that a new entrant into either the new or reconditioned EOCC markets have sufficient technical know-how regarding the product in order to design and sell EOCCs. Thus, a new entrant must invest in significant design and engineering expertise in order to create the necessary tooling and intellectual property required to successfully manufacture new or reconditioned EOCCs according to AAR standards and railroad customer requirements.

30. A new entrant into the new or reconditioned EOCC markets also must produce EOCCs in sufficient quantities and with sufficiently consistent quality to assure railroad customers that the new and reconditioned EOCCs will provide the necessary level of cushioning required to protect sensitive cargo. Achieving this quality reputation requires an additional investment in time and money by any new entrant.

31. Although the manufacturing processes for new and reconditioned EOCCs are similar, both require unique inputs that are not readily available in the marketplace. For example, the manufacture of new EOCCs requires the use of patented designs and proprietary molds that are not needed in the reconditioning process. Similarly, the manufacture of reconditioned EOCCs requires the application of certain machining techniques and testing processes that are unique to the EOCC reconditioning market.

32. Therefore, entry by any firm into the new or reconditioned EOCC markets would not be timely, likely, or sufficient to counter anticompetitive price increases imposed by Amsted.

VI. First Cause of Action (Violation of Section 7 of the Clayton Act)

33. The United States incorporates the allegations of paragraphs 1 through 32 above.

34. On or about December 1, 2005, Amsted acquired FMI and its associated EOCC assets used in the manufacture of new and reconditioned EOCCs. The effect of this acquisition has been substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

35. The transaction has had the following effects, among others:

a. Competition in the new and reconditioned EOCC markets has been lessened substantially;

b. Actual and potential competition between Amsted and FMI in the design, manufacture, and sale of new and reconditioned EOCCs in the United States has been eliminated; and

c. Prices for new and reconditioned EOCCs have increased and likely will continue to increase, the quality of EOCCs likely will decline, innovation relating to EOCCs likely will decline, and services currently offered in the EOCC markets have become and will continue to be less favorable to railroad customers.

Second Cause of Action (Violation of Section 2 of the Sherman Act)

36. The United States incorporates the allegations of paragraphs 1 through 32 above.

37. On or about December 1, 2005, Amsted willfully created monopoly power by acquiring FMI, its only competitor in the manufacture and sale of new EOCCs. The effect of this acquisition has been to create a monopoly in violation of Section 2 of the Sherman Act.

38. The transaction has had the following effects, among others:

a. The combination created a monopoly for the sale of new EOCCs in the United States;

b. Actual and potential competition between Amsted and FMI in the design, manufacture, and sale of new EOCCs in the United States has been eliminated; and

c. Prices for new EOCCs have increased and likely will continue to increase, the quality of new EOCCs likely will decline, innovation relating to new EOCCs likely will decline, and services currently offered in the new EOCC market have become and will continue to be less favorable to railroad customers.

VII. Requested Relief

39. The United States requests that this Court:

a. Adjudge and decree the acquisition of FMI and its assets by defendant Amsted to violate Section 7 of the Clayton Act, 15 U.S.C. 18 and Section 2 of the Sherman Act, 15 U.S.C. 2;

b. Compel Amsted to divest all FMI EOCC intangible assets, in addition to all tools and patterns used for imparting the shape, form, or finish of EOCC components, and to take any further actions necessary to restore the market to the competitive position that existed prior to the acquisition;

c. A ward the United States the cost of this action; and

d. Grant the United States such other and further relief as the case requires and the Court deems just and proper.

Respectfully submitted,

April 18, 2007.

For Plaintiff United States:

/s/ _____

Gerald F. Masoudi Bar No. 466120,

Deputy Assistant Attorney General.

/s/ _____

J. Robert Kramer II,

Director of Operations.

/s/ _____

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Assistant Chief, Litigation II Section.

/s/ _____

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Attorneys U.S. Department of Justice Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Appendix A—Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See Horizontal Merger Guidelines § 1.51.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on April 18, 2007, and the United States and defendant, Amsted Industries, Inc. (''Amsted''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Amsted agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by Amsted to assure that competition is substantially restored;

And whereas, the United States requires Amsted to make certain divestitures, grant certain licenses, release all market participants of any Restrictive Covenants, and provide notification of any future transactions within 10 years of this Final Judgment for the purpose of remedying the lost competition alleged in the Complaint;

And Whereas, Amsted has represented to the United States that the divestitures, license grants, release of Restrictive Covenants, and notification of future transactions, as required below, can and will be made and that Amsted will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Amsted under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and Section 2 of the Sherman Act, 15 U.S.C. 2.

II. Definitions

As used in this Final Judgment:

A. ''Amsted'' means defendant Amsted Industries, Inc., a Delaware corporation with its headquarters in Chicago, IL, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''FMI'' means FM Industries, Inc., a Texas corporation and former subsidiary of Progress Rail, engaged in the development, production, and sale of EOCCs until it was acquired by Amsted on December 1, 2005.

C. ''Progress Rail'' means Progress Rail Services Holding Corporation, a Delaware corporation with headquarters in Albertville, AL, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents and employees.

D. ''EOCC'' means end-of-car cushioning unit, a hydraulic energy absorption device used to absorb and dissipate buff, draft, and coupling forces exerted on freight railcars.

E. ''Acquirer'' means Wabtec Corporation, the entity to whom Amsted

shall divest the Divested Assets and grant the Supplemental Asset License.

F. ''Alternative Acquirer'' means the entity to whom Amsted shall divest the Divested Assets and grant the Supplemental Asset License in the event that the Acquirer is unable or unwilling to receive the Divested Assets or the Supplemental Asset License.

G. ''Divested Assets'' means all FMI intangible assets owned or controlled by Amsted and all FMI tools and patterns owned or controlled by Amsted and used for imparting the shape, form, or finish to EOCC components, including:

1. All detail and arrangement drawings, customer drawings, schematics, blueprints, designs, design validation testing reports, and design review notes;

2. All specifications, manufacturing plans, assembly instructions, standard operating procedures, and work instructions related to the manufacturing process, including those related to tool speeds, feeds, special cutting tools, materials used, grinding and polishing, plating temperatures and processes, material thicknesses, seals, welding, and heat treatment;

3. All dies, castings, patterns, molds, models, toolings, fixtures, jigs, and gages;

4. All safety procedures and quality assurance documentation and instructions, including quality control plans, inspection frequency and criteria, work instructions, testing criteria, supplier manufacturing requirements, regulatory certifications, testing equipment specifications, surface finish instrument specifications, pressure/leakage testing and specifications, gage specifications, product validation, qualification, acceptance, and rejection criteria, and all related empirical performance measurements, data, and reports;

5. All supplier contact lists, customer contact lists, material lists, materials safety data sheets, substitute material lists, historic pricing and sales volume information, customer complaints, product serialization data, warranty information, product failure reports, market analyses, and all contracts, agreements, leases, commitments, or understandings with suppliers or customers;

6. All intellectual property (''IP'') assets or rights that have been used in the development, production, servicing, and sale of EOCCs, including but not limited to the names ''FMI,'' ''FM Industries,'' and ''Freight Master,'' all patents, including FMI's patented active draft technology (U.S. patent number 6,237,733 ''Internal neutral Positioning Spring''), all licenses, rights, and sublicenses, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, approvals, certifications, advertising literature, and all manuals and technical information provided to the employees, customers, suppliers, agents, or licensees of FMI; and

7. All research data concerning historic and current research and development efforts, including designs of experiments, and the results of unsuccessful designs and experiments relating to the production and design of EOCCs.

Among the Divested Assets, the divestiture of U.S. Patent number 6,237,733 ''Internal Neutral Positioning Spring'' will be transferred subject to a perpetual, royalty-free license to Amsted.

H. ''Person'' means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

I. ''Restrictive Covenants'' means all agreements, contracts, understandings, or arrangements between Amsted and any other person restricting competition in the development, production, and sale of EOCCs, including non-compete agreements between Amsted and former FMI employees; non-compete agreements between Amsted and current or former Amsted employees; and any exclusivity arrangements between Amsted and any of its suppliers or customers. The term Restrictive Covenants does not include Section 8.7 ''Post-Closing Non-Compete'' of Amsted's Asset Purchase Agreement with Progress Rail dated December 1, 2005. The term Restrictive Covenants does not include agreements between Amsted and Amsted's current and former employees to the extent those agreements prevent the disclosure of confidential information.

J. ''Supplemental Asset License'' means a perpetual royalty-free license to and copy of all Amsted's intangible assets used in the development, production, or sale of EOCCs, and a limited license to use certain Amsted tangible assets used in the development, production, or sale of EOCCs, including:

1. All detail and arrangement drawings, customer drawings, schematics, blueprints, designs, design validation testing reports, and design review notes;

2. All specifications, manufacturing plans, assembly instructions, standard operating procedures, and work instructions related to the manufacturing process, including those related to tool speeds, feeds, special cutting tools, materials used, grinding and polishing, plating temperatures and processes, material thicknesses, seals, welding, and heat treatment;

3. The use for two (2) years of all Amsted-owned or controlled dies, castings, patterns, molds, models, toolings, fixtures, jigs, and gages employed by Amsted suppliers in the production of EOCC components;

4. All safety procedures and quality assurance documentation and instructions, including quality control plans, inspection frequency and criteria, work instructions, testing criteria, supplier manufacturing requirements, testing equipment specifications, surface finish instrument specifications, pressure/leakage testing and specifications, gage specifications, product validation, qualification, acceptance, and rejection criteria, and all related empirical performance measurements, data, and reports; and

5. Amsted's patented active draft technology, U.S. Patent number 6,357,612 ''Rail Car Cushioning Device;''

The term ''Supplemental Asset License'' shall not include tangible or intangible assets exclusively used in the production or sale of products other than EOCCs, and also shall not include Amsted cost data, price data, revenue data, research and development information, or customer contract information.

III. Applicability

A. This Final Judgment applies to Amsted, as defined above, and all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

B. Amsted shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divested Assets, or the assets underlying the Supplemental Asset License, that the purchaser will agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Amsted is hereby ordered and directed, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divested Assets and grant the Supplemental Asset License to the Acquirer, all in a manner consistent with this Final Judgment. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in

total, and shall notify the Court in such circumstances. Amsted agrees to use its best efforts to divest the Divested Assets and grant the Supplemental Asset License as expeditiously as possible. Amsted also agrees that it shall receive no compensation or anything of value for divesting the Divested Assets or granting the Supplemental Asset License pursuant to this Final Judgment.

B. In accomplishing the divestiture and licenses ordered by this Final Judgment, Amsted promptly shall inform the Acquirer that the Divested Assets and Supplemental Asset License are being conveyed pursuant to this Final Judgment and provide the Acquirer a copy of this Final Judgment. Amsted shall offer to furnish to the Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Divested Assets and Supplemental Asset License customarily provided in a due diligence process, except such information or documents subject to the attorney-client or work-product privileges. Amsted shall make available such information to the United States at the same time that such information is made available to any other person.

C. Amsted shall permit the Acquirer to have reasonable access to personnel and to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. Amsted shall provide information giving the identity and function of the personnel involved in the operation and management of both Amsted and FMI to enable the Acquirer to make offers of employment. Amsted will not interfere with any negotiations by the Acquirer to employ any Amsted employee.

D. Amsted shall unilaterally release all persons from any Restrictive Covenants related to the production, development, or sale of EOCCs. If after one year from the entry of this Final Judgment, the Acquirer has failed to deliver an EOCC manufactured or reconditioned by the Acquirer to a railroad industry customer, Amsted shall also unilaterally release Progress Rail from Section 8.7 of Amsted's Asset Purchase Agreement with Progress Rail dated December 1, 2005 (''Post-Closing Non-Compete'').

E. Amsted shall preserve and maintain the Divested Assets and the assets licensed under the Supplemental Asset License and shall not license, transfer, encumber, or otherwise impair the value of such assets while the divestiture is pending.

F. Amsted shall use commercially reasonable efforts to facilitate the transfer of EOCC cores from Amsted's facilities at the request of railroad customers. Amsted shall take no action the effect of which is to interfere with or impede the transfer of EOCC cores owned by railroad customers to the Acquirer or the ability of the Acquirer to compete effectively in the sale of reconditioned EOCCs.

