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WHEN: Tuesday, September 11, 2007
9:00 a.m.–Noon

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150–AI00

Revision of Fee Schedules; Fee Recovery for FY 2007; Correction

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rulemaking published on June 6, 2007 (72 FR 31401), that amends the licensing, inspection, and annual fees charged to its applicants and licensees. This notice is necessary to correct an erroneous amendatory instruction.

DATES: *Effective Date:* August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Renu Suri, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–0161, e-mail *RXS6@nrc.gov*.

SUPPLEMENTARY INFORMATION:

PART 171—[CORRECTED]

§ 171.16 [Corrected]

■ On page 31427, in the third column, amendatory instruction 10. is corrected to read, ''In 171.16, paragraph (a)(2) is redesignated as paragraph (a)(3) and revised, a new paragraph (a)(2) is added, and paragraphs (c), (d), and (e) are revised to read as follows:''

Dated at Rockville, Maryland, this 20th day of July, 2007.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Acting Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E7–14441 Filed 7–25–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30561; Amdt. No. 3228]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 26, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 2007.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase— Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 13, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35, and 97.37 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, LDA w/GS, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, MLS, TLS, GLS, WAAS PA, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, § 97.37 Takeoff Minima and Obstacle Departure Procedures. Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
07/05/07	IN	NEW CASTLE	NEW CASTLE—HENRY CO MUNI	7/7352	NDB OR GPS RWY 9, AMDT 5.
07/11/07	AR	FORT SMITH	FORT SMITH REGIONAL	7/7963	ILS RWY 25, AMDT 21A.

[FR Doc. E7–14079 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 510, 514, and 516

[Docket No. 2005N–0329]

RIN 0910–AF60

Designation of New Animal Drugs for Minor Uses or Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Minor Use and Minor Species Animal Health Act of 2004 (MUMS act) amended the Federal Food, Drug, and Cosmetic Act (the act) to establish new regulatory procedures that provide incentives intended to make more drugs legally available to veterinarians and animal owners for the treatment of minor animal species and uncommon diseases in major animal species. At this time, FDA is issuing final regulations to implement the act. These regulations describe the procedures for designating a new animal drug as a minor use or minor species drug. Such designation establishes eligibility for the incentives provided by the MUMS act.

DATES: This rule is effective October 9, 2007.

FOR FURTHER INFORMATION CONTACT: Bernadette Dunham, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, e-mail: *Bernadette.Dunham@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In enacting the MUMS act (Public Law 108–282), Congress sought to encourage the development of animal drugs that are currently unavailable to minor species (species other than cattle, horses, swine, chickens, turkeys, dogs, and cats) in the United States or to major species afflicted with uncommon diseases or conditions (minor uses). Congress recognized that the markets for drugs intended to treat these species, diseases, or conditions are often so small that there are insufficient economic incentives to motivate sponsors to develop data to support approvals. Further, Congress recognized that some minor species populations are too small or their management systems too diverse to make it practical to conduct traditional studies to demonstrate safety and effectiveness of these animal drugs. As a result of these limitations, sponsors have generally not been willing or able to collect data to

support legal marketing of drugs for these species, diseases, or conditions. Consequently, Congress enacted the MUMS act, which amended the Federal Food, Drug, and Cosmetic Act (the act) to provide incentives to develop new animal drugs for minor species and minor uses, while still ensuring appropriate safeguards for animal and human health.

In the **Federal Register** of September 27, 2005 (70 FR 56394), FDA issued proposed regulations to implement section 573 of the act (21 U.S.C. 360ccc-2). These regulations proposed procedures for designating a new animal drug as a minor use or minor species drug. Such designation provides eligibility for certain incentives established by the MUMS act, including exclusive marketing rights associated with the conditional approval or approval of designated new animal drugs and for grants to support designated new animal drug development. The proposed rule initially provided for a 75-day public comment period during which the agency received several comments asserting that 75 days was not an adequate amount of time to prepare and submit meaningful comments. In response to this, in the **Federal Register** of December 28, 2005 (70 FR 76732), FDA reopened the comment period allowing an additional 30 days of public comment.

II. Changes to the Proposed Rule

In response to public comment, or in two places to provide added clarity, FDA has made the following changes to the proposed rule:

§ 516.3 *Definitions*. The definition of ''*Infrequently*'' was changed by adding the words ''on an annualized basis'' to the end of the proposed definition. The definition now reads: ''*Infrequently*, as used in the minor use definition, means a disease or condition that is uncommon or that occurs only sporadically on an annualized basis.''

§ 516.21 *Documentation of minor use status*. The language in § 516.21(b) was revised for clarity.

§ 516.28 *Publication of MUMS-drug designations*. In § 516.28(b), the term ''generic name'' was changed to ''established name'' to avoid confusion with abbreviated applications approved under section 512(b)(2) of the act.

§ 516.31 *Scope of MUMS-drug exclusive marketing rights*. In § 516.31(a)(2), the words ''or proposes to withdraw'' were removed.

III. Comments

The agency received comments from 9 organizations or individuals on the September 27, 2005, proposal. Comments were received from a trade organization representing new animal drug manufacturers, a trade organization representing pet product manufacturers, an animal feed manufacturer, a professional association representing veterinarians, an association representing zoos and aquariums, a consumer advocacy organization, and 3 consumers.

A. Comments on the Proposed Rule

(Comment 1) In § 516.3(b) one comment stated that for added clarity and consistency we should add the words ''on an annualized basis'' to the end of the definition for infrequently.

(Response) We agree. We explained in the preamble to the proposed rule why we thought that it was appropriate to annualize the data on the number of animals in which the indication occurs (see 70 FR at 56395 to 56396). Therefore, we have revised the codified section accordingly.

(Comment 2) Two comments stated that the requirement for a specific product development plan as part of a request for MUMS-drug designation in § 516.20(b)(6) is unnecessarily arduous and premature in the designation process. Commentors also stated that frivolous requests for designation should not be burdensome to the agency; and, therefore, that the requirement for a specific product development plan is unnecessary.

(Response) We do not agree that the requirement for submission of a description of the product development plan is arduous or premature. Also, the basis for this requirement is not primarily to reduce burden on the agency due to frivolous requests for designation. The primary reasons for requiring a specific product development plan as part of a request for MUMS-drug designation are as follows. As we explained in the preamble to the proposed rule (70 FR 56394 at 56399), for new animal drugs, unlike for human orphan drugs, each designation must be unique with respect to drug, dosage form, and intended use. In this way, the MUMS act, which was enacted to address the critical shortage of approved animal drugs for minor species/minor uses, facilitates the development of a broad range of animal drugs in part by discouraging multiple sponsors from pursuing identical uses. Because each MUMS designation is unique, it is important to the effective implementation of section 573 of the act that initial designation of a drug be based on evidence that requesting sponsors clearly understand their responsibilities in terms of drug research and development and are prepared to accept those responsibilities.

Submission of a description of the product development plan helps to ensure that timely development of the drug, consistent with the requirement of section 573(a)(2)(B) to actively pursue approval with due diligence, is feasible. Designation of a drug that could not feasibly be approved under the sponsor's current drug development plan would inappropriately delay development and marketing of a needed drug by the same or a different sponsor and undermine the goals of the MUMS act. Submitting the description of the product development plan also facilitates meaningful communication between the sponsor and the agency to help ensure that safety and effectiveness testing, which for designated drugs may be supported by grants or contracts under section 573(b) of the act, is efficiently designed and conducted. Efficient and effective use of sponsor and agency resources, which is enabled by this and other requirements of final § 516.20, is critically important to alleviating the shortage of new animal drugs addressed by the MUMS act.

(Comment 3) Two comments stated that the documentation requirements for minor use status in § 516.21 are too burdensome. They believe there is a lack of balance between the documentation required for a minor use designation versus a minor species designation. More specifically, both commentors believe that § 516.21(b) is asking sponsors to prove a negative concerning the lack of medical justification and one of these commentors stated that the financial information requested in § 516.21(c) is, for the most part, confidential. As an alternative approach, these two commentors submitted similar two-part working definitions for minor use that could be used in place of the proposed provisions for § 516.21 as follows:

Either:

1. The drug is not currently approved, it is unlikely the ''minor use'' designation for the drug will be applicable to a majority of the major species population, and the need for the drug for a specific disease or condition has been clearly identified by animal health professionals or an animal industry. One commentor also added a fourth provision that if the drug has the same active ingredient as other approved drugs, the environmental safety assessment of the combined active ingredient of all such drugs is shown to be adequate.

Or;

2. The annualized commercial return on investment for the product is not reasonably expected to exceed the development and maintenance costs of the product.

(Response) We do not agree that the requirements for documentation of minor use status in § 516.21 are too burdensome. FDA agrees that these implementing regulations should not be overly burdensome to drug sponsors in order to achieve the objectives set forth in the MUMS Act. However, it is unavoidable that a certain amount of additional information will be required in a request for minor use designation that will not be required in a request for minor species designation. Section 516.21 describes this additional information and comprises three paragraphs.

Section 516.21(a) asks for an estimate of the total number of animals to which a drug could potentially be administered on an annual basis. Whether compared to a predetermined small number of animals or as part of a case-by-case determination, this number will be essential to any request for minor use designation. Simply put, this estimated number of animals serves as documentation that the intended use of a proposed MUMS drug is limited to a ''small number of animals'', as required by the MUMS Act.

Section 516.21(b) describes how to define a minor use population if the proposed MUMS drug is under development for only a subset of the estimated total number of animals to which the drug could potentially be administered on an annual basis. In this situation, a sponsor may utilize the provisions of this paragraph to argue that administration of a proposed MUMS drug is only justified for a small subset of a larger major species population potentially affected by a particular disease or condition and that administration to the remaining larger affected population is medically inappropriate. If the number of animals in this medically justified subset is a small number of animals, then such a use is a minor use.

The provisions in this paragraph were apparently misinterpreted by two of the commentors. Its purpose is not to require medical justification to the effect that a drug approved for disease A could not be used for disease B or C or D. Its purpose is to allow drug sponsors to restrict the intended use of a drug to a subset of the animals affected by disease A, thereby reducing their estimate of the total number of animals eligible to be treated as required in § 516.21(a), by providing medical justification that only a subset of animals afflicted with disease A are amenable to treatment. For improved clarity, we have revised the language of § 516.21(b).

Section 516.21(c) requires drug sponsors to provide economic information relevant to why their MUMS drug should be considered a minor use drug. In the preamble to the proposed MUMS designation rule (70 FR 56394) we cited the Senate report (S. Rept. 108–226) concerning the bill before the Senate (S. 741), which discusses the minor use definition and how minor use should be determined: ''This definition incorporates the existing definition in the Code of Federal Regulations (21 CFR 514.1(d)(1)) with a further limitation to ''small numbers'' to assure that such intended uses will not be extended to a wider use. The Secretary is expected to further clarify this definition in regulations implementing this section. FDA is given broad latitude in determining what constitutes a minor use in a major species. The Congress intends for FDA to make the determination of minor use by evaluating, in the context of the drug development process, whether the incidence of the disease or condition occurs so infrequently that the sponsor of a drug intended for such use has no reasonable expectation of its sales generating sufficient revenues to offset the costs of development. The Congress does not intend for FDA to establish a test of commercial value, but rather directs FDA to determine whether the expected low use of a drug would discourage its development.'' (S. Rept. 108–226 at 12–13.)

In evaluating whether the incidence of the disease or condition is so infrequent that the sales are not reasonably expected to offset development costs, we might take two different approaches. First, we could consider each request on a case-by-case basis utilizing the information provided in § 516.21(c). Alternatively, we could establish, by regulation based on industry-wide economic data, a specific small number of animals for each of the seven major species to be used as a yardstick against which we would measure the estimated total number of animals to which a drug could potentially be administered on an annual basis, as documented under § 516.21(a). If such ''small number'' for each major species is established by regulation at some point in the future, there would no longer be a need for requiring the information requested in § 516.21(c).

(Comment 4) With respect to § 516.24, two comments stated that FDA should respond to requests for designation within 60 days from the time the request was submitted.

(Response) FDA agrees that timely processing of requests for designation is important. However, because of limitations on agency resources, the agency does not believe that it is feasible to commit to responding to all requests for designation within 60 days. We intend to issue guidance in the future to describe target timelines for the designation process consistent with current resources.

(Comment 5) Two comments stated that FDA should update the publicly available list of MUMS-designated drugs within 60 days of granting a new MUMS designation.

(Response) We agree that timely updating of the list of MUMS-designated drugs is appropriate. However, the agency does not believe it is feasible to commit to definite timelines in these regulations because of uncertain resource limitations. As discussed above, we intend to describe target timelines for our actions related to the designation process in future guidance.

(Comment 6) Two comments stated that a 1-year advance notification for discontinuing the manufacture of a drug, as specified in § 516.29(b), is excessive and a 30–60 day timeframe would be more appropriate.

(Response) A 1-year advance notification for discontinuing the manufacture of a MUMS-designated drug is required by section 573(a)(2)(C) of the act and, therefore, is not subject to alteration by regulation.

(Comment 7) One commentor requested clarification on the hypothetical situation in which FDA has withdrawn designation status after notification by a sponsor (sponsor A) of its intent to discontinue production, but the drug is still being sold, as permitted in accordance with the lengthy pre-notification required by the statute. The commentor asked if another sponsor (sponsor B) could potentially achieve designation and conditional approval, and thus block any further sale by sponsor A, even if sponsor A still has time left on their notification and still has drug to be sold.

(Response) In this situation, FDA has only withdrawn sponsor A's designation and, therefore, its exclusivity. The approval or conditional approval remains intact. Therefore, while approval or conditional approval may be possible for sponsor B, designation cannot be granted for sponsor B because the MUMS Act only allows designation when a specific drug, dosage form, and intended use is not already approved or conditionally approved.

(Comment 8) In § 516.31(a)(2) one comment stated that the words § or proposes to withdraw'' should be removed because this appears to negate the right of the sponsor to due process.

(Response) We agree that the exclusivity of an approved or conditionally approved MUMS-designated drug should not be abrogated by a proposal to withdraw the approval or conditional approval. We have revised the codified section accordingly.

(Comment 9) One comment stated that oral dosage form new animal drugs and new animal drugs for use in animal feeds should not be considered two different dosage forms for the purpose of MUMS designation. It argues, for example, that if an oral dosage form new animal drug is designated and approved subsequent to the designation and approval of a medicated feed containing the same drug and for the same intended use, it will negatively impact the business case and success of the medicated feed.

(Response) The agency believes that this same argument could apply to any drug that is available in more than one dosage form. For example, an approved injectable product could be negatively impacted by approval of an oral form of the drug.

As stated in the preamble to the proposed rule (70 FR 56394 at 56398), current federal regulations recognize the following dosage forms: Oral dosage forms (21 CFR part 520), implantation or injectable dosage forms (21 CFR part 522), ophthalmic and topical dosage forms (21 CFR part 524), intramammary dosage forms (21 CFR part 526), miscellaneous dosage forms (21 CFR part 529), and drugs in animal feeds (21 CFR part 558). The preamble also notes that medicated feeds are subject to different limitations from those for other oral dosage forms (70 FR 56394 at 56398), which also supports treating medicated feeds as a different dosage form for the purpose of MUMS designation.

In addition, the markets for medicated feeds and other oral dosage forms may be different. An oral dosage in the form of a drench or a water treatment may be appropriate in different settings than those requiring treatment through the use of medicated feeds. For example, pheasants in a hatchery setting can be treated with medicated water while those in large outdoor pens are more efficiently treated with medicated feeds. Because the populations served by medicated feeds and by other oral dosage forms can be different enough to represent separate markets and because, as already noted, the same potential overlap can occur between any two dosage forms, we believe it is appropriate to treat medicated feeds and other oral dosage forms as different for MUMS designation purposes.