G. Amsted shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divested Assets or Supplemental Asset License.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment shall include the entire Divested Assets and Supplemental Asset License, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divested Assets and Supplemental Asset License can and will be used by the Acquirer as part of an economically viable, ongoing business engaged in the production and sale of EOCCs in the United States. The divestiture shall be accomplished so as to satisfy the United States, in its sole discretion, that:

1. The Divestiture Assets and Supplemental Asset License will remain viable and that the divestiture will remedy the competitive harm alleged in the Complaint; and

2. None of the terms of any agreement between the Acquirer and Amsted gives Amsted the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively in the production and sale of EOCCs.

V. Appointment of Trustee To Effect Divestiture

A. In the event that the Acquirer is unable or unwilling to receive the Divested Assets and Supplemental Asset License, Amsted shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divested Assets and the grant of the Supplemental Asset License in a manner consistent with this Final Judgment to an Alternative Acquirer approved by the United States in its sole discretion.

B. Amsted shall use commercially reasonable efforts to facilitate the transfer of EOCC cores from Amsted's facilities at the request of railroad customers. Amsted shall take no action the effect of which is to interfere with or impede the transfer of EOCC cores owned by railroad customers to the Alternative Acquirer or the ability of the Alternative Acquirer to compete effectively in the sale of reconditioned EOCCs.

C. Unless the United States otherwise consents in writing, the divestiture pursuant to Section V of this Final Judgment shall include the entire Divested Assets and Supplemental Asset License, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divested Assets and Supplemental Asset License can and will be used by the Alternative Acquirer as part of an economically viable, ongoing business engaged in the production and sale of EOCCs in the United States. The divestiture shall be accomplished so as to satisfy the United States, in its sole discretion, that:

1. The Alternative Acquirer has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the production and sale of EOCCs;

2. None of the terms of any agreement between the Alternative Acquirer and Amsted gives Amsted the ability unreasonably to raise the Alternative Acquirer's costs, to lower the Alternative Acquirer's efficiency, or otherwise to interfere in the ability of the Alternative Acquirer to compete effectively in the production and sale of EOCCs; and

3. The Divested Assets and Supplemental Asset License will remain economically viable and the divestiture will remedy the competitive harm alleged in the Complaint.

D. After the appointment of a trustee becomes effective, only the trustee shall have the right to convey the Divested Assets and Supplemental Asset License. The trustee shall have the power and authority to accomplish the divestiture to an Alternative Acquirer approved by the United States, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. The divestiture of the Divested Assets and the grant of the Supplemental Asset License shall be made without any cost to the Alternative Acquirer or any compensation to Amsted. Subject to Section V(E) of this Final Judgment, the trustee may hire at the cost and expense of Amsted any investment bankers, attorneys, accountants, or any other agents and outside contractors who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

E. Amsted shall not object to a grant or conveyance by the trustee on any ground other than the trustee's malfeasance. Any such objections by Amsted must be in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

F. The trustee shall serve at the cost and expense of Amsted, on such terms and conditions as the United States approves, and shall account for all costs incurred from the conveyance of the Divested Assets and Supplemental Asset License. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the fair market value of the Divested Assets and Supplemental Asset License, and based on a fee arrangement providing the trustee with an incentive based on the speed with which the divestiture is accomplished.

G. Amsted shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets to be divested, and the Supplemental Asset License; and Amsted shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection. Amsted shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

H. After appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divested Assets or Supplemental Asset License and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divested Assets or grant the Supplemental Asset License.

I. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and Amsted of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and grant of the Supplemental Asset License, and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divested Assets or the Supplemental Asset License together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Amsted, the proposed Alternative Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Alternative Acquirer, and any other potential Alternative Acquirer. Amsted and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within (a) thirty (30) calendar days after receipt of the notice or (b) twenty (20) calendar days after the United States has been provided the additional information requested from Amsted, the proposed Alternative Acquirer, any third party, or the trustee, whichever is later, the United States shall provide written notice to Amsted and the trustee stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Amsted's limited right to object to the conveyance under Section V(E) of this Final Judgment. Absent written notice that the United States does not object to the proposed Alternative Acquirer or upon objection by the United States, the divestiture proposed under Section V shall not be consummated. Upon objection by Amsted under Section V(E), the divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Amsted shall not finance all or any part of any purchase or divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Amsted shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Amsted shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Amsted shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall describe in detail each contact with any person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divested Assets or Supplemental Asset License including the Acquirer or any potential Alternative Acquirer. Each such affidavit shall also include a description of the efforts Amsted has taken to convey the Divested Assets and Supplemental Asset License, and to provide required information to the Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Amsted, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Amsted shall deliver to the United States an affidavit that describes all actions Amsted has taken and all

steps Amsted has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Amsted shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Amsted's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Amsted shall keep all records of all efforts made to preserve the Divested Assets and to convey the Divested Assets and Supplemental Asset License until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Amsted, be permitted:

1. Access during Amsted's office hours to inspect and copy, or at the United States' option, to require Amsted to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of Amsted, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Amsted's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Amsted.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Amsted shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Amsted to the United States, Amsted represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Amsted marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Amsted ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification of Future Transactions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Amsted shall not, without notifying the United States, directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity, or management interest, in the development, production, or sale of EOCCs in the United States if the value of such acquisition exceeds $1,000,000. This notification requirement shall run for a period of ten years.

B. Such notification shall be provided to the United States in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about EOCCs. Notification shall be provided at least thirty (30) days prior to acquiring any such assets or interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the United States make a written request for additional information, Amsted shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Amsted may not reacquire any part of the Divested Assets or any right, title or interest in the Supplemental Asset License during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This case was brought because Defendant Amsted Industries, Inc. (''Amsted'') acquired all of the assets of

FM Industries, Inc. (''FMI''), a business unit of Progress Rail Services Holding Corporation, Inc. (''Progress Rail'').[1] On April 25, 2006, Amsted dismantled FMI by firing its employees and disposing of virtually all FMI plant equipment through an auction. The United States filed a civil antitrust Complaint on April 18, 2007, alleging that the acquisition lessened competition substantially for the design, manufacture, and sale of new and reconditioned end-of-car cushioning units (''EOCCs'') in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U. S. C. 2. This loss of competition has impacted the rail industry through higher prices, reduced services, and decreased innovation.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, Amsted is required to divest without compensation all intellectual property and other intangible assets that it acquired from Progress Rail. In addition, Amsted is required to grant a perpetual, royalty-free license to certain Amsted-generated intellectual property and notify the United States of future acquisitions related to EOCCs. Under the terms of the Hold Separate Stipulation and Order, Amsted will take steps to ensure that the divested assets remain economically viable during the pendency of the ordered divestiture.

The United States and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Parties to the Consummated Transaction

Amsted is a diversified manufacturer of industrial components for the railroad, vehicular, and construction markets. Its products include a range of railroad car parts, including couplers, side frames, bolsters, draft gears; and EOCCs. Amsted's EOCC sales in the United States are made through its wholly owned subsidiary, ASF–Keystone. ASF–Keystone is a Delaware corporation with its principal place of business in Granite City, IL.

Progress Rail, a wholly owned subsidiary of Caterpillar, Inc., is one of the largest suppliers of new and reconditioned railroad car parts, rail and trackwork components, and railroad car repair services to the railroad industry in the United States. Progress Rail's EOCC sales in the United States were made through its wholly owned subsidiary, FMI, formerly a Texas corporation with its principal place of business and EOCC manufacturing facility in Fort Worth, Texas.

Prior to the merger, Amsted and FMI were the only two manufacturers of new EOCCs and two of only three manufacturers of reconditioned EOCCs. The transaction lessened competition substantially for these products. As a result, prices for new and reconditioned EOCCs have increased and likely will continue to increase, the quality of EOCCs likely will decline, innovation relating to EOCCs likely will decline, and services currently offered in the EOCC markets have become and will continue to be less favorable to railroad customers.

B. The Relevant Product Market: End-of-Car Cushioning Units

Railroad freight cars undergo considerable stress during transit due to longitudinal forces known as draft and buff forces. Draft forces are pulling forces caused by train acceleration when freight cars are stretched or pulled apart. Buff forces are compressive forces caused by train deceleration when freight cars are pushed together. If not absorbed and dissipated, the energy from draft and buff forces can cause considerable damage to both car and cargo. Freight cars also undergo considerable stress during switching and coupling at train depots. In order for a railroad to connect one freight car to another, it must collide the cars at significant speed. The impact sustained during switching and coupling, like draft and buff forces, can cause serious damage to sensitive cargo inside a freight car.

Railroads must equip all freight cars with energy absorption devices to mitigate the effects of draft, buff, and coupling stresses. The most common device is known as a draft gear, which provides the minimum protection required for safe railroad operation. Draft gears rely on friction between two steel plates to absorb and dissipate the energy created by longitudinal forces impacting the freight car. Another type of device is commonly referred to as an ''elastomeric'' device. These devices use an elastic substance (e.g., rubber) and steel coils to absorb the draft, buff, and coupling stresses. Elastomeric devices are lightweight and low cost, but they are not suitable for all applications as they return much of the absorbed energy back into the draft system. Neither draft gears nor elastomers are sufficient to protect sensitive cargos.

When transporting sensitive cargos in traditional freight cars, railroads must use EOCCs to absorb and dissipate the maximum buff, draft, and coupling forces. These devices use hydraulics (e.g., pressurized nitrogen gas and oils) to minimize longitudinal forces and ensure that sensitive cargo is not damaged during transit. Each EOCC unit consists of a piston, shaft, cylinder, end bells, and a rod that attaches the piston to the freight car coupler. Each EOCC-equipped freight car requires two EOCCs, one at each end of the freight car. EOCCs are critical components for freight cars carrying sensitive commodities, such as steel products, automobile products, electronics, lumber, and paper products. Other energy absorption devices, such as draft gears and elastomeric devices, do not provide the necessary level of cushioning required by customers shipping sensitive goods on freight cars. Railroads and new freight car builders do not consider prices or availability of draft gears or elastomeric devices when soliciting prices for EOCCs from prospective suppliers.

Though sensitive cargos can be transported by ''intermodal'' freight cars with articulated connectors, railroads cannot substitute intermodal transportation for freight cars equipped with EOCCs, Intermodal freight cars are specially designed railcars that allow standard cargo containers to be stacked for rail transport. The cars must travel in groups connected by a ''slackless'' articulated coupling system. The coupling system transfers longitudinal forces to the ends of the intermodal group, protecting the containers from damage. Despite their suitability for certain applications, intermodal freight cars do not provide sufficient cushioning for some sensitive commodities, cannot physically transport certain sensitive commodities (such as automobiles and certain lumber products), and are typically much more expensive to own and operate than freight cars equipped with EOCCs. The intermodal groups must also travel to the same destination due to their slackless connection. Because of these additional costs and operational constraints, intermodal rail transportation in North America tends to be most economical for large shipments manufactured outside of

[1] Progress Rail was subsequently acquired by Caterpillar Inc. on May 16, 2006.

North America and imported by sea. When soliciting prices for EOCCs from prospective suppliers, railroad customers do not consider the cost of transporting goods using intermodal freight cars with articulated connectors.

Railroad customers may use either new or reconditioned EOCCs when equipping freight cars. However, customers building new freight cars are almost always required to use only new EOCCs in construction. Though higher cost, these new units are highly durable and invariably protected by an industry standard ten-year warranty. The vast majority of customers building new freight cars would be unable to use reconditioned EOCCs in construction. Similarly, customers servicing older freight cars that have been in service for more than a decade almost always choose reconditioned EOCCs because the cost of reconditioned units is substantially lower than the cost of new units. Thus, customers are unlikely to substitute new EOCCs for reconditioned EOCCs for use on older freight cars.

A small but significant increase in the price of new EOCCs would not cause purchasers to substitute draft gear, elastomeric devices, intermodal cars, or reconditioned EOCCs so as to make such a price increase unprofitable. Accordingly, the design, manufacture, and sale of new EOCCs is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2. Likewise, a small but significant increase in the price of reconditioned EOCCs would not cause purchasers to substitute draft gear, elastomeric devices, intermodal cars, or new EOCCs so as to make such a price increase unprofitable. Accordingly, the design, manufacture, and sale of reconditioned EOCCs is also a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

C. The Relevant Geographic Market

All EOCCs in the United States are designed, manufactured, and sold in the United States. Amsted sells, and FMI sold, EOCCs to customers located throughout the United States. The United States is the relevant geographic market for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

D. The Competitive Effects of the Transaction on End-of-Car Cushioning

Prior to Amsted's acquisition of FMI, the markets for EOCCs were highly concentrated. For new EOCCs, the merging entities were the only two suppliers.[2] For reconditioned EOCCs, the market was limited to three suppliers, and the merging parties controlled over 80% of the market. Thus, the markets were highly concentrated and became substantially more so following the acquisition. Using the Herfindahl-Hirschman Index (''HHI''),[3] the consolidation in the market for reconditioned EOCCs resulted in a post-merger concentration of over 7000 (an increase of over 2700), while the consolidation in the market for new EOCCs resulted in a monopoly.