(Comment 10) In the definition section under § 516.13, under *Intended Use*, one comment asked if treatment, control, and prevention are the same thing (i.e., one designation) or are they three different things (i.e., three possible designations).

(Response) Given that requirements for approval may differ significantly for these three categories, they are considered to be different for purposes of designation.

(Comment 11) One comment disagreed with the third principle of sameness discussed in the preamble to the proposed rule, under which an intended use for a disease or condition caused by one organism is considered different from an intended use for the same disease or condition caused by a different organism. The comment perceived this approach to determining sameness to be a disincentive to seeking MUMS designation.

(Response) This comment raises the general issue of how different intended uses must be to be considered separate intended uses. If the uses are clearly separable and have different data requirements for approval, we believe it is appropriate to permit separate MUMS-drug designations. Intended uses for diseases or conditions caused by different organisms are clearly separable and would need to be supported by different data for approval; therefore, we believe that allowing separate MUMS-drug designations for drugs for such uses would be appropriate.

(Comment 12) One comment was concerned that many zoo animals may be included in the broad major species categories. It stated that FDA should specifically identify the species and subspecies that are considered ''major species'' with the recognition that some species/subspecies may be appropriate only for public display or exhibition, and that these non-domestic animals should be identified separately for appropriate drug approval under MUMS regulations.

(Response) Zoo species will not be lumped with major species for the purposes of drug approval. The major species are the domesticated species only, not including hybrids or closely-related wild species. Whether an animal belongs to a major or minor species is not affected by its location or use; it is strictly a matter of the species.

Currently, FDA considers the major species to be:

Cattle—*Bos taurus taurus* / *Bos taurus indicus*
Horses—*Equus caballus*
Swine—*Sus domesticus*
Dogs—*Canis familiaris* (also called *Canis lupus familiaris*)
Cats—*Felis domesticus* (also called *Felis catus* or *Felis silvestris catus*)
Chickens—*Gallus gallus*
Turkeys—*Meleagris gallopavo gallopavo*

All other species are considered to be minor. Therefore, there should be no cause for concern regarding the status of zoo animals in terms of new animal drug approval. The agency intends to clarify this issue in guidance to be published in the future.

(Comment 13) One comment stated that a manufacturer of a drug that is already approved in countries with substantially the same approval requirements as the United States does not need incentives to develop data and should not be given a MUMS designation.

(Response) The MUMS incentives exist to encourage pharmaceutical companies to pursue approval of new animal drugs for minor uses and minor species. Even in cases where foreign approvals exist, sponsors generally need to provide considerable new data to meet the requirements for FDA approval. Therefore, the MUMS incentives remain appropriate when a drug has been approved in a foreign country.

(Comment 14) One comment stated that in order to monitor whether the MUMS rule is fulfilling its intended goal to increase the availability of drugs for minor uses, FDA should require annual reports on quantities sold of each designated and conditionally approved drug.

(Response) The agency agrees that knowledge of the quantity of designated drugs distributed on an annual basis would be useful information in terms of assessing the success of the MUMS act. The MUMS act itself requires the annual submission of information regarding quantities of conditionally approved products distributed (see 21 U.S.C. 360ccc(d)(2)(B)(ii)). All fully approved new animal drugs are required by regulation (21 CFR 514.80 (b)(4)(i)) to report the quantity of product distributed. The Office of Minor Use and Minor Species Animal Drug Development will have direct access to this information.

B. Comments on ''Small Number of Animals'' and Minor Use

(Comment 15) Three comments stated that companion animal ''small numbers'' should be considered separately from food animal ''small

numbers.'' Two comments asked FDA to consider the numbers of animals eligible to be designated under a minor species provision (e.g., sheep) as a benchmark against which to compare numbers of animals to benefit from minor use provisions.

(Response) The agency agrees that the ''small numbers'' for companion animals need to be considered separately from the ''small numbers'' for food animals. FDA also agrees that it is appropriate to consider the relationship between the number of animals of a minor species permitted to be designated under the MUMS act and the number of animals of a major species permitted to be designated in establishing ''small numbers'' of animals under the definition of minor use in the statute. However, the agency views the primary basis for establishing ''small numbers'' to be Congress' expression of intent in the report language accompanying the act that the agency further define minor use in a major species ''by evaluating, in the context of the drug development process, whether the incidence of the disease or condition occurs so infrequently that the sponsor of a drug intended for such use has no reasonable expectation of its sales generating sufficient revenues to offset the cost of development'' (S. Rept. 108–226 at 12–13).

Since Congress provided incentives in the MUMS act to stimulate drug development, the agency interprets the previous statement to mean that FDA should determine for each major species what the ''small number of animals'' eligible to be treated on an annual basis would need to be in order to represent a drug market value that (relative to drug development costs) would be considerably less likely to be pursued in the absence of the MUMS incentives, than in their presence.

(Comment 16) Two comments stated that ''small numbers'' should be based on epidemiological data and not on a percentage of the total major species population. Commentors stated that since such epidemiological data are not yet available, FDA should make minor use designations on a case-by-case basis rather than setting hard numbers.

(Response) In the preamble to the proposed rule for MUMS designation (70 FR 56394), the agency already rejected the idea of establishing ''small numbers'' based on a percentage of the major species population as overly simplistic. There the agency explained that using the human orphan drug prevalence limit of 200,000 cases (0.1% of the U.S. population in 1983) did not seem helpful for calculating ''small numbers'' in cattle, swine, chickens, and turkeys because the populations involved, the manner of drug use in those populations, and the drug development processes for those species are too dissimilar to the human drug scenario (70 FR 56394 at 56396). Further analysis made clear that these factors were not sufficiently comparable for this approach to be viable, even for dogs, cats, and horses (70 FR 56394 at 56396). On the other hand, as already noted, Congress directed the agency to define ''minor use'' and, by extension, ''small numbers,'' on the basis of determining whether a population of animals of a major species needing drug treatment would provide sufficient drug market value to offset the cost of drug development given the incentives provided by the MUMS act.

The use of epidemiological data comes into play at the point that the sponsor and the agency are trying to establish the population of animals eligible to be treated with a particular drug for a particular intended use. Such data need to be shared with the agency whether the determination of minor use is being made on a case-by-case basis or with respect to an established small number of animals.

(Comment 17) One comment stated that FDA should consider the potential of a drug to be used extralabel when making a minor use designation.

(Response) The agency understands the expressed concern regarding extra-label drug use, but extra-label drug use is an issue that clearly transcends the designation process. Extra-label use of approved new animal drugs is statutorily permissible under specified circumstances. (Extra-label use is not permitted for either conditionally approved or indexed drugs because such drugs have not met the full approval requirements of the statute.) There is no general prohibition regarding the extra-label use in minor species of products approved for use in major species or vice versa.

Therefore, under designation, a product designated and approved for a minor species can be legally used in an extra-label manner in a major species (subject to established statutory and regulatory conditions). The same is true for a product designated for a minor use in a major species. It is difficult enough to determine whether the population of animals associated with the disease or condition for which a drug is labeled for use fails to provide sufficient market value to offset the cost of drug development (or falls above or below an established small number of animals). It would be impossible to determine the population of all animals subject to all potential extra-label uses of a drug. In fact, it must be assumed that this population (which may include all potential uses of a drug in all animal species) would very often exceed a small number of animals. Therefore, consideration of potential extra-label use in the designation process would have the effect of essentially negating the designation provision of the statute and this would clearly be contrary to the intent of the legislation.

(Comment 18) One comment stated that long term use of a drug, even in a small number of animals, would constitute a much larger market than for shorter term use and that FDA should not consider animal numbers as ''small'' if food animals are to receive drugs for a long duration, perhaps for a period longer than 21 days, consistent with FDA's Guidance for Industry (GFI) #152.

(Response) As noted previously, the agency acknowledges the concern regarding the use of drugs in food animals and accepts that the concept of ''small numbers'' of animals included in the statutory definition of minor use is based, in part, on this concern. The agency will address the issue of establishing ''small numbers'' of animals for each major species in future rulemaking. However, a full assessment of the relative risks of individual drugs or drug uses is a matter that must be left to the comprehensive analysis associated with the review of individual new animal drug applications consistent with GFI #152 and other applicable policies and regulatory requirements.

IV. Legal Authority

FDA's authority for issuing this final rule is provided by the MUMS act (21 U.S.C. 360ccc *et seq.*). When Congress passed the MUMS act, it directed FDA to publish implementing regulations (see 21 U.S.C. 360ccc note). In the context of the MUMS act, the statutory requirements of section 573 of the act, along with section 701(a) of the act (21 U.S.C. 371(a)) provide authority for this final rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act.

V. Analysis of Economic Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

FDA finds that the final rule does not constitute an economically significant regulatory action as defined in section 3(f)(1) of Executive Order 12866. We believe that the annual impacts will not exceed $100 million since by its very nature the rule applies to animal drugs that have a very small market. Similarly, the administrative costs are unlikely to have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

FDA received nine comments to the proposed rule. Only two of these comments contained any remarks that addressed the impacts analysis of the proposed rule. Both stated that the requirement for a specific development plan before a designation is granted would be too burdensome. Neither of the comments provided any estimates on the size of the burden that would be imposed. FDA responded previously in this preamble to the burden issue in these comments. Further, FDA believes that the development of the plan would not be overly burdensome because, in most cases, it would be the same plan that a sponsor would establish with FDA under the regular animal drug review process, and because its cost, estimated at less than one thousand dollars each, would represent less than 0.1% of revenues of even the smallest establishments. Additionally, the MUMS act requires that FDA measure the diligence with which sponsors work towards final approval of a MUMS-designated drug, and a drug development plan is necessary for FDA to measure a sponsor's progress towards this goal. FDA has therefore not changed this provision in the final rule.

None of the changes made to the final rule would affect the expected impacts of the rule on the animal drug producers. Accordingly, lacking any other comments to its analysis of the proposed rule, FDA has reviewed its impacts analysis published in the proposed rule and retains it here for the final rule.

The intention of this rule, and therefore its benefit, is the creation of a system that would stimulate the development and marketing of animal drugs for rare diseases in major species and diseases found in minor species in the United States, which would otherwise not be economically viable under current market conditions. The countervailing cost, or risk of this final rule, would be the possibility of limited competition for approved drugs for a minor use drug indication or in a minor species drug due to the granting of the 7-year exclusive marketing right. In addition to the benefit-risk tradeoff mentioned previously, there would be additional administrative costs for those companies seeking the MUMS designation for a new animal drug application (NADA). We estimate that the designation request would require about 16 hours of preparation by a regulatory affairs official. At a benefit adjusted wage rate of almost $48 per hour for these employees, each request would have administrative costs of about $760.[1] We estimate that about 15 separate sponsors would each annually submit, on average, 5 MUMS designation requests. Administrative costs for these actions would total to about $57,300.

The agency is also requiring in § 516.22 that foreign sponsors requesting designation do so through a permanent resident U.S. agent. This is consistent with the current requirements of 21 CFR 514.1(a) since requests for MUMS designation will ultimately be submitted to an NADA file. The agency does not expect to receive many requests for designation from foreign sponsors, and estimates that number at less than one per year. As such, the agency has not quantified the cost of this provision but believes it would be negligible.

Amendments made to existing designations are expected to occur infrequently. We estimate that three amendments will be filed annually, requiring about two hours of preparation. At the same wage rate, this would cost an additional $300.

[1] 2000 National Industry-Specific Occupational Employment and Wage Estimates, U.S. Department of Labor, Bureau of Labor Statistics (*www.bls.gov/oes/2000/oesi3_283.htm*); Compliance officer wage rate adjusted to 2005 by 2000–20004 average annual wage inflator at BLS (*http://data.bls.gov/cgi-bin/surveymost*).

Sponsors may also transfer sponsorship of MUMS-designated drug or terminate the designation. We estimate that these activities would result in only 3 additional hours of administrative costs annually, totaling to $150. The preparation of the annual report that would be required for each MUMS-designated drug is estimated to take about 2 hours. In the first year, this would result in another 150 hours of administrative costs, or about $7,200 in total. FDA notifications to sponsors concerning insufficient quantities of approved MUMS-designated drugs are expected to be rare, about once each year. Sponsor responses are estimated to take 3 hours, at a cost of $150.

Assuming a sponsor chooses to seek the MUMS designation for its NADA, total administrative costs for this rule across all sponsors are estimated at about $65,000 in the first year, and to increase each year thereafter due to the annual reporting requirements.

Regulatory Flexibility Analysis

1. Small Business Impacts

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis if a rule is expected to have a significant economic impact on a substantial number of small entities. Although we believe it is unlikely that significant economic impacts would occur, the following along with other sections of this preamble constitute the regulatory flexibility analysis.

One requirement of the Regulatory Flexibility Act is a succinct statement of any objectives of the rule. As stated previously in this analysis, with this rule the agency intends to create a system, provided for by statute, that would stimulate the development and marketing of animal drugs for rare diseases in major species and diseases found in minor species in the United States, which would otherwise not be economically viable under current market conditions.

The Regulatory Flexibility Act also requires a description of the small entities that would be affected by the rule, and an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) defines the criteria for small businesses using the North American Industrial Classification System (NAICS). For pharmaceutical preparation manufacturers (NAICS number 325412), SBA defines small businesses as those with less than 750 employees. Census data shows that 723 companies with 901

establishments represent this category.[2] While about two-thirds of the establishments would be considered small using the SBA criteria, the agency acknowledges that many requests for MUMS designation would likely be received from multi-establishment companies that exceed the 750-employee limit on small businesses. Nonetheless, the cost of submitting a single request represents only about 0.1% of the revenues of the smallest set of establishments (those with 1–4 employees), and much smaller revenue percentages of all larger establishments. The agency believes that these costs would not represent a significant economic impact on these firms.

All of the costs described previously would be incurred by any small business that applies for MUMS designation. These include costs for request preparation, amendments to designations, preparing annual reports and responding to FDA notifications of insufficient quantities. The firms submitting requests for MUMS designation are expected to already have the necessary administrative personnel with the skills required to prepare the requests and fulfill reporting requirements as identified previously.

2. Analysis of Alternatives

The Regulatory Flexibility Act requires that the agency consider any alternatives to a rule that would accomplish the objective while minimizing significant impacts of the rule. As stated previously, the agency believes that the final rule, due to the relatively small costs, would not be likely to impose significant economic impacts on small businesses. As such, the agency believes the final rule achieves the objective with minimal costs to industry.

The statute that creates this system, Public Law 108–282, does not provide the agency a great deal of flexibility in the implementing regulations, such as in determining the length of the exclusivity period or granting an exclusivity to more than one animal drug without regard to sameness of drug, dosage form and intended use. The agency did consider, however, applying an explicit threshold number of animals of each major species as the upper bound of disease incidence in the definition of ''minor use'' of animal drugs. The agency determined that the data needed to develop these estimates would not be available in time for the publication date of the final rule as mandated by statute. The agency intends in the future to propose a separate rule defining the threshold numbers of animals of each major species. The agency will continue to consider the acceptability of each request for designation as a minor use animal drug on a case-by-case basis as provided for in the Senate report concerning the legislation, until it issues any final rule based on such a proposal.