Amsted and FMI directly constrained each other's prices, limiting overall price increases for new and reconditioned EOCCs. Prior to the transaction, Amsted created forecasts that contemplated significant price increases resulting from the merger. These price increases were aimed at achieving certain margin targets each year that would result in total additional profits of over $17 million during the first three years following the transaction. According to the forecasts, achieving this goal would require an overall price increase of 4% in 2006, 10% in 2007, and 5% in 2008, beyond materials cost increase surcharges. Amsted pricing data shows that Amsted raised prices substantially following its acquisition of FMI. For new EOCCs, customers who did not have the pricing protection of long-term contracts paid on average approximately 14% more in February 2006 than they did in November 2005. For reconditioned EOCCs, customers without long-term contracts paid an average increase of approximately 5% more during the same time period.

Purchasers of new and reconditioned EOCCs in the United States benefitted from vigorous and aggressive competition between Amsted and FMI through lower prices, higher quality, more innovation, and better service. Without the competitive constraint of head-to-head competition from FMI, Amsted has had and will continue to have the ability to exercise market power by raising prices, lowering product quality, lessening innovation, and decreasing the level of services.

Entry into the design, manufacture, and sale of new or reconditioned EOCCs will not be timely, likely, or sufficient to counter the anticompetitive effects of the transaction. A new entrant to either market would require certifications and approvals from the Association of American Railroads (''AAR''), including facility certification and design certification for each EOCC model to be manufactured or reconditioned. Additionally, the AAR requires that a new entrant undergo a conditional approval period during which production is monitored and significantly limited.

It is also essential that a new entrant into either the new or reconditioned EOCC markets have sufficient technical know-how regarding the product in order to design and sell EOCCs. Thus, a new entrant must invest in significant design and engineering expertise in order to create the necessary tooling and intellectual property required to successfully manufacture new or reconditioned EOCCs according to AAR standards and railroad customer requirements.

A new entrant into the new or reconditioned EOCC markets also must produce EOCCs in sufficient quantities and with sufficiently consistent quality to assure railroad customers that the new and reconditioned EOCCs will provide the necessary level of cushioning required to protect sensitive cargo. Achieving this quality reputation requires an additional investment in time and money by any new entrant.

Although the manufacturing processes for new and reconditioned EOCCs are similar, both require unique inputs that are not readily available in the marketplace. For example, the manufacture of new EOCCs requires the use of patented designs and proprietary molds that are not needed in the reconditioning process. Similarly, the

[2] American Hydraulics, Inc. is the only other manufacturer certified by the Association of American Railroads (''AAR'') to build new units. However, American Hydraulics historically has had no revenue in this product area, and customers uniformly viewed the merging parties as the only suppliers of new EOCCs.

[3] ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See Merger Guidelines ¶ 1.51.

manufacture of reconditioned EOCCs requires the application of certain machining techniques and testing processes that are unique to the EOCC reconditioning market.

For these reasons, entry by any firm into the new or reconditioned EOCC markets would not be timely, likely, or sufficient to counter anticompetitive price increases imposed by Amsted.

III. Explanation of the Proposed Final Judgment

Because the FMI business was discontinued as a result of the transaction and Amsted now has only one facility that manufactures EOCCs, the divestiture of a going concern in this case would be difficult and potentially disruptive to the railroad industry. Instead, the divestiture and license requirements of the proposed Final Judgment are designed to create an independent and economically viable competitor by providing to a new entrant the market-specific intellectual assets needed for successful competition. The proposed Final Judgment requires that Amsted divest these assets, without compensation, to a pre-approved acquirer operating in the railroad industry. Amsted must divest all of the acquired FMI intangible assets and all of the FMI tangible assets used for imparting the shape, form, or finish to EOCC components. The divestiture includes all trademarks, brands, certifications, patents, blueprints, drawings, castings, dies, molds, toolings, fixtures, specifications, quality assurance plans, manufacturing plans, and related financial data.

The proposed Final Judgment also requires Amsted to provide to the acquirer a royalty-tree, perpetual license to all Amsted-generated intangible assets and a limited license to the use of all Amsted-generated casting patterns needed for the production of EOCC components. The license should effectively fill any intellectual property gaps in the FMI divestiture package and resolve questions concerning the completeness of the available FMI assets. The license includes all patents, blueprints, drawings, castings, dies, molds, toolings, fixtures, specifications, quality assurance plans, manufacturing plans, and product tracking information.

Combined with readily available manufacturing equipment, these assets will provide the acquirer with immediate access to the technical know-how required to make new and reconditioned EOCCs. The engineering information should accelerate the AAR certification process, while also providing customers with assurance that the designs used by the acquirer are field tested and historically successful. The proposed Final Judgment provides that for the divestiture to be approved, it must be demonstrated to the satisfaction of the United States, in its sole discretion, that the acquirer will enter the market to remedy the competitive harm alleged in the Complaint. The divestiture must be made to an acquirer that in the United States' judgment has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the design, manufacture, and sale of EOCCs; the divestiture also must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between an acquirer and the defendant gives the defendant the ability unreasonably to raise the acquirer's costs, reduce the acquirer's efficiency, or otherwise interfere in the ability of the acquirer to compete effectively in the design, manufacture, and sale of EOCCs. The defendant must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the acquirer.

The proposed Final Judgment requires the defendant, within sixty (60) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, (1) to divest the Divested Assets to the acquirer, and (2) to grant the Supplemental Asset License to the acquirer. The defendant agrees to use its best efforts to accomplish the license grant and divestiture expeditiously.

In the event that the approved acquirer is unable or unwilling to receive the divested assets, the Court will appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the assets to an alternative acquirer acceptable to the United States. Amsted will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of 60 days, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment requires Amsted to release all industry participants of restrictive covenants that might otherwise inhibit the acquirer's access to employees, customers, or suppliers. Amsted must also release Progress Rail from an acquisition-related ''covenant not to compete'' if the acquirer is unable to deliver its first manufactured or reconditioned unit within twelve months after the entry of the Final Judgment.

Finally, the proposed Final Judgment prohibits Amsted from acquiring any assets of or any interest in the development, production, or sale of EOCCs in the United States if the value of such acquisition exceeds $1,000,000 without first notifying the United States through procedures set out in the Final Judgment, unless the transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act. This notification requirement runs for a period of ten years.

The provisions of the proposed Final Judgment will facilitate new entry in order to eliminate the anti competitive effects of the acquisition in the design, manufacture, and sale of EOCCs.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment.

Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendant. The United States could have commenced litigation and sought a judicial order requiring Amsted to recreate FMI as a separate business unit that could be divested as a going concern. This alternative would have substantially delayed relief while introducing a significant risk that the divestiture would be unsuccessful. This alternative may have also increased the potential for harm to the markets through supply disruption and a decrease in available capacity. The United States is satisfied that the divestiture and license described in the proposed Final Judgment will facilitate entry in order to recreate competition for the design, manufacture, and sale of EOCCs in the relevant markets identified by the United States, and thus would achieve substantially all of the relief that the United States would have obtained through litigation, but without the cost and risks associated with trial.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS,* Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard that is more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). The Court ''must accord deference to the government's predications about the efficacy of its remedies, and may not require the remedies to perfectly match the alleged violations because this may only reflect underlying weaknesses in the government's case or concessions made during negotiations.'' *United States* v. *SBC Commc'ns, Inc.,* Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *16 (D.D.C. Mar. 29, 2007).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place, '' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60. As this Court recently confirmed in *SBC Commc'ns,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a

[4] *Cf. BNS,* 858 F.2d at 463 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

mockery of judicial power.'' *SBC Commc'ns,* at *14.

In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. Compare 15 U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). These amendments, however, did not change the fundamental role of courts in reviewing proposed settlements. To the contrary, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16 (e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

This-Court recently examined the role of the district court in reviewing proposed final judgments in light of the 2004 amendments, confirming that the amendments ''effected minimal changes[] and that this Court's scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' See *United States* v. *SBC Commc'ns, Inc.*, Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *9 (D.D.C. Mar. 29, 2007). This Court concluded that the amendments did not alter the articulation of the public interest standard in *Microsoft. Id.* at *15.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 18, 2007.

Respectfully submitted,

/s/

C. Scott Hataway Bar No. 473942, *U.S. Department of Justice, Antitrust Division, Lit II Section, 1401 H Street NW., Washington, DC 20530 202–514–8380.*

[FR Doc. 07–2087 Filed 4–27–07; 8:45am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Application

This is notice that on October 18, 2006, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: April 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. E7–8132 Filed 4–27–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 1, 2007, Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Oxymorphone (9652), a basic class of controlled substance listed in schedule II.

The company plans on manufacturing the listed controlled substance in bulk for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Attention: DEA Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than June 29, 2007.

Dated: April 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. E7–8131 Filed 4–27–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Application

This is notice that on January 26, 2007, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Coca Leaves (9040), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for the manufacture of a bulk controlled substance for distribution to its customer.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: April 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. E7–8133 Filed 4–27–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 24, 2007.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

OMB Number: 1218–0065.

Type of Response: Recordkeeping.

Affected Public: Public Sector: Business or other for-profits.

Number of Respondents: 734,820.

Number of Annual Responses: 6,503,968.

Estimated Time per Response: Varies by task.

Total Burden Hours: 720,187.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Standard requires employers to preserve and provide access to records associated with employees' exposure to toxic chemicals and harmful physical agents. Employee records and access to them are critically important to the detection, treatment, and prevention of occupational illness and disease.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Formaldehyde (1910.1048).

OMB Number: 1218–0145.

Type of Response: Recordkeeping and Third-party disclosure.

Affected Public: Public Sector: Business or other for-profits.

Number of Respondents: 112,638.

Number of Annual Responses: 1,903,049.

Estimated Time per Response: Varies by task.

Total Burden Hours: 519,076.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $55,325,688.

Description: The Formaldehyde Standard and its collections of information are designed to provide protection for employees from the adverse health effects associated with occupational exposure to formaldehyde. The Standard requires employers to monitor employee exposure and provide notification to employees of their exposure. Employers are required to make available medical surveillance to employees.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Definition and Requirements for a Nationally Recognized Testing Laboratory (29 CFR 1910.7).

OMB Number: 1218–0147.

Type of Response: Reporting.

Affected Public: Public Sector: Business or other for-profits.

Number of Respondents: 67.

Number of Annual Responses: 67.

Estimated Time per Response: 20 hours.

Total Burden Hours: 1,340.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: A number of OSHA's standards require certain equipment to be ''tested'' (or ''approved'') by a ''nationally recognized testing laboratory'' (NRTL). An organization seeking to perform this testing (or approval) must be ''recognized'' by OSHA and must apply to the OSHA NRTL Program for recognition. Recognition is granted after OSHA determines that the organization meets certain requirements.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–8142 Filed 4–27–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2007–06; Exemption Application Nos. D–11383, L–11384, D–11385, D–11383, L–11384, D–11385, L–11302 and L–11303]

Grant of Individual Exemptions Involving; Kern County Electrical Pension Trust (the Pension Plan), Kern County Electrical Joint Apprenticeship and Training Trust (the Apprenticeship Plan), Kern County Electrical Health and Welfare Plan (the Welfare Plan), The International Brotherhood of Electrical Workers Local Union 428 (the Local Union), OPET Health Care and Life Insurance Plans RM3A and RM5A (Together, the HYL Plans), and OPET Prescription Drug Plan RRx (Plan RRx; All Three Together, the Plans)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Kern County Electrical Pension Trust (the Pension Plan); Kern County Electrical Joint Apprenticeship and Training Trust (the Apprenticeship Plan); Kern County Electrical Health and Welfare Plan (the Welfare Plan) [1] **and The International Brotherhood of Electrical Workers Local Union 428 (the Local Union) Located in Bakersfield, California**

[Prohibited Transaction Nos. 2007–06; Exemption Application Nos. D–11383; L–11384; and D–11385]

Exemption

Section I: Transactions

(a) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) [2] shall not apply to the sale by the Pension Plan of a parcel of unimproved real property (Parcel #1) to the Local Union, a party in interest with respect to the Pension Plan; provided that the conditions in section II(a),(d),(f),(h),and (i), as set forth below, are satisfied;

(b) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the sale to the Apprenticeship Plan by the Pension Plan of a parcel of unimproved real property (Parcel #2) which is adjacent to Parcel #1; provided that the conditions in section II(b),(c),(e),(g),(h),(i), and (j), as set forth below, are satisfied; and

(c) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Act shall not apply to the lease (the Lease) by the Apprenticeship Plan of office space (the Premises) in a training facility (the Training Center) to be constructed by the Apprenticeship Plan on (Parcel #2) to Construction Benefits Administration, Inc. (CBA), a party in interest with respect to the Plans, as service provider, whose directors are also trustees of the Plans and officers of the Local Union; provided that the conditions in section II(i),(k), (l),(m),(n), and (o), as set forth below, are satisfied.