VI. Paperwork Reduction Act of 1995

In the **Federal Register** of September 27, 2005, FDA published a proposed rule and invited comments on the proposed collection of information. Also in a **Federal Register** of December 28, 2005, FDA published a notice reopening the comment period for the proposed rule to allow interested persons additional time to comment. Concurrently, FDA submitted the information collection request to the Office of Management and Budget (OMB) for review and approval. OMB did not approve this collection of information, but as terms for clearance, filed comment. In filing comment on this collection of information, OMB requested that FDA examine public comment in response to the notice of proposed rulemaking and describe in the preamble of the final rule how the agency has maximized the practical utility of the collection and minimized the burden. Further, OMB requested for any future submissions of this information collection, FDA indicate the submission as ''new'' and reference OMB control number 0910–0590.

In response to these **Federal Register** notices, FDA did not receive any comments regarding the information collection requirements contained in the final rule. In response to OMB's request that the agency describe how it has maximized the practical utility of this collection and minimized the burden, an explanation has been provided elsewhere in the preamble of this final rule.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish notice in the **Federal Register**, announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

Title: Designated New Animal Drugs for Minor Use and Minor Species—21 CFR Part 516, OMB Control No. 0910–0590.

Description: The MUMS act amended (the act) to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species as well as uncommon diseases in major animal species. This legislation provides incentives designed to help pharmaceutical companies overcome the financial burdens they face in providing limited-demand animal drugs. These incentives are only available to sponsors whose drugs are ''MUMS-designated'' by FDA. Minor use drugs are drugs for use in major species (cattle, horses, swine, chickens, turkeys, dogs, and cats) that are needed for diseases that occur in only a small number of animals either because they occur infrequently or in limited geographic areas. Minor species are all animals other than the major species, for example, zoo animals, ornamental fish, parrots, ferrets, and guinea pigs. Some animals of agricultural importance are also minor species. These include animals such as sheep, goats, catfish, and honeybees. Participation in the MUMS program is completely optional for drug sponsors so the associated paperwork only applies to those sponsors who request and are subsequently granted ''MUMS designation.'' The proposed rule will specify the criteria and procedures for requesting MUMS designation as well as the annual reporting requirements for MUMS designees.

Under the new part 516, § 516.20 provides requirements on the content and format of a request for MUMS-drug designation, § 516.26 provides requirements for amending MUMS-drug designation, provisions for change in sponsorship of MUMS-drug designation can be found under § 516.27, under § 516.29 are provisions for termination of MUMS-drug designation, under § 516.30 are requirements for annual reports from sponsor(s) of MUMS designated drugs, and under § 516.36 are provisions for insufficient quantities of MUMS-designated drugs.

Description of Respondents: Pharmaceutical companies that sponsor new animal drugs.

FDA estimates the burden for this collection of information as follows:

[2] 2002 Economic Census, US Census Bureau, Manufacturing Industry Series, Pharmaceutical Preparation Manufacturing, Table 4.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
516.20	15	5	75	16	1,200
516.26	3	1	3	2	6
516.27	1	1	1	1	1
516.29	2	1	2	1	2
516.30	15	5	75	2	150
516.36	1	1	1	3	3
Total					1,362

[1] There is no capital or operating and maintenance cost associated with this collection of information.

VII. Environmental Impact

We have carefully considered the potential environmental impacts of this final rule and determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 514 and 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

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

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Amend § 20.100 by adding paragraph (c)(43) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(43) Minor-use or minor-species (MUMS) drug designations, in § 516.52 of this chapter.

PART 510—NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 4. Amend § 510.3 by revising paragraph (k) to read as follows:

§ 510.3 Definitions and interpretations.

* * * * *

(k) *Sponsor* means the person requesting designation for a minor-use or minor-species drug as defined in part 516 of this chapter, who must be the real party in interest of the development and the intended or actual production and sales of such drug (in this context, the sponsor may be an individual, partnership, organization, or association). Sponsor also means the person responsible for an investigation of a new animal drug. In this context, the sponsor may be an individual, partnership, corporation, or Government agency or may be a manufacturer, scientific institution, or an investigator regularly and lawfully engaged in the investigation of new animal drugs. Sponsor also means the person submitting or receiving approval for a new animal drug application (in this context, the sponsor may be an individual, partnership, organization, or association). In all contexts, the sponsor is responsible for compliance with applicable provisions of the act and regulations.

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 5. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e, 381.

§ 514.1 [Amended]

■ 6. Amend § 514.1 by removing paragraph (d).

■ 7. Add part 516 to read as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

Subpart A—General Provisions

Sec.
516.1 Scope.
516.2 Purpose.
516.3 Definitions.

Subpart B—Designation of a Minor Use or Minor Species New Animal Drug

516.11 Scope of this subpart.
516.12 Purpose.
516.13 Definitions.
516.14 Submission of requests for designation.
516.16 Eligibility to request designation.
516.20 Content and format of a request for MUMS-drug designation.
516.21 Documentation of minor use status.
516.22 Permanent-resident U.S. agent for foreign sponsor.
516.23 Timing of requests for MUMS-drug designation.

516.24 Granting MUMS-drug designation.
516.25 Refusal to grant MUMS-drug designation.
516.26 Amendment to MUMS-drug designation.
516.27 Change in sponsorship.
516.28 Publication of MUMS-drug designations.
516.29 Termination of MUMS-drug designation.
516.30 Annual reports for a MUMS-designated drug.
516.31 Scope of MUMS-drug exclusive marketing rights.
516.34 FDA recognition of exclusive marketing rights.
516.36 Insufficient quantities of MUMS-designated drugs.
516.52 Availability for public disclosure of data and information in requests.

Subpart C—[Reserved]

Subpart D—[Reserved]

Authority: 21 U.S.C. 360ccc–2, 371.

Subpart A—General Provisions

§ 516.1 Scope.

(a) This part implements section 573 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ccc–2) and contains the following subparts:

(1) Subpart A—General Provisions.

(2) Subpart B—Designation of a Minor Use or Minor Species New Animal Drug.

(3) Subpart C—[Reserved]

(4) Subpart D—[Reserved]

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 516.2 Purpose.

This part establishes standards and procedures for implementing section 573 of the act, including designation of minor use or minor species new animal drugs and associated exclusive marketing rights.

§ 516.3 Definitions.

(a) The definitions and interpretations contained in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321) apply to those terms when used in this part.

(b) The following definitions of terms apply to all subparts of part 516:

Active moiety means the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the pharmacological action of the drug substance.

Functionally superior means that a drug has been shown to provide a significant therapeutic or physiologic advantage over that provided by a conditionally-approved or approved MUMS drug, that is otherwise the same drug, in one or more of the following ways:

(i) The drug has been shown to be more effective, as assessed by effect on a clinically meaningful endpoint in adequate and well-controlled clinical trials, than a conditionally approved or approved MUMS drug, that is otherwise the same drug. Generally, this would represent the same kind of evidence needed to support a comparative effectiveness claim for two different drugs; in most cases, direct comparative clinical trials will be necessary; or

(ii) The drug has been shown to be safer than a conditionally-approved or approved MUMS drug, that is otherwise the same drug, in a substantial portion of the target population, for example, by the elimination of an ingredient or contaminant that is associated with relatively frequent adverse effects. In some cases, direct comparative clinical trials will be necessary.

Infrequently, as used in the minor use definition, means a disease or condition that is uncommon or that occurs only sporadically on an annualized basis.

Limited geographical areas, as used in the minor use definition, means regions of the United States distinguished by physical, chemical, or biological factors that limit the distribution of a disease or condition.

Major species means cattle, horses, swine, chickens, turkeys, dogs, and cats.

Minor species means animals, other than humans, that are not major species.

Minor use means the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually.

MUMS drug means a new animal drug, as defined in section 201 of the act, intended for a minor use or for use in a minor species.

Same dosage form means the same as one of the dosage forms specified in the following parts of this chapter:

(i) Part 520: Oral dosage form new animal drugs (excluding use in animal feeds as specified in part 558 of this chapter).

(ii) Part 522: Implantation or injectable dosage form new animal drugs.

(iii) Part 524: Ophthalmic and topical dosage form new animal drugs.

(iv) Part 526: Intramammary dosage forms.

(v) Part 529: Certain other dosage form new animal drugs.

(vi) Part 558: New animal drugs for use in animal feeds.

Same drug means a MUMS drug for which designation, indexing, or conditional approval is sought that meets the following criteria:

(i) If it is a MUMS drug composed of small molecules and contains the same active moiety as a prior designated, conditionally-approved, or approved MUMS drug, even if the particular ester or salt (including a salt with hydrogen or coordination bonds) or other noncovalent derivative such as a complex, chelate or clathrate is not the same, it is considered the same drug; except that, if the prior MUMS drug is conditionally approved or approved and the second MUMS drug is shown to be functionally superior to the conditionally approved or approved MUMS drug for the same intended use, it is not considered the same drug.

(ii) If it is a MUMS drug composed of large molecules (macromolecules) and contains the same principal molecular structural features (but not necessarily all of the same structural features) as a prior designated, conditionally approved, or approved MUMS drug, it is considered the same drug; except that, if the prior MUMS drug is conditionally approved or approved and the second MUMS drug is shown to be functionally superior to the conditionally approved or approved MUMS drug for the same intended use, it is not considered the same drug. This criterion will be applied as follows to different kinds of macromolecules:

(A) Two protein drugs would be considered the same if the only differences in structure between them were due to post-translational events or infidelity of translation or transcription or were minor differences in amino acid sequence; other potentially important differences, such as different glycosylation patterns or different tertiary structures, would not cause the drugs to be considered different unless the subsequent drug is shown to be functionally superior.

(B) Two polysaccharide drugs would be considered the same if they had identical saccharide repeating units, even if the number of units were to vary and even if there were postpolymerization modifications, unless the subsequent drug is shown to be functionally superior.

(C) Two polynucleotide drugs consisting of two or more distinct nucleotides would be considered the same if they had an identical sequence of purine and pyrimidine bases (or their derivatives) bound to an identical sugar backbone (ribose, deoxyribose, or modifications of these sugars), unless

the subsequent drug is shown to be functionally superior.

(D) Closely related, complex partly definable drugs with similar pharmacologic intent would be considered the same unless the subsequent drug is shown to be functionally superior.

Same intended use means an intended use of a MUMS drug, for which designation, indexing, or conditional approval is sought, that is determined to be the same as (or not different from) a previously designated, conditionally approved, or approved intended use of a MUMS drug. Same intended use is established by comparing two intended uses and not by simply comparing the specific language by means of which the intent is established in labeling in accordance with the following criteria:

(i) Two intended uses are considered the same if one of the intended uses falls completely within the scope of the other.

(ii) For intended uses associated with diseases or conditions with multiple causative organisms, two intended uses are not considered the same when they involve different causative organisms or different subsets of causative organisms of that disease or condition when the causative organisms involved can reliably be shown to be clinically significant causes of the disease or condition.

(iii) Two intended uses of a drug are not considered the same if they involve different intended species or different definable subpopulations (including ''production classes'') of a species.

Sponsor means the person requesting designation for a MUMS drug who must be the real party in interest of the development and the intended or actual production and sales of such drug (in this context, the sponsor may be an individual, partnership, organization, or association). Sponsor also means the person responsible for an investigation of a new animal drug (in this context, the sponsor may be an individual, partnership, corporation, or Government agency or may be a manufacturer, scientific institution, or an investigator regularly and lawfully engaged in the investigation of new animal drugs). Sponsor also means the person submitting or receiving approval for a new animal drug application (in this context, the sponsor may be an individual, partnership, organization, or association). In all contexts, the sponsor is responsible for compliance with applicable provisions of the act and regulations.

Subpart B—Designation of a Minor Use or Minor Species New Animal Drug

§ 516.11 Scope of this subpart.

This subpart implements section 573 of the act. Specifically, this subpart sets forth the procedures and requirements for submissions to FDA of requests for designation of a new animal drug for a minor use or a minor species.

§ 516.12 Purpose.

This subpart establishes standards and procedures for determining eligibility for designation and the associated incentives and benefits described in section 573 of the act, including a 7-year period of exclusive marketing rights.

§ 516.13 Definitions.

The following definitions of terms apply only in the context of subpart B of this part:

Director means the Director of the Office of Minor Use and Minor Species Animal Drug Development of the FDA Center for Veterinary Medicine.

Intended use means the intended treatment, control or prevention of a disease or condition, or the intention to affect the structure or function of the body of animals within an identified species, subpopulation of a species, or collection of species.

MUMS-designated drug means a new animal drug, as defined in section 201 of the act, intended for a minor use or for use in a minor species that has been designated under section 573 of the act.

MUMS-drug exclusive marketing rights or *exclusive marketing rights* means that, effective on the date of FDA conditional approval or approval as stated in the approval letter of an application for a MUMS-designated drug, no conditional approval or approval will be given to a subsequent application for the same drug, in the same dosage form, for the same intended use for 7 years, except as otherwise provided by law or in this subpart.

§ 516.14 Submission of requests for designation.

All correspondence relating to a request for designation of a MUMS drug must be addressed to the Director of the Office of Minor Use and Minor Species Animal Drug Development. Submissions not including all elements specified in § 516.20 will be returned to the sponsor without review.

§ 516.16 Eligibility to request designation.

The person requesting designation must be the sponsor and the real party in interest of the development and the intended or actual production and sales of the drug or the permanent-resident U.S. agent for such a sponsor.

§ 516.20 Content and format of a request for MUMS-drug designation.

(a) A sponsor that submits a request for designation of a new animal drug intended for a minor use or minor species must submit each request in the form and containing the information required in paragraph (b) of this section. While a request for designation may involve multiple intended uses, each request for designation must constitute a separate submission. A sponsor may request MUMS-drug designation of a previously unapproved drug, or a new intended use or dosage form for an already conditionally approved or approved drug. Only one sponsor may receive MUMS-drug designation of the same drug, in the same dosage form, for the same intended use.

(b) A sponsor must submit two copies of a completed, dated, and signed request for designation that contains the following information:

(1) A request for designation of a new animal drug for a minor use or use in a minor species, which must be specific.

(2) The name and address of the sponsor; the name of the sponsor's primary contact person and/or permanent-resident U.S. agent including title, address, and telephone number; the generic and trade name, if any, of the drug; and the name and address of the source of the drug.

(3) A description of the proposed intended use for which the drug is being or will be investigated.

(4) A description of the drug and dosage form.

(5) A discussion of the scientific rationale for the intended use of the drug; specific reference, including date(s) of submission, to all data from nonclinical laboratory studies, clinical investigations, copies of pertinent unpublished and published papers, and other relevant data that are available to the sponsor, whether positive, negative, or inconclusive.

(6) A specific description of the product development plan for the drug, its dosage form, and its intended use.

(7) If the drug is intended for a minor use in a major species, documentation in accordance with § 516.21, with appended authoritative references, to demonstrate that such use is a minor use.

(8) A statement that the sponsor submitting the request is the real party in interest of the development and the intended or actual production and sales of the product.

(9) A statement that the sponsor acknowledges that, upon granting a

request for MUMS designation, FDA will make information regarding the designation publicly available as specified in § 516.28.

§ 516.21 Documentation of minor use status.

So that FDA can determine whether a drug qualifies for MUMS-drug designation as a minor use in a major species under section 573 of the act, the sponsor shall include in its request to FDA for MUMS-drug designation under § 516.20 documentation demonstrating that the use is limited to a small number of animals (annualized). This documentation must include the following information:

(a) The estimated total number of animals to which the drug could potentially be administered on an annual basis for the treatment, control, or prevention of the disease or condition for which the drug is being developed, including animals administered the drug as part of herd or flock treatment, together with a list of the sources (including dates of information provided and literature citations) for the estimate.