Section II: Conditions

The relief, herein, is conditioned upon the adherence to the material facts and representations set forth in the application files and upon compliance with the conditions, as set forth in this exemption.

(a) The sale by the Pension Plan of Parcel #1 to the Local Union is a one-time transaction for cash;

(b) The sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan is a one-time transaction for cash;

(c) An independent, qualified fiduciary (the I/F), acting on behalf of the Apprenticeship Plan:

(1) After negotiating, reviewing, and analyzing the terms of the purchase of Parcel #2, approves such purchase by the Apprenticeship Plan;

(2) After negotiating, reviewing, and analyzing the construction of the Training Center on Parcel #2, approves the construction of the Training Center by the Apprenticeship Plan;

(3) Determines that the acquisition of Parcel #2 and the construction of the Training Center by the Apprenticeship Plan would be feasible, in the interest of, and protective of the Apprenticeship Plan and its participants and beneficiaries; and

(4) Is responsible for monitoring compliance with the terms and condition of this exemption and the terms and conditions of the acquisition of Parcel #2 and the construction of the Training Center by the Apprenticeship Plan;

(d) The purchase price paid by the Local Union for Parcel #1 is equal to the fair market value of such parcel, as determined by an independent, qualified appraiser, as of the date of the sale;

(e) The purchase price paid by the Apprenticeship Plan for Parcel #2 is equal to the fair market value of such parcel, as determined by an independent, qualified appraiser, as of the date of the sale;

(f) The terms of the sale by the Pension Plan of Parcel #1 to the Local Union are no less favorable to the Pension Plan than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) The terms of the sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan are no less favorable to the Pension Plan and no less favorable to the Apprenticeship Plan than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(h) The Plans will not provide any construction financing or permanent financing to the Local Union in

[1] The Apprenticeship Plan, the Pension Plan, and the Welfare Plan are, herein, collectively referred to as the Plans.

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

connection with the acquisition by the Local Union of Parcel #1 and the construction of a building on Parcel #1 (the Union Building) by the Local Union, nor will the Pension Plan, the Welfare Plan, or the Local Union provide any construction financing or permanent financing to the Apprenticeship Plan in connection with the acquisition by the Apprenticeship Plan of Parcel #2 and the construction of the Training Center on Parcel #2 by the Apprenticeship Plan;

(i) The Plans will not pay any commissions, fees, or other similar payments to any party in connection with any of the subject transactions;

(j) The terms of any loan from an unrelated third party obtained by the Apprenticeship Plan for the purpose of acquiring Parcel #2 or constructing the Training Center provides recourse to such unrelated third party lender only against the Apprenticeship Plan's interest in Parcel #2 and not against the general assets of the Apprenticeship Plan;

(k) Prior to entering into the Lease, the I/F, acting on behalf of the Apprenticeship Plan, determines that the leasing transaction is feasible, in the interest of, and protective of the Apprenticeship Plan and its participants and beneficiaries; and approves the leasing transaction in accordance with the fiduciary provisions of the Act;

(l) Throughout the duration of the Lease, the I/F, acting on behalf of the Apprenticeship Plan, monitors compliance with the terms and conditions of the Lease, ensures that such terms and conditions are at all times satisfied, and is responsible for legally enforcing the payment of the rent and the proper performance by CBA under the terms of the Lease and for taking any and all steps necessary to ensure that the Apprenticeship Plan is protected, including but not limited to reviewing, negotiating, and approving the initial Lease and any amendment, renewal, or extension of such Lease;

(m) Under the provisions of the Lease, the leasing transaction is at all times on terms that are at least as favorable to the Apprenticeship Plan and to CBA, as terms that would have been negotiated under similar circumstances at arm's length with unrelated third parties;

(n) The rental rate under the terms of the initial Lease and under the terms of any amendment, renewal, or extension of the Lease, is adjusted at least every three (3) years in which such Lease is in effect, and the rental rate reflects the fair market rental value of the Premises, as determined by an independent, qualified appraiser; and

(o) Notwithstanding anything to the contrary in the Lease, the Apprenticeship Plan may at any time upon ninety (90) days prior written notice given to CBA, terminate the Lease and CBA's occupancy of the Premises, effective as of the date specified in such written notice, which date shall be at least ninety (90) days after the date such written notice is given to CBA.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on February 19, 2007, at 72 **Federal Register** 6760.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number).

OPET Health Care and Life Insurance Plans RM3A and RM5A (together, the H&L Plans); and OPET Prescription Drug Plan RRX (Plan RRX; All Three Together, the Plans) Located in Portland, Oregon

[Prohibited Transaction Exemption 2007–07; Exemption Application Nos. L–11302 and L–11303]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the purchase by the Plans' participants and beneficiaries of prescription drugs from the Labor Center Pharmacy (LCP), a party in interest with respect to the Plans, provided the following conditions are satisfied:

(a) The terms of the transactions are at least as favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party;

(b) Any decisions by the Plans to enter into agreements governing the subject purchases have been and will be made by Plan fiduciaries independent of LCP;

(c) At least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving LCP are unrelated to LCP or any other party in interest with respect to the Plans;

(d) LCP will be treated no differently than any other pharmacy participating in the PPN (*e.g.*, subject to the same reimbursement rates and oversight as the other participating pharmacies); and

(e) The transactions are not part of an agreement, arrangement or understanding designed to benefit LCP or any other party in interest with respect to the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 13, 2007 at 72 FR 6766.

DATES: *Effective Date:* This exemption is effective as of January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of April, 2007.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–8183 Filed 4–27–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Proposed Exemptions and Application Nos.: D–11344, Victor P. Olson Profit Sharing Plan; D–11355, The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan); and L–11365 American Maritime Officers Safety & Education Plan (the S&E Plan), et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or Fax. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by fax to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Victor P. Olson Profit Sharing Plan (the Plan) Located in White City, Oregon

[Application No. D–11344]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code shall not apply to the proposed cash sale (the Sale) of a parcel of improved real property (the Property) by the Plan to Victor P. Olson (the Applicant), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan will receive the greater of $375,000 or the fair market value of the Property at the time of the Sale;

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and

(e) The fair market value of the Property is determined by an independent, qualified appraiser.

Summary of Facts and Representations

1. The applicant is Victor P. Olson, the trustee of the Plan (the Trustee) as well as the Plan sponsor (the Applicant). The Applicant manufactures doors and windows. The Trustee has sole investment discretion regarding the Plan. The Plan has three participants and as of December 31, 2006, the Plan held assets valued at approximately $754,371.87. Approximately 50% of the assets of the Plan will be involved in the proposed transaction.

2. The Property was initially purchased for $218,687.50 from a third party on October 11, 1996 as an investment. The Property is identified by the street address, 6425 Crater Lake Highway, Central Point Oregon. The Property is currently occupied by Swede and Sons Army Surplus, a third party. The Property is comprised of a 6000 square foot metal building situated on approximately one acre of land. Other improvements include asphalt paving, concrete, and a drilled well. In addition, the Property is in close proximity to real estate owned by the Applicant.

3. The Applicant requests an exemption for the Sale. The Applicant represents that the proposed transaction would be feasible because it would be a one-time transaction for cash. A recent large benefit distribution to a Plan participant was made in cash. This cash payout from the Plan has caused the Property to comprise approximately 50% of the Plan's assets. The Applicant seeks to sell the Property to diversify the Plan investments. Furthermore, the Applicant states that the transaction would be in the best interests of the Plan because the Sale would enable the Plan to invest the proceeds from the Sale in assets with a higher rate of return. Finally, the Applicant represents that the transaction will be protective of the rights of the Plan's participants and beneficiaries because the Plan will receive the greater of $375,000 or the fair market value of the Property, as

determined by a qualified, independent appraiser on the date of the Sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

4. Rickey R. Richey (Mr. Richey), a MAI appraiser with R&R Richey Co., located in Phoenix, Oregon, appraised the Property on February 12, 2007. Mr. Richey is a qualified, independent appraiser. Mr. Richey has been an appraiser since 1979. Mr. Richey used the Income Approach, Sales Comparison Approach, and assigned an additional value attributable to a ''specific buyer with a special need for the property'' (due to the Property's proximity to real estate owned by the Applicant) to determine the value of the Property. Mr. Richey represents that his analysis, opinion and conclusion were developed and the report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice. In the course of his analysis, Mr. Richey reviewed files of similar properties that were appraised within the last 24 months. After inspecting the Property and analyzing all relevant data, Mr. Richey determined that the fair market value of the Property as of February 12, 2007, is $375,000.

5. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Sale is a one-time transaction for cash; (b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (c) The Plan will receive the greater of $375,000 or the fair market value of the Property at the time of the Sale; (d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (e) The fair market value of the Property is determined by an independent, qualified appraiser.

Notice to Interested Parties: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication of this notice of proposed exemption in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

The Revlon Employees Savings, Investment and Profit Sharing Plan (the Plan) Located in New York, New York

[Application No. D–11355]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 18, 2006, to (1) the acquisition of certain stock rights (Stock Right(s)) by the Plan in connection with a Stock Rights offering by Revlon, Inc. (Revlon), a holding company that wholly owns Revlon Consumer Products Corporation (RCPC), a party in interest with respect to the Plan; (2) the holding of the Stock Rights by the Plan during the subscription period of the Stock Rights offering; and (3) the disposition or exercise of the Stock Rights by the Plan, provided that the following conditions were met:

(a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms to all shareholders of common stock of Revlon;

(c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering;

(d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity, and all holders of the Stock Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The Plan received the same proportionate number of Stock Rights as other owners of Class A common stock.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 18, 2006.

Summary of Facts and Representations

1. RCPC is the sponsor of the Plan. The Plan is a tax-qualified, defined contribution profit sharing plan that incorporates a cash or deferred (i.e., 401(k)) arrangement. The trustee of the trust established under the Plan is Fidelity Management Trust Company (the Trustee).[1]

Revlon is a world leader in cosmetics, skin care, fragrance and personal care. MacAndrews & Forbes Holdings Inc. (together with its affiliates, MacAndrews & Forbes), which is wholly owned by Ronald O. Perelman, beneficially owns 217,444,170 shares of the Class A Common Stock (including 37,063,156 shares of Class A Common Stock beneficially owned by a family member, with respect to which shares MacAndrews & Forbes holds a voting proxy but excluding 1,525,000 that are fully vested and exercisable within 60 days of December 11, 2006). Mr. Perelman, through MacAndrews & Forbes, also beneficially owns all of the outstanding 31,250,000 shares of the Class B Common Stock, which, together with the Class A Common Stock referenced above, represents approximately 60% of the outstanding shares of the Corporation's outstanding Common Stock. Based on the shares referenced above, Mr. Perelman, as of the Record Date, had approximately 76% of the combined voting power of the outstanding shares of the Class A and the Class B Common Stock.

2. Class A common stock and Class B common stock are in all respects identical except that (i) each share of Class A common stock entitles the holder to one vote and each share of Class B common stock entitles the holder to ten votes on all matters being voted on by Revlon's stockholders, (ii) Class A common stock is publicly traded and held in the Plan whereas Class B common stock is not publicly traded and not held in the Plan, and (iii) certain transfer restrictions apply to Class B common stock that do not apply to Class A common stock. These restrictions provide that the Class B common stock (all of which is currently held by MacAndrews & Forbes) can only be transferred to affiliates of the current holder of Class B common stock.