(b) The estimated total number of animals referred to in paragraph (a) of this section may be further reduced to only a subset of the estimated total number of animals if administration of the drug is only medically justified for this subset. To establish this, requestors must demonstrate that administration of the drug to animals subject to the disease or condition for which the drug is being developed other than the subset is not medically justified. The sponsor must also include a list of the sources (including dates of information provided and literature citations) for the justification that administration of the drug to animals other than the targeted subset is medically inappropriate.

(c) An estimate of the potential market associated with the total number of animals established in paragraph (a) of this section compared to an estimate of the development costs of the proposed drug, in the proposed dosage form, for the proposed intended use.

§ 516.22 Permanent-resident U.S. agent for foreign sponsor.

Every foreign sponsor that seeks MUMS-drug designation shall name a permanent resident of the United States as the sponsor's agent upon whom service of all processes, notices, orders, decisions, requirements, and other communications may be made on behalf of the sponsor. Notifications of changes in such agents or changes of address of agents should preferably be provided in advance, but not later than 60 days after the effective date of such changes. The permanent-resident U.S. agent may be an individual, firm, or domestic corporation and may represent any number of sponsors. The name and address of the permanent-resident U.S. agent shall be provided to the Director of the Office of Minor Use and Minor Species Animal Drug Development.

§ 516.23 Timing of requests for MUMS-drug designation.

A sponsor may request MUMS-drug designation at any time in the drug development process prior to the submission of an application for either conditional approval or approval of the MUMS drug for which designation is being requested.

§ 516.24 Granting MUMS-drug designation.

(a) FDA may grant the request for MUMS-drug designation if none of the reasons described in § 516.25 for refusal to grant such a request apply.

(b) When a request for MUMS-drug designation is granted, FDA will notify the sponsor in writing and will give public notice of the MUMS-drug designation in accordance with § 516.28.

§ 516.25 Refusal to grant MUMS-drug designation.

(a) FDA will refuse to grant a request for MUMS-drug designation if any of the following reasons apply:

(1) The drug is not intended for use in a minor species or FDA determines that there is insufficient evidence to demonstrate that the drug is intended for a minor use in a major species.

(2) The drug is the same drug in the same dosage form for the same intended use as one that already has a MUMS-drug designation but has not yet been conditionally approved or approved.

(3) The drug is the same drug in the same dosage form for the same intended use as one that is already conditionally approved or approved. A drug that FDA has found to be functionally superior is not considered the same drug as an already conditionally approved or approved drug even if it is otherwise the same drug in the same dosage form for the same intended use.

(4) The sponsor has failed to provide:

(i) A credible scientific rationale in support of the intended use,

(ii) Sufficient information about the product development plan for the drug, its dosage form, and its intended use to establish that adherence to the plan can lead to successful drug development in a timely manner, and

(iii) Any other information required under § 516.20.

(b) FDA may refuse to grant a request for MUMS-drug designation if the request for designation contains an untrue statement of material fact or omits material information.

§ 516.26 Amendment to MUMS-drug designation.

(a) At any time prior to conditional approval or approval of an application for a MUMS-designated drug, the sponsor may apply for an amendment to the designated intended use if the proposed change is due to new and unexpected findings in research on the drug, information arising from FDA recommendations, or other unforeseen developments.

(b) FDA will grant the amendment if it finds:

(1) That the initial designation request was made in good faith;

(2) That the amendment is intended to make the MUMS-drug designated intended use conform to the results of new and unexpected findings in research on the drug, information arising from FDA recommendations, or other unforeseen developments; and

(3) In the case of a minor use, that as of the date of the submission of the amendment request, the amendment would not result in the intended use of the drug no longer being considered a minor use.

§ 516.27 Change in sponsorship.

(a) A sponsor may transfer sponsorship of a MUMS-designated drug to another person. A change of sponsorship will also transfer the designation status of the drug which will remain in effect for the new sponsor subject to the same conditions applicable to the former sponsor provided that at the time of a potential transfer, the new and former sponsors submit the following information in writing and obtain permission from FDA:

(1) The former sponsor shall submit a letter to FDA that documents the transfer of sponsorship of the MUMS-designated drug. This letter shall specify the date of the transfer. The former sponsor shall also certify in writing to FDA that a complete copy of the request for MUMS-drug designation, including any amendments to the request, and correspondence relevant to the MUMS-drug designation, has been provided to the new sponsor.

(2) The new sponsor shall submit a letter or other document containing the following information:

(i) A statement accepting the MUMS-drug designated file or application;

(ii) The date that the change in sponsorship is intended to be effective;

(iii) A statement that the new sponsor has a complete copy of the request for

MUMS-drug designation, including any amendments to the request and any correspondence relevant to the MUMS-drug designation;

(iv) A statement that the new sponsor understands and accepts the responsibilities of a sponsor of a MUMS-designated drug established elsewhere in this subpart;

(v) The name and address of a new primary contact person or permanent resident U.S. agent; and

(vi) Evidence that the new sponsor is capable of actively pursuing approval with due diligence.

(b) No sponsor may relieve itself of responsibilities under the act or under this subpart by assigning rights to another person without:

(1) Assuring that the new sponsor will carry out such responsibilities; and

(2) Obtaining prior permission from FDA.

§ 516.28 Publication of MUMS-drug designations.

FDA will periodically update a publicly available list of MUMS-designated drugs. This list will be placed on file at the FDA Division of Dockets Management, and will contain the following information for each MUMS-designated drug:

(a) The name and address of the sponsor;

(b) The established name and trade name, if any, of the drug;

(c) The dosage form of the drug;

(d) The species and the proposed intended use for which MUMS-drug designation was granted; and

(e) The date designation was granted.

§ 516.29 Termination of MUMS-drug designation.

(a) The sponsor of a MUMS-designated drug must notify FDA of any decision to discontinue active pursuit of conditional approval or approval of such MUMS drug. FDA must terminate the designation upon such notification.

(b) A conditionally-approved or approved MUMS-designated drug sponsor must notify FDA at least 1 year before it intends to discontinue the manufacture of such MUMS drug. FDA must terminate designation upon such notification.

(c) MUMS designation shall terminate upon the expiration of any applicable period of exclusive marketing rights under this subpart.

(d) FDA may terminate designation if it independently determines that the sponsor is not actively pursuing conditional approval or approval with due diligence. At a minimum, due diligence must be demonstrated by:

(1) Submission of annual progress reports in a timely manner in accordance with § 516.30 that demonstrate that the sponsor is progressing in accordance with the drug development plan submitted to the agency under § 516.20 and

(2) Compliance with all applicable requirements of part 511 of this chapter.

(e) Designation of a conditionally approved or approved MUMS-designated drug and the associated exclusive marketing rights may be terminated if the sponsor is unable to provide sufficient quantities of the drug to meet the needs for which it is designated.

(f) FDA may also terminate MUMS-drug designation for any drug if the agency finds that:

(1) The request for designation contained an untrue statement of material fact; or

(2) The request for designation omitted material information required by this subpart; or

(3) FDA subsequently finds that the drug in fact had not been eligible for MUMS-drug designation at the time of submission of the request;

(4) The same drug, in the same dosage form, for the same intended use becomes conditionally approved or approved for another sponsor; or

(5) FDA withdraws the conditional approval or approval of the application for the new animal drug.

(g) For a conditionally approved or approved drug, termination of MUMS-drug designation also terminates the sponsor's exclusive marketing rights for the drug but does not withdraw the conditional approval or approval of the drug's application.

(h) Where a drug has been MUMS-designated for a minor use in a major species, its designation will not be terminated on the grounds that the number of animals to which the drug could potentially be administered on an annual basis for the treatment, control, or prevention of the disease or condition for which the drug is being developed, including animals administered the drug as part of herd or flock treatment, subsequently increases.