The Plan provides for a variety of contributions in addition to 401(k) contributions, including after-tax employee contributions, company-matching contributions, rollover

[1] Fidelity Management Trust Company became the Trustee effective January 3, 2006, at which time it replaced Putnam Fiduciary Trust Company as Trustee. Notwithstanding that Fidelity Management Trust Company serves generally as trustee of the Plan, it has not served as trustee in respect of the Stock Rights offering. Accordingly, the Investment Committee established under the Plan (the Investment Committee) served as trustee of the Stock Rights.

contributions and profit-sharing contributions. The Plan permits individual participants to direct the investment of their entire account balance under the Plan to the extent described below and is intended to satisfy the requirements of section 404(c) of ERISA with respect to all such participant investment directions.

One of the investments available under the Plan is Class A Common Stock (the Common Stock Fund).[2] Participants may allocate all contributions made on their behalf (and any earnings thereon) among the Common Stock Fund and all of the other investments available under the Plan.[3]

3. As of December 11, 2006, there were approximately 3,376 participants in the Plan. The Plan's assets totaled approximately $131,932,023. Approximately 1,367 Plan participants and beneficiaries held shares of Class A Common Stock. The Plan held approximately 1,038,671 shares of Class A Common Stock, or approximately 0.27% of the then outstanding shares of Class A Common Stock, with a value of approximately $1,516,459 based on the $1.46 closing price on the New York Stock Exchange of Class A Common Stock on December 11, 2006), or approximately 1.1% of Plan assets.

Because the Plan holds Class A Common Stock, Stock Rights were allocated to Plan participants in proportion to their holdings of Class A Common Stock under the Plan, and Plan participants were entitled to dispose of those Stock Rights on the terms and conditions described more fully below. Participants in the Plan received the same information regarding the Stock Rights offering as is provided to all stockholders. In addition, participants were provided a special notice that describes some features of the Stock Rights offering in easily understood language, together with additional information that is peculiar to their status as holders of Class A Common Stock under the Plan (for example, special rules relating to the payment of the purchase price for shares under the Stock Rights offering).

4. If the Plan were denied participation in the Stock Rights offering, Plan participants would not have received the benefit of the Stock Rights which other stockholders received, including the ability to realize value by selling Stock Rights. Revlon has requested this exemption so that Plan participants would be eligible to participate in the Stock Rights offering on the same basis as other stockholders.[4]

5. Revlon launched the Stock Rights offering on December 18, 2006. The Stock Rights offering expired at 5 p.m., New York, New York local time on January 19, 2007. The amount of the Stock Rights offering was $100 million (the Maximum Amount).

Each Stock Right entitles its holder to purchase a number of shares of Class A Common Stock such that the aggregate number of shares of Class A Common Stock to be offered in the Stock Rights offering, multiplied by the Subscription Price, will equal the Maximum Amount.[5] The Stock Rights were transferable, as described to Plan participants in the Stock Rights prospectus. A market for the Stock Rights did develop and was maintained: The Stock Rights began trading on the New York Stock Exchange on December 20, 2006, and ceased trading January 18, 2007 (i.e., the day before the expiration of the offering). The Stock Rights were, in fact, sold for each Plan participant who directed a sale or who did not give a proper exercise order.

6. Revlon paid all of the fees and expenses attributable to the Stock Rights offering (other than any fees that may be charged by brokers or nominees). No fees or expenses were paid by the Plan (other than any standard commissions that may apply to the sale of any Right). The Stock Rights were sold and a commission was charged upon the sale of rights consistent with the disclosure to Plan participants in the rights offering prospectus. For any Stock Rights sold by the Plan, a commission of 2.9 cents per right was charged to the Plan account from which the Stock Right was sold. The commission was disclosed to participants in the materials provided explaining the Stock Rights offering. The commission was not paid to Revlon but to a broker-dealer, National Financial Services (NFS) of New York City, New York, for the sale transaction. NFS is an affiliate of the Trustee.

7. The Investment Committee considered whether it was appropriate and in the best interests of the Plan to permit the Trustee to effect sales of Stock Rights under the Plan through NFS. The Investment Committee took the following considerations into account, among others: (a) Brokerage services required to effect the sales transactions are necessary services for the operation of the Plan; (b) the reputation of NFS as a reputable broker; (c) the already established procedures between the Trustee and NFS for the prompt execution of sales transactions under the Plan; (d) the ability of NFS to accept the engagement on very short notice (i.e., the short notice provided by Revlon); (e) the reasonable price charged for the brokerage services when compared with other unrelated brokers; and (f) the short-term nature of the arrangement. Following discussion, the Investment Committee authorized the use of NFS as broker for effecting sales of Stock Rights under the Plan. Although Fidelity is affiliated with NFS, Fidelity did not use any discretion to select NFS as broker for the Stock Rights. Plan participants paid commissions on the sale of their Stock Rights in the same manner as any other similarly situated shareholder paid commissions on the sales of their Stock Rights.

8. Each Right carries with it a basic subscription privilege and an over-subscription privilege. The basic subscription privilege entitles a Rights holder to subscribe for its pro rata share of Class A Common Stock offered in the Stock Rights offering. MacAndrews & Forbes has agreed, upon the consummation of the Stock Rights offering and at the Subscription Price, to acquire the number of shares of Class A Common Stock as equals the number of shares of Class A Common Stock that MacAndrews & Forbes would otherwise have been entitled to purchase in the Stock Rights offering pursuant to its basic subscription privilege. Except for MacAndrews & Forbes, all holders of Common Stock who elected to exercise their Rights in full were also permitted to subscribe for the remaining shares at the same Subscription Price per share, to the extent that other shareholders did not exercise all of their rights in full. Although MacAndrews & Forbes, as a holder of Common Stock, would otherwise have been entitled to such over-subscription privilege,

[2] No other ''employer security,'' within the meaning of section 407 of ERISA, is presently available as an investment under the Plan.

[3] Plan participants are effectively free to designate the extent to which their Plan accounts will be invested in Class A Common Stock.

[4] The distribution of the Rights was accomplished as a dividend under Delaware corporate law. Accordingly, Revlon was required to distribute the Rights to all stockholders on a pro rata basis. In exercising their fiduciary duties to all stockholders, the Board of Directors of Revlon was required to treat all stockholders (including the Plan) the same and cannot pay a dividend to some, but not all, stockholders.

[5] Revlon is required under its credit agreement to use the proceeds of a $110 million equity issuance by Revlon, to be completed on or before March 31, 2007, to promptly reduce its indebtedness. Revlon has determined that a rights offering such as the Stock Rights offering is the most appropriate way for it to fulfill the capital commitment while providing an opportunity for all stock holders of Revlon, including the Plan participants, to retain their pro rata ownership in Revlon. Revlon believed that it will not be able to timely fulfill its credit agreement commitment if the Stock Rights offering is delayed until prospective exemptive relief is provided.

MacAndrews & Forbes has agreed to subordinate such rights in order to enhance the over-subscription privilege of other stockholders.

MacAndrews & Forbes agreed to ''back-stop'' $75 million of the Stock Rights offering by purchasing, on the same terms as the Stock Rights offering, such number of shares of Class A Common Stock offered but not purchased by other Rights holders as would be sufficient for the aggregate gross proceeds of the Stock Rights offering to total $75 million. With respect to the shares offered in the Stock Rights offering in excess of the $75 million being backstopped by MacAndrews & Forbes (i.e., shares with an approximate value of $25 million), MacAndrews & Forbes had the right, but not the obligation, pursuant to a private placement agreement with the Revlon, to purchase additional shares of Class A Common Stock, at the Subscription Price, in the event the Stock Rights offering was not fully subscribed after Rights holders, other than MacAndrews & Forbes, exercise their basic and over-subscription privileges.

9. If a sufficient number of shares were not available to fully satisfy the over-subscription privilege requests, the available shares were to be sold *pro rata* among Rights holders who exercised their over-subscription privilege based on the number of shares each Rights holder subscribed for under the basic subscription privilege. Any excess subscription payments were returned without interest or deduction promptly after the expiration of the Stock Rights offering.

Any election to exercise a Right (whether made with respect to Stock Rights held under the Plan or otherwise) was irrevocable once made. Plan participants who wanted to exercise some or all of their Rights were required to notify the Trustee on or before the date that is approximately seven (7) calendar days before the expiration of the Stock Rights offering (the Plan Election Date).[6]

10. Participants were also entitled to direct the Trustee to sell the Rights allocated to them on the open market by notifying the Trustee of such election on or before the Plan Election Date; any such election was irrevocable once made and were executed as soon as practicable after it is received. To the extent that a participant did not elect to either exercise or sell the Rights credited to his or her account on or before the Plan Election Date, the Investment Committee instructed the Trustee to attempt to sell such Rights on the open market in the same manner as if the participant had directed such a sale. The Investment Committee instructed the Trustee not to exercise Rights where the Subscription Price exceeds the per share public trading price of Class A Common Stock at the time for exercise (in which case an attempt was made to sell the Rights instead, although the Rights likely would have no value in such a case and thus would expire without value). A confirmation of a sale or exercise of rights, as the case may be, appeared on participant statements.

11. Approximately three (3) calendar days before the expiration of the Stock Rights offering, the Trustee liquidated an amount sufficient to pay a Plan participant's exercise price by selling a pro-rata portion of the amounts held in such participant's various investment funds (other than the Common Stock Fund) and transferred such funds to the subscription agent in order to participate in the Stock Rights offering on behalf of Plan participants who elect to exercise some or all of their Rights. No Stock Rights under the Plan were exercised before this date. The shares of Class A Common Stock purchased upon the consummation of the Stock Rights offering were be allocated to the accounts of Plan participants as soon as practicable thereafter.

12. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Stock Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts; (b) The Plan's receipt of the Stock Rights occurred in connection with a Stock Rights offering made available on the same terms available to all shareholders of common stock of Revlon; (c) All decisions regarding the holding and disposition of the Stock Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Stock Rights in connection with the Stock Rights offering; (d) The Plan's acquisition of the Stock Rights resulted from an independent act of Revlon as a corporate entity; and (e) The Plan received the same proportionate number of Stock Rights as other owners of Class A common stock.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

American Maritime Officers Safety & Education Plan (the S&E Plan) Located in Dania Beach, Florida and Toledo, Ohio

[Exemption Application No. L–11365]

Proposed Exemption

The Department is considering granting the following exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(C) and 406(a)(1)(D) of the Act shall not apply to the S&E Plan's, doing business as STAR Center, entering into an agreement with Kongsberg Maritime Simulator Inc. (Kongsberg), a party in interest, to provide certain services (the Services) to Kongsberg at the Dania Beach, Florida facility (the Facility) involving hydrodynamic and geographic modeling and training required in connection with Kongsberg's contract with the U.S. Navy, provided that the following conditions are met:

Conditions

This proposed exemption is subject to the following conditions:

(a) The S&E Plan will charge and will be paid for the Services at the rates approved by the Board of Trustees of the S&E Plan (the Trustees) for similar services provided to unrelated third parties;

(b) The terms of the arrangement between the S&E Plan and Kongsberg are at least as favorable to the S&E Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) An independent auditor will perform annual audits of the S&E Plan to identify and reconcile any recordkeeping discrepancies involving the Services; and

(d) The S&E Plan will maintain, for a period of six (6) years, the records necessary to determine whether the

[6] This date was before the expiration date of the Stock Rights offering in order to enable the Trustee to review and implement participant directions (including the liquidation of individual account balances necessary to fund each participant's exercise price) and provide such aggregate instructions to the subscription agent under the Offering within the time constraints imposed generally with respect to the Stock Rights offering. Because the Stock Rights offering was extended for at least thirty (30) calendar days, Revlon did not anticipate that this requirement was unduly restrictive for Plan participants.

conditions of this exemption have been met.

Summary of Facts and Representations

1. The S&E Plan is a jointly administered multiemployer welfare training plan funded pursuant to a collective bargaining agreement. The purposes of the S&E Plan are to (a) develop and execute programs for the education, development and improvement of licensed marine officers, (b) develop and execute programs to increase safety in the operation of marine vessels, (c) create and execute programs to develop and maintain a skilled pool of licensed marine officers and (d) develop and execute a research program on a variety of issues of interest to S&E Plan participants and their employers. The S&E Plan conducts training and accommodates the students attending training at the Facility. As of January 6, 2006, the S&E Plan had 3,495 participants and beneficiaries and $43,563,887 in plan assets.

Kongsberg is an industry leader in supplying simulators that are used in the training of professional mariners. The S&E Plan, doing business as the STAR Center, utilizes Kongsberg marine simulators to provide training for participants of the S&E Plan.

2. Kongsberg has provided services to the STAR Center that include: Delivering simulation software and hardware; providing training on the use of its products; and providing software updates and technical support to the STAR Center. Accordingly, Kongsberg could be viewed as a party in interest to the Plan as a service provider under ERISA § 3(14) and certain transactions between the S&E Plan and Kongsberg would be prohibited transactions under ERISA section 406(a).

The applicant represents that because of the unique nature of the maritime industry, and the specialized niches held by Kongsberg and the STAR Center, the STAR Center is especially suited to provide training-related services to Kongsberg. Kongsberg has recently signed a contract with the United States Navy to supply a total of 57 navigation simulators that will constitute a critical part of an ongoing U.S. Navy program for navigation, seamanship and ship handling training. Because of the experience and expertise of the STAR Center, Kongsberg wishes to subcontract with the STAR Center to permit the STAR Center to perform certain hydrodynamic modeling and geographic modeling necessary for the development of the navigation simulators, and to provide training assistance. The S&E Plan wishes to contract with Kongsberg to provide these services since it would be in furtherance of the overall purposes of the S&E Plan and beneficial to the STAR Center and the S&E Plan participants, as well as the United States Navy.

3. The Facility is home to the STAR Center. S&E Plan participants attend courses at the STAR Center, which is among the most comprehensive and advanced maritime training and research facilities in the world. The STAR Center provides participants in the S&E Plan with complete license training, license upgrading and certifications with respect to various U.S. Coast Guard and international treaty requirements. The STAR Center also has the capability to develop models of vessels and ports that can be utilized in training programs.

At the core of the STAR Center is the 360-degree full mission training bridge, from which officers can simulate command of various types of vessels in over a hundred different waterways from around the world. The instructors at the STAR Center and the simulator's programmers use the simulator to re-create a variety of situations and conditions in order to train participants in safe and efficient vessel operations and effective responses to hazardous environments and extreme conditions. Many of the models utilized on the simulators are developed at the STAR Center. The Facility includes other types of simulators as well. The students' training on the simulators is interactive and provides for real-time exercises. It is the STAR Center's ability to provide hands-on, real-time training in a controlled environment and model different environments that makes the S&E Plan a valuable benefit to its participants and makes S&E Plan participants even more valuable to contributing employers. Simulators used at the STAR Center were purchased from Kongsberg and the S&E Plan has an on-going maintenance contract with Kongsberg.

4. Participants in the S&E Plan work predominantly on U.S.-flag ships in foreign and domestic commercial trade. Many serve onboard civilian ships under contract to the United States government. In addition, participants also serve as engine and deck officers and stewards in the U.S.-flag Great Lakes dry bulk and tanker fleets and on various vessels and tug barges on inland waterways. The S&E Plan, through the STAR Center, provides centralized training locations for employees in the maritime industry. In addition, maritime officers are subject to Federal laws and significant regulation and licensing requirements by the United States Coast Guard, the Department of Defense and the Department of Transportation. The S&E Plan and the STAR Center provide a centralized way for maritime officers to obtain licenses and training required by the various governmental agencies.

5. Kongsberg will pay the S&E Plan for these services at the rates approved by the Trustees for similar services provided to unrelated third parties. The following is a description of the service that would be provided by the S&E Plan.

Hydrodynamic Modeling: The applicant represents that the key to realistic ship-handling simulation is an accurate representation of ship maneuvering characteristics. The mathematical modeling of ship behavior is referred to as ''Hydrodynamic Modeling.'' The applicant represents that the STAR Center has developed skills in this area over the last several years and has personnel uniquely qualified in the development of hydrodynamic models required by Kongsberg.

Geographic Modeling: In order to represent the environment necessary for ship-handling simulation, a ''Geographic Model'' needs to be created. This model includes a visual representation of a particular port or waterway as well as the bathometric (underwater contours) and environmental conditions, such as water current and wind. The STAR Center has developed a substantial in-house capability to create these models. Although the field of simulation modeling is expanding, models that will run on a Kongsberg simulator require the use of proprietary software tools. The applicant represents that the STAR Center is the largest external developer of Kongsberg-specific geographic models and has the capability and a reputation for creating accurate geographic models.

Training: The STAR Center is currently the largest user of Kongsberg simulators in the country and has years of experience utilizing these simulators in approved training programs. The applicant represents that because of this experience, the STAR Center is qualified to assist Kongsberg in training other users in the proper operation of the simulators.

6. The applicant represents that the STAR Center has developed and improved its capabilities over the last thirteen years and is recognized as a provider of specialized simulator training services. Because this is a small industry, and there are a limited number of entities with the requisite experience and expertise in simulation training, the inability of the S&E Plan to contract

with Kongsberg to provide modeling and training services unduly restricts the operations of the S&E Plan. By providing the Services, the S&E Plan would be able to develop hydrodynamic and geographic models that will improve the overall quality of maritime officers and increase safety in the operation of marine vessels, thus furthering the purposes of the S&E Plan, and would be able to increase the level of expertise in the application of modeling tools and techniques by the S&E Plan, thus expanding the training opportunities for S&E Plan participants, many of whom are employed on vessels assigned to areas of conflict overseas. Many S&E Plan participants serve on vessels engaged in the transportation and supply of cargo to troops stationed in conflicts around the world. Finally, the revenue received by the STAR Center from the Services will help offset operating costs of the STAR Center. This, in turn, will allow the S&E Plan to provide expanded services to plan participants without increasing contribution levels.

7. To ensure that the interests of the S&E Plan and their participants are well protected, the S&E Plan has retained Bond Beebe C.P.A. (Bond Beebe) as outside auditors to perform the annual audit of the Services. Bond Beebe will perform annual audits of the S&E Plan to identify and reconcile any recordkeeping discrepancies involving the Services.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The S&E Plan will charge and will be paid for the Services at the rates approved by the Trustees for similar services provided to unrelated third parties; (b) The terms of the arrangement between the S&E Plan and Kongsberg are at least as favorable to the S&E Plan as those obtainable in an arm's length transaction with an unrelated party; (c) An independent auditor will perform annual audits of the S&E Plan to identify and reconcile any recordkeeping discrepancies involving the Services; and (d) The S&E Plan will maintain, for a period of six (6) years, the records necessary to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Notice to Interested Parties: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication of this notice of proposed exemption in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of April, 2007.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–8184 Filed 4–27–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability for Program Year (PY) 2005 Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that nine states are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) incentive awards under the WIA Regulations.

DATES: The nine eligible states must submit their applications for incentive funding to the Department of Labor by June 14, 2007.

ADDRESSES: Submit applications to the Employment and Training Administration, Office of Performance and Technology, 200 Constitution Avenue, NW., Room S–5206, Washington, DC 20210, Attention: Karen Staha and Traci DiMartini, Telephone number: 202–693–3698 (this is not a toll-free number). Fax: 202–693–3490. E-mail: *staha.karen@dol.gov* and *dimartini.traci@dol.gov.* Information may also be found at the ETA Performance Web site: *http://www.doleta.gov/performance.*

SUPPLEMENTARY INFORMATION: Nine (9) states (see Appendix) qualify to receive a share of the $16.3 million available for incentive grant awards under WIA section 503. These funds, which were contributed by the Department of Education from appropriations for the Adult Education and Family Literacy Act and the Carl D. Perkins Vocational and Technical Education Act, are available for the eligible states to use through June 30, 2009, to support innovative workforce development and education activities that are authorized under title I (Workforce Investment Systems) or title II (the Adult Education and Family Literacy Act (AEFLA)) of WIA, or under the Perkins Act (Pub. L. 105–332, 20 U.S.C. 2301 *et seq.*). In order to qualify for a grant award, a state must have exceeded performance levels agreed to by the Secretaries, Governor, and State Education Officer for

outcomes in WIA title I, adult education (AEFLA), and vocational education (Perkins Act) programs. The goals included placement after training, retention in employment, and improvements in literacy levels, among other measures. After review of the performance data submitted by states to the Department of Labor and to the Department of Education, each Department determined which States would qualify for incentives for its programs (the Appendix at the bottom of this notice details the eligibility of each State by program). These lists of eligible States were compared, and States that qualified under all three programs are eligible to apply for and receive an incentive grant award. The amount that each state is eligible to receive was determined by the Department of Labor and the Department of Education and is based on WIA section 503(c) (20 U.S.C. 9273(c)), and is proportional to the total funding received by these States for the three Acts.

The states eligible to apply for incentive grant awards and the amounts they are eligible to receive are listed in the following chart:

State	Amount of award
1. Arizona	$1,724,063
2. Delaware	967,758
3. Illinois	3,000,000
4. Iowa	1,190,729
5. Massachusetts	1,752,678
6. Missouri	1,922,350
7. Oregon	1,781,694
8. Tennessee	2,096,895
9. Virginia	1,917,021

Dated: April 24, 2007.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

APPENDIX

BILLING CODE 4510–FN–P

State	PY 2005-06 Exceeded State Performance Levels			
	WIA (Title I)	AEFLA (Adult Education)	Perkins Act (Vocational Education)	WIA Title I; AEFLA; Perkins Act
Alabama	X	X		
Alaska			X	
Arizona	X	X	X	**X**
Arkansas			X	
California			X	
Colorado		X	X	
Connecticut		X	X	
District of Columbia		X	X	
Delaware	**X**	**X**	**X**	**X**
Florida	X		X	
Georgia		X	X	
Hawaii	X		X	
Idaho		X	X	
Illinois	**X**	**X**	**X**	**X**
Indiana		X	X	
Iowa	X	X	X	**X**
Kansas		X	X	
Kentucky	X		X	
Louisiana		X	X	
Maine			X	
Maryland		X	X	
Massachusetts	X	X	X	**X**
Michigan	X	X		
Minnesota	X	X		
Mississippi		X	X	
Missouri	**X**	**X**	**X**	**X**
Montana		X	X	
Nebraska		X	X	
Nevada			X	
New Hampshire		X		
New Jersey	X		X	
New Mexico				
New York		X	X	
North Carolina			X	
North Dakota	X	X		
Ohio		X	X	
Oklahoma			X	
Oregon	X	X	X	**X**
Pennsylvania			X	
Puerto Rico			X	

State	PY 2005-06 Exceeded State Performance Levels			
	WIA (Title I)	AEFLA (Adult Education)	Perkins Act (Vocational Education)	WIA Title I; AEFLA; Perkins Act
Rhode Island				
South Carolina		X	X	
South Dakota	X	X		
Tennessee	X	X	X	**X**
Texas		X	X	
Utah			X	
Vermont			X	
Virginia	X	X	X	**X**
Washington		X	X	
West Virginia		X	X	
Wisconsin		X	X	
Wyoming		X	X	

States in **bold** exceeded their performance levels for AEFLA and the Perkins Act.

[FR Doc. E7–8221 Filed 4–27–07; 8:45 am]
BILLING CODE 4510–FN–C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 30, 2007 (Note that the new time period for requesting copies has changed from 45 to 30 days after publication). Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the follwing means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational

unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note That The New Time Period For Requesting Copies Has Changed From 45 to 30 Days After Publication)

1. Department of Agriculture, National Agricultural Statistics Service (N1–355–07–1, 131 items, 110 temporary items). A comprehensive records schedule, including administrative agricultural census and survey records, web records, agency management records, agreements, communications records, and consultant and performance improvement records. Also included are records generated in the process of obtaining agricultural census and survey data, and editing, summarizing, tabulating, and producing reports and aggregate data from them. Proposed for permanent retention are recordkeeping copies of correspondence, speeches, and other records of high-level staff; press releases; census and survey publicity records; records of official boards, advisory committees, and conferences; directives; census questionnaires; data warehouse master files and documentation; publications; and published article manuscripts. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Defense, National Geospatial-Intelligence Agency (N1–537–03–7, 28 items, 21 temporary items). Working files and reference materials used in the study, determination, and definition of foreign geographic place names and inputs, master files, and documentation associated with an electronic information system used to collect and maintain foreign geographic place name data. Proposed for permanent retention are recordkeeping copies of records documenting program activities, policies, decisions, and procedures for the standardization of foreign geographic place names, technical studies, project files, foreign geographic place name electronic data and documentation, and foreign geographic place name card files.

3. Department of Justice, Federal Bureau of Investigation (N1–65–06–7, 4 items, 4 temporary items). Inputs, outputs, master file, and system documentation associated with an electronic information system used to track stolen art and artifacts.

4. Department of State, Bureau of Diplomatic Security (N1–59–07–4, 20 items, 17 temporary items). Records documenting antiterrorism assistance program law enforcement and security training activities. Included are daily and weekly summaries of program activities, course and program reporting material, student and course information, course instructional material, student participation material, working files, and administrative files documenting day-to-day housekeeping activities. Proposed for permanent retention are recordkeeping copies of Country Assessment Reports, Country Assistance Plans, and Annual Reports.

5. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–05–8, 42 items, 34 temporary items). Records accumulated within the Office of Policy and Program Development. Included are budget background records, chronological files, driver exemptions and waiver files, audit reports, safety recommendation files, complaint files, petitions for rulemaking files, policy and planning subject files and research reports, reference files, and waiver, exemptions, and pilot program files. Proposed for permanent retention are recordkeeping copies of formal interpretations of regulations, evidence reports and other program and scientific documents, multi-year planning documents, and public docket files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Transportation, National Highway Traffic Safety Administration (N1–416–07–1, 5 items, 5 temporary items). Records of the Office of Civil Rights, including administrative and compliance correspondence and reports. This schedule authorizes the agency to apply the proposed disposition instruction to any recordkeeping medium.

7. Department of the Treasury, Office of Thrift Supervision (N1–483–07–3, 7 items, 7 temporary items). Records of the Planning Budget and Finance Office relating to budget and accounting procedures. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Commodity Futures Trading Commission, Division of Enforcement (N1–180–07–1, 3 items, 3 temporary items). Records associated with investigatory case files, reparations complaint files, and routine litigation case files. Paper recordkeeping copies of these files were previously approved for disposal. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. National Aeronautics and Space Administration, Agency-wide, (N1–255–06–1, 2 items, 2 temporary items). Records of management offices, including general subject files, briefings, reports, presentations, office operational records, and records of management functions. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. National Aeronautics and Space Administration, Agency-wide, (N1–255–07–1, 1 item, 1 temporary item). Trademark records including correspondence, applications, notification files and infringement case files, and other records relating to efforts by the agency to obtain trademark registrations at the Patent and Trademark Office. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

11. National Archives and Records Administration, Agency-wide (N1–64–07–2, 8 items, 8 temporary items). Records of the NARA Online Ordering System for managing web-based customer orders for products and services. Included are records used for submitting orders for reproductions of popular documents and for researching orders, and a tracking system used to track and fill online orders.

12. National Archives and Records Administration, Office of Administrative Services (N1–64–07–3, 6 items, 6 temporary items). Records documenting customer orders for products and services and related reports and summaries. Included are order history files, transaction files, summaries and statistical reports, and order fulfillment tracking and payment records.

13. Tennessee Valley Authority, Human Resources Division (N1–142–07–1, 5 items, 5 temporary items). Inputs, master files, and outputs relating to the testing of job applicants. Included are such records as personal data concerning applicants, test results, form

letters notifying applicants of test scores, reports which summarize all applicant scores for each test, and automated indexes.

Dated: April 20, 2007.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E7–8150 Filed 4–27–07; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 20, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–27953.

Date Filed: April 16, 2007.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 532—Resolution 010o, TC3 Special Passenger Amending Resolution, between Japan and China (excluding Hong SAR and Macao SAR), (Memo 1080), Intended effective date: 1 September 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–8173 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending April 20, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (see 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify cope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2007–27996.

Date Filed: April 18, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 9, 2007.

Description: Application of Volare, S.p.A., requesting a foreign air carrier permit to carry international charter air traffic of passengers and their accompanying baggage and/or cargo between any point of points in the Republic of Italy and any point or points in the territory of the United States and any point or points in any third country or countries subject to the conditions set out in the currently effective open skies agreement between the Republic of Italy and the United States; and other charter trips in foreign air transportation.

Docket Number: OST–2005–20072 and OST–2005–21744.

Date Filed: April 19, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 10, 2007.

Description: Application of Skybus Airlines, Inc. (''Skybus''), requesting a disclaimer of jurisdiction and reissuance of certificates or, alternatively, approval of the transfer of Skybus's certificates of public convenience and necessity and other operating authority from Skybus Airlines, LLC, an entity which no longer exists.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–8174 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Land at Deer Valley Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Request to Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release from the conditions and restrictions contained in applicable grant agreements with the United States for approximately 417 square feet of unimproved land obligated for airport purposes at Deer Valley Airport, Phoenix, Arizona, and which is not needed for airport purposes. The released land will be used for a driveway and sidewalk as part of the street paving and storm drain improvement project by the city of Phoenix. The project will improve traffic safety in the neighborhood and will not impact airport operation. Upon the release of this airport land, the Aviation Department will receive the appraised fair market value for airport improvements.

DATES: Comments must be received on or before May 30, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Airports Division, Federal Register Comment, P.O. Box 92007, Los Angeles, CA 90009–2007. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Russell, Project Manager, City of Phoenix, Aviation Department, Rental Car Center, 1805 East Sky Harbor South, Phoenix, Arizona 85034.

FOR FURTHER INFORMATION CONTACT: Ms. Kimchi Hoang, Airports Program Manager, Los Angeles Airports District Office, telephone (310) 725–3617, or fax (310) 725–6849. For airport-specific information regarding the release, contact Mr. Richard Russell, City of Phoenix, at above address or (602) 273–3454 or fax (602) 273–8879.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by the assurances in grant agreements.

The following is a brief overview of the request:

The City of Phoenix (City) requested a release from the conditions and restrictions in applicable grant agreements with the United States for approximately 417 square feet of unimproved City Aviation Department land, obligated for airport purposes, to sell to the City Streets Transportation Department, Phoenix, Arizona. The 417 square feet cannot be used for airport purposes and is not needed for future airport development. This land is located outside Phoenix Deer Valley Airport's western fence line on 19th Avenue north of Deer Valley Road and Pinnacle Peak Road in Phoenix, Arizona. The appraised fair market value of the parcel is $3,000 and the City Streets Transportation Department

will transfer the fund of $3,000 to the Airport Aviation Department. The release will permit improvements for the traffic safety including road widening, grading, drainage, sidewalks and landscaping. The airport will use the proceeds for airport purposes.

Issued in Hawthorne, California, on April 10, 2007.

Brian Q. Armstrong,

Manager, Los Angeles Airports District Office, Western-Pacific Region.

[FR Doc. 07–2103 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Project No. HPP–TI–LC49(97)]

Environmental Impact Statement; Utah County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: FWHA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed transportation improvements between the Provo Airport and the University Avenue Interchange on I–15 in Utah County, Utah.

FOR FURTHER INFORMATION CONTACT: Anthony Sarhan, Area Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0182; or Lori Dabling, UDOT R3 Project Manager, 658 N. 1500 W. Orem, UT 84057, Telephone: 801–227–8081 Fax: 801–222–3420.

SUPPLEMENTARY INFORMATION: FWHA, in cooperation with the Utah Department of Transportation (UDOT) and Provo City will prepare an Environmental Impact Statement (EIS) on a proposal to address current and projected traffic demand and provide an improved access between the Provo Airport and the University Avenue Interchange on I–15. The proposed project area extends for approximately 3 miles in length between the interchange and the airport and along existing Center Street in Provo. The project is generally bordered on the south and west by Utah Lake and on the east by I–15.

The FHWA will consider a reasonable range of alternatives which meet the project objectives and are based on agency and public input. These alternatives include: (1) Taking no action; (2) using alternative travel modes, (3) upgrading and adding lanes to existing Center Street; and (4) constructing a highway on a new location for all or a portion of the project length.

The public, as well as Federal, State, and local agencies, will be invited to participate in project scoping to ensure that a full range of alternatives is considered and that all appropriate environmental issues and resources are evaluated. The scoping process will include opportunities to provide comments on the purpose and need for the project, potential alternatives, and social, economic, and environmental issues of concern.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies, and to private organizations and citizens who have previously expressed or who are known to have an interest in this proposal. An agency scoping meeting will be held to solicit comments on May 22, 2007, from 1 p.m. to 3 p.m. in Conference Rooms A, B, and C at the UDOT Region 3 Office (658 North 1500 West, Orem, UT).

The public will be invited to participate in scoping meetings which will be held in an open house format at locations and dates to be determined. In addition, a public hearing will be held following the release of the draft EIS. Public notice advertisements and direct mailings will notify interested parties of the time and place of the public meetings and the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20–.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued On: April 23, 2007.

Edward Woolford,

Environmental Specialist, FHWA—Utah Division.

[FR Doc. E7–8161 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27515]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 25 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before May 30, 2007.

ADDRESSES: You may submit comments identified by Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA–2006–27515 using any of the following methods:

- *Web Site: http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

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

24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 25 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Roosevelt Bell, Jr.

Mr. Bell, age 42, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''In my professional opinion, Mr. Bell's visual impairment does not compromise his ability to operate a commercial vehicle safely.'' Mr. Bell reported that he has driven straight trucks for 14 years, accumulating 218,400 miles. He holds a Class C operator's license from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David K. Boswell

Mr. Boswell, 46, has a macular scar in his right eye due to ocular histoplasmosis that occurred in 1998. The visual acuity in his right eye is 20/60 and in the left, 20/15. Following an examination in 2006, his optometrist noted, ''It is my opinion that Mr. Boswell's condition is stable that he has sufficient visual capability to perform the driving and other tasks associated with operating a commercial vehicle.'' Mr. Boswell reported that he has driven tractor-trailer combinations for 7 years, accumulating 525,000 miles. He holds a Class A Commercial Driver's License (CDL) from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Melvin M. Carter

Mr. Carter, 59, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''I certify with my medical opinion, Melvin Carter has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Carter reported that he has driven tractor-trailer combinations for 21 years, accumulating 1 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows one crash, which he was cited for, and no convictions for moving violations in a CMV.

Bernabe V. Cerda

Mr. Cerda, 36, has a prosthetic right eye due to a traumatic injury sustained as a child. The visual acuity in his left eye is 20/20. Following an examination in 2007, his optometrist noted, ''I believe Mr. Cerda has the level of vision to drive a commercial vehicle.'' Mr. Cerda reported that he has driven straight trucks for 8 years, accumulating 400,000 miles, tractor-trailer combinations for 3 years, accumulating 375,000 miles, and buses for 4 years, accumulating 140,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael S. Crawford

Mr. Crawford, 39, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''I do not feel that the amblyopia should prevent him from performing the driving tasks required to safely operate a commercial vehicle.'' Mr. Crawford reported that he has driven straight trucks for 9 years, accumulating 187,200 miles. He holds a Class D operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rex A. Dyer

Mr. Dyer, 46, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60 and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''I believe Mr. Rex Dyer has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle.'' Mr. Dyer reported that he has driven straight trucks for 26 years, accumulating 1.3 million miles, and tractor-trailer combinations for 26 years, accumulating 1.4 million miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Patrick J. Goebel

Mr. Goebel, 57, has loss of vision in his left eye due to ocular hypertension, secondary to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in the left, count-finger-vision. Following an examination in 2006, his optometrist noted, ''It is my impression that Mr. Goebel has had stable central and peripheral vision for many years and at this time has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Goebel reported that he has driven straight trucks for 40 years, accumulating 2.2 million miles, and tractor-trailer combinations for 11 years, accumulating 60,500 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas A. Gotto

Mr. Gotto, 53, has complete loss of vision in his right eye due to a traumatic injury sustained in 1998. The visual acuity in his left eye is 20/20. Following an examination in 2006, his ophthalmologist noted, ''From my exam today, I feel that he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Gotto reported that he has driven straight trucks for 18 years, accumulating 540,000 miles, and

tractor-trailer combinations for 18 years, accumulating 180,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Louis W. Henderson, Jr.

Mr. Henderson, 45, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2006, his optometrist noted, ''Mr. Henderson has maintained a safe driving record for many years and has always driven with mild visual disability of the left eye. Since it has always been present, he has functioned well, and his peripheral visual acuity is excellent there is no reason to believe that he cannot continue to operate commercial vehicles.'' Mr. Henderson reported that he has driven straight trucks for 3 years, accumulating 37,500 miles. He holds a Class B CDL from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William P. Holloman

Mr. Holloman, 59, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in the left, 20/60. Following an examination in 2006, his optometrist noted, ''It is my opinion that William Holloman has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Holloman reported that he has driven straight trucks for 2 years, accumulating 20,000 miles, and tractor-trailer combinations for 2½ years, accumulating 250,000 miles. He holds a Class A CDL Instruction Permit from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wilbur J. Johnson

Mr. Johnson, 50, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my medical opinion the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Johnson reported that he has driven straight trucks for 18 years, accumulating 100,800 miles, and tractor-trailer combinations for 29 years, accumulating 101,500 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert J. MacInnis

Mr. MacInnis, 54, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''His vision is stable and sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. MacInnis reported that he has driven straight trucks for 2 years, accumulating 2,400 miles, and tractor-trailer combinations for 18 years, accumulating 1.6 million miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 15 mph.

Joseph W. Mayes

Mr. Mayes, 40, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my medical opinion, Mr. Mayes has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Mayes reported that he has driven straight trucks for 15 years, accumulating 600,000 miles, and buses for 10 years, accumulating 350,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry L. Morseman

Mr. Morseman, 61, has had amblyopia in his right eye since 1999. The best corrected visual acuity in his right eye is 20/70 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''It is my opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Morseman reported that he has driven straight trucks for 34 years, accumulating 425,000 miles, and tractor-trailer combinations for 7½ years, accumulating 11,250 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Earl R. Neugebauer

Mr. Neugebauer, 56, has loss of vision in his right eye due to a traumatic injury sustained at age 20. The best corrected visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''In my opinion, Earl has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Neugebauer reported that he has driven straight trucks for 12 years, accumulating 240,000 miles, tractor-trailer combinations for 24 years, accumulating 2.2 million miles, and buses for 2 years, accumulating 180,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Luis M. Ramos

Mr. Ramos, 39, has a macular scar in his right eye due to a traumatic injury sustained approximately 18 years ago. The visual acuity in his right eye is 20/60 and in the left, 20/15. Following an examination in 2006, his ophthalmologist noted, ''I feel, to the best of my medical opinion, that he has sufficient vision to operate a commercial vehicle.'' Mr. Ramos reported that he has driven tractor-trailer combinations for 18 years, accumulating 2.5 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kenneth C. Reeves

Mr. Reeves, 62, has complete loss of vision in his right eye due to an optic nerve injury at birth. The visual acuity in his left eye is 20/20. Following an examination in 2006, his optometrist noted, ''The results of the examination reveals his vision has not changed and that he has sufficient vision to perform the driving of a commercial vehicle.'' Mr. Reeves reported that he has driven straight trucks for 1 year, accumulating 25,000 miles, and tractor-trailer combinations for 40½ years, accumulating 2 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory C. Simmons

Mr. Simmons, 49, has had glaucoma in his left eye since at least 2000. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2006, his ophthalmologist noted, ''In my opinion, he has sufficient visual function to drive a commercial vehicle.'' Mr. Simmons reported that he has driven straight trucks for 4 years, accumulating 20,800 miles, and tractor-trailer combinations for 17 years, accumulating 132,600 miles. He holds a Class A CDL from

Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dustin N. Sullivan

Mr. Sullivan, 24, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''In my medical opinion, Dustin Sullivan has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Sullivan reported that he has driven straight trucks for 5 years, accumulating 250,000 miles, and tractor-trailer combinations for 3½ years, accumulating 157,500 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas E. Summers

Mr. Summers, 59, has loss of vision in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is light perception and in the left, 20/25. Following an examination in 2006, his ophthalmologist noted, ''I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Summers reported that he has driven tractor-trailer combinations for 29 years, accumulating 2 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speed in a CMV. He exceeded the speed limit by 8 mph.

Jon C. Thompson

Mr. Thompson, 48, has had latent nystagmus in his left eye since birth. The visual acuity in his right eye is 20/25 and in the left, 20/200. Following an examination in 2006, his ophthalmologist noted, ''It is my opinion that in his current medical status, that Mr. Thompson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Thompson reported that he has driven straight trucks for 26 years, accumulating 1.1 million miles, and tractor-trailer combinations for 2 years, accumulating 90,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lorenzo Wade

Mr. Wade, 48, has loss of vision in his right eye due to retinal damage from broken blood vessels sustained as a child. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''I believe he has the vision necessary to continue to perform the driving tasks required to operate a commercial vehicle for his job, as he has done in the past.'' Mr. Wade reported that he has driven straight trucks for 7 years, accumulating 68,600 miles. He holds a Class C operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James S. Wheeler

Mr. Wheeler, 62, has complete loss of vision in his right eye due to a traumatic injury sustained in 1967. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2006, his optometrist noted, ''This patient has sufficient vision to perform driving tasks with commercial vehicles.'' Mr. Wheeler reported that he has driven straight trucks for 32 years, accumulating 2.8 million miles, and tractor-trailer combinations for 32 years, accumulating 2.4 million miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tommy N. Whitworth

Mr. Whitworth, 53, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50 and in the left, 20/20. Following an examination in 2006, his ophthalmologist noted, ''In my opinion, this patient has sufficient visual acuity with both eyes open to operate a commercial vehicle.'' Mr. Whitworth reported that he has driven tractor-trailer combinations for 20 years, accumulating 2 million miles, and buses for 1 ½ years, accumulating 22,500 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. Williams

Mr. Williams, 53, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2006, his optometrist noted, ''This person is capable of operating a commercial vehicle in any state without restriction.'' Mr. Williams reported that he has driven straight trucks for 19 years, accumulating 475,000 miles, and tractor-trailer combinations for 16 years, accumulating 320,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to obey a traffic sign.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business May 30, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: April 24, 2007.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E7–8177 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2006–26600]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt fifty-five individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective April 30, 2007. The exemptions expire on June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30

a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

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

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

Background

On March 1, 2007, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifty-five individuals, and requested comments from the public (72 FR 9399). The public comment period closed on April 2, 2007 and two comments were received.

FMCSA has evaluated the eligibility of the fifty-five applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3). The Agency would like to publish a correction to Mr. Cottongim's profile. Mr. Cottongim was published as having an operator's license from the State of Ohio when he actually holds an operator's license from the State of Indiana.

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with Insulin-Treated Diabetes Mellitus (ITDM) to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifty-five applicants have had ITDM over a range of 1 to 40 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 1, 2007, **Federal Register** Notice (72 FR 9399). Because there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received two comments in this proceeding. The comments are considered and discussed below.

A letter of recommendation was received in favor of granting the Federal diabetes exemption to Mr. Jamison P. Noel. It was written by Pamela R. Miller who states that Mr. Noel takes exceptional care of his health and is very responsible.

The World Privacy Forum stated its concern that personal medical information tied to identifiable individuals is being published in the **Federal Register**. They are of the opinion that the disclosure of the medical status of these individuals can have negative consequences for them and their family members.

The Transportation Equity Act (TEA 21), Section 4007 states that ''upon receipt of an exemption request, the Secretary shall publish in the **Federal Register** a notice explaining the request that has been filed and shall give the public an opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request. This

subparagraph does not require the release of information protected by law from public disclosure.''

The Agency publishes a profile on each individual that submits an application in order to provide the public with the information required by TEA 21. The Federal diabetes exemption application informs the applicant, in detail, of all information that will be published in the **Federal Register** related to their application. Therefore, each applicant is fully informed of this requirement prior to submitting their application.

Conclusion

After considering the comments to the docket and based upon its evaluation of the fifty-five exemption applications, FMCSA exempts, James F. Andrews, Roger D. Balzan, Ronald K. Barker, James A. Bettis, Daniel W. Bezdek, James A. Burchette, Andrew J. Causey, Ross E. Cheney, Joan L. Chumney, Jerry R. Chandler, Leonard T. Coker, Robert S. Conchola, Sr., Robert M. Cottongim, Don C. Doerfler, Frederick J. Fath, Jason L. Freeseman, Rusty W. Frost, Marcel C. Gagnier, Steven A. Gibbs, Kenneth D. Gregory, Perry S. Green, Paul M. Harris, Andrew J. Hayek, Gary L. Koehn, Randall B. Kutzke, Michael J. Marlin, Marc K. Marsing, Frank J. Mattos, Winfred A. McMurray, Edward T. Megee, Steven T. Moody, Paul E. Mougin, Timothy W. Nelson, Richard W. Newman, Jamison P. Noel, Rex S. Norquist, Steven B. Novak, Lawrence E. Olson, Ronnie L. Patterson, Benigno A. Piedra, David L. Rice, Emiliano Rios, Russell D. Rockefeller, Matthew T. Russell, Larry V. Schwaller, Ellis D. Scott, Scott Sheerer, Lowell P. Smith, Richard L. Strange, Samuel G. Thiel, Robert J. Varetoni, Michael R. Vaupel, David G. White, and Ray W. Wright from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 24, 2007.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E7–8178 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28000]

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 RELAX A WILE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 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–2007–28000 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 Public Law 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 30, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28000. 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 RELAX A WILE is:

Intended Use: ''Charter (Coastwise trade 20%).''

Geographic Region: ''Inland and coastal waters of the east coast USA between Eastport, ME and Cedar Key, FL (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, DE, MD, VA, NC, SC, GA, FL, the Bahamas, Turks & Caicos Islands.''

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 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–8194 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss progress on public and private sector recommendations from the Council's Intermodal Report, expanded MTS education outreach, and regional MTS activities. A public

comment period is scheduled for 9:30 a.m. to 10 a.m. on Thursday, May 10, 2007. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by May 2, 2007. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by May 18, 2007.

DATES: The meeting will be held on Wednesday, May 9, 2007, from 9 a.m. to 5 p.m. and Thursday, May 10, 2007, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Hyatt Regency O'Hare, 9300 W. Bryn Mawr Avenue, Rosemont, IL 60018. The hotel's phone number is 847–696–1234.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–7678; Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; *richard.lolich@dot.gov.*

(Authority: 49 CFR 1.66)

Dated: April 19, 2007.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. 07–2109 Filed 4–25–07; 4:12 pm]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0522)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request has been forwarded to OMB for an extension of the currently approved information collection. PHMSA published a **Federal Register** notice soliciting comments on this information collection and received none. The purpose of this notice is to allow the public an additional 30 days to submit comments.

DATES: Comments must be submitted on or before May 30, 2007.

ADDRESSES: Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Office for the Department of Transportation, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick at (202) 366–5523, or by e-mail at *le.herrick@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA requires operators of gas distribution, transmission, and gathering pipelines to complete and submit annual and incident reports. PHMSA also requires immediate telephone notification from operators to report potentially significant safety issues related to an incident. The follow-up written report for each incident is to be submitted by the operators within 30 days of the incident. The reporting requirements are found in 49 CFR part 191.

The operators are required to use PHMSA forms F 7100.1, F 7100.1–1, F 7100.2 and F 7100.2–2 for their report submissions to PHMSA. These reports enable PHMSA to identify and evaluate existing and potential pipeline safety problems as part of its efforts to minimize natural gas pipeline failures and to develop statistical and data/safety reports. A copy of the report forms is available in the docket.

On February 12, 2007, PHMSA published a notice with request for comments in the **Federal Register** (72 FR 6664). PHMSA received four comments. Pursuant to 44 U.S.C. 3506(c)(2)(A) of the PRA, PHMSA will include the comments in the request for OMB's clearance of this information collection. PHMSA is now forwarding the collection of information request to the OMB and providing an additional 30 days for comments. PHMSA is inviting comments on whether the proposed information collection is necessary for the proper performance of the functions of the Department. The comments may include (1) Whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

As used in this notice, the term ''information collection'' includes all work related to preparing and disseminating information in accordance with recordkeeping requirements.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Incident and Annual Reports for Gas Pipeline Operators.

Respondents: 2100 gas pipeline operators.

Estimated Total Annual Burden on Respondents: 36,105 hours.

Issued in Washington, DC, on April 25, 2007.

Florence L. Hamn,

Director of Regulations, Office of Pipeline Safety.

[FR Doc. E7–8232 Filed 4–27–07; 8:45 am]

BILLING CODE 4910–60–P

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§§ 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.