(i) When a MUMS-drug designation is terminated, FDA will notify the sponsor in writing and will give public notice of the termination of the MUMS-drug designation.

§ 516.30 Annual reports for a MUMS-designated drug.

Within 14 months after the date on which a MUMS drug is granted designation and annually thereafter until approval, the sponsor of a MUMS-designated drug shall submit a brief progress report on the drug to the investigational new animal drug file addressed to the Director of the Office of Minor Use and Minor Species Animal Drug Development that includes the following information:

(a) A short account of the progress of drug development including a description of studies initiated, ongoing, and completed, and a short summary of the status or results of such studies;

(b) A description of the investigational plan for the coming year, as well as any anticipated difficulties in development, testing, and marketing; and

(c) A brief discussion of any changes that may affect the MUMS-designated drug status of the product. For example, situations in which testing data demonstrate that the proposed intended use is inappropriate due to unexpected issues of safety or effectiveness.

§ 516.31 Scope of MUMS-drug exclusive marketing rights.

(a) After conditional approval or approval of an application for a MUMS-designated drug in the dosage form and for the intended use for which MUMS-drug designation has been granted, FDA will not conditionally approve or approve another application or abbreviated application for the same drug in the same dosage form for the same intended use before the expiration of 7 years after the date of conditional approval or approval as stated in the approval letter from FDA, except that such an application can be conditionally approved or approved sooner if, and at such time as, any of the following occurs:

(1) FDA terminates the MUMS-drug designation and associated exclusive marketing rights under § 516.29; or

(2) FDA withdraws the conditional approval or approval of the application for the drug for any reason; or

(3) The sponsor with exclusive marketing rights provides written consent to FDA to conditionally approve or approve another application before the expiration of 7 years; or

(4) The sponsor fails to assure a sufficient quantity of the drug in accordance with section 573 of the act and § 516.36.

(b) If an application for a MUMS drug cannot be approved until the expiration of the period of exclusive marketing of a MUMS-designated drug, FDA will so notify the sponsor in writing.

§ 516.34 FDA recognition of exclusive marketing rights.

(a) FDA will send the sponsor (or the permanent-resident U.S. agent, if applicable) timely written notice recognizing exclusive marketing rights when an application for a MUMS-

designated drug has been conditionally approved or approved. The written notice will inform the sponsor of the requirements for maintaining MUMS-designated drug exclusive marketing rights for the full 7-year term. This notice will generally be contained in the letter conditionally approving or approving the application.

(b) When an application is conditionally approved or approved for a MUMS-designated drug that qualifies for exclusive marketing rights, FDA will publish this information in the **Federal Register** at the time of the conditional approval or approval. This notice will generally be contained in the notice of conditional approval or approval of the application.

§ 516.36 Insufficient quantities of MUMS-designated drugs.

(a) Under section 573 of the act, whenever FDA has reason to believe that sufficient quantities of a conditionally-approved or approved, MUMS-designated drug to meet the needs for which the drug was designated cannot be assured by the sponsor, FDA will so notify the sponsor of this possible insufficiency and will offer the sponsor the following options, one of which must be exercised by a time that FDA specifies:

(1) Provide FDA information and data regarding how the sponsor can assure the availability of sufficient quantities of the MUMS-designated drug within a reasonable time to meet the needs for which the drug was designated; or

(2) Provide FDA in writing the sponsor's consent for the conditional approval or approval of other applications for the same drug before the expiration of the 7-year period of exclusive marketing rights.

(b) If, within the time that FDA specifies, the sponsor fails to consent to the conditional approval or approval of other applications and if FDA finds that the sponsor has not shown that it can assure the availability of sufficient quantities of the MUMS-designated drug to meet the needs for which the drug was designated, FDA will issue a written order terminating designation of the MUMS drug and the associated exclusive marketing rights. This order will state FDA's findings and conclusions and will constitute final agency action. An order terminating designation and associated exclusive marketing rights may issue whether or not there are other sponsors that can assure the availability of alternative sources of supply. Such an order will not withdraw the conditional approval or approval of an application. Once terminated under this section, neither designation, nor exclusive marketing rights may be reinstated.

§ 516.52 Availability for public disclosure of data and information in requests.

(a) FDA will not publicly disclose the existence of a request for MUMS-drug designation under section 573 of the act prior to final FDA action on the request unless the existence of the request has been previously publicly disclosed or acknowledged.

(b) Whether or not the existence of a pending request for designation has been publicly disclosed or acknowledged, no data or information in the request are available for public disclosure prior to final FDA action on the request.

(c) Except as provided in paragraph (d) of this section, upon final FDA action on a request for designation, the public availability of data and information in the request will be determined in accordance with part 20 of this chapter and other applicable statutes and regulations.

(d) In accordance with § 516.28, FDA will make a cumulative list of all MUMS-drug designations available to the public and update such list periodically. In accordance with § 516.29, FDA will give public notice of the termination of all MUMS-drug designations.

Subpart C—[Reserved]

Subpart D—[Reserved]

Dated: March 12, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

Editorial Note: This document was received at the Office of the Federal Register on July 23, 2007.

[FR Doc. E7–14444 Filed 7–25–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9333]

RIN 1545–BG64

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations (TD 9333) that were published in the **Federal Register** on Thursday, June 21, 2007 (72 FR 34176) on the suspension of any interest, penalty, addition to tax, or additional amount with respect to listed transactions or undisclosed reportable transactions. The temporary regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions.

DATES: The correction is effective July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Stuart Spielman, (202) 622–7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 6404(g) of the Internal Revenue Code.

Need for Correction

As published, temporary regulations (TD 9333) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 9333), which was the subject of FR Doc. E7–12081, is corrected as follows:

1. On page 34176, column 2, in the preamble, under the caption ''**SUMMARY:**'', lines 13 and 14, the language ''Opportunity Zone Act of 2005, and the Tax Relief and Health Care Act of 2006.'' is corrected to read ''Opportunity Zone Act of 2005, the Tax Relief and Health Care Act of 2006, and the Small Business and Work Opportunity Tax Act of 2007.''.

2. On page 34176, column 3, in the preamble, under the paragraph heading ''Background'', line 8 from the bottom of the paragraph, the language ''Public Law 110–28 (121 Stat. 112, 200),'' is corrected to read ''Public Law 110–28 (121 Stat. 190, 200),''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–14398 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD05–07–043]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the ''East Coast Boat Racing Club power boat race'', a marine event to be held over the waters of the Chesapeake Bay adjacent to Cape Charles, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on the Chesapeake Bay in the vicinity of Cape Charles Beach, Cape Charles, Virginia during the event.

DATES: This rule is effective from 11:30 a.m. on August 4, 2007 through 4:30 p.m. on August 5, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–07–043 and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 22, 2007, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Chesapeake Bay, Cape Charles, VA in the **Federal Register** (72 FR 28631). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations, and area newspapers.

Background and Purpose

On August 4, 2007, the East Coast Boat Racing Club of New Jersey will sponsor a power boat race, on the waters of the Chesapeake Bay, Cape Charles, Virginia. The event will consist of approximately 20 New Jersey Speed Garveys and Jersey Speed Skiffs conducting high-speed competitive races along an oval race course in close proximity to Cape Charles Beach, Cape Charles, Virginia. A fleet of spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Chesapeake Bay, Cape Charles, Virginia.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this regulation will prevent traffic from transiting a portion of the Chesapeake Bay during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Chesapeake Bay adjacent to Cape Charles Beach during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–043 to read as follows:

§ 100.35–T05–043 Chesapeake Bay, Cape Charles, Virginia.

(a) *Regulated area* includes the waters of the Chesapeake Bay, along the shoreline adjacent to Cape Charles, Virginia, to and including waters up to 300 yards offshore, parallel with the Cape Charles Beach shoreline in this area. The area is bounded on the south by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′.2″ North, longitude 076°01′28.5″ West, to a point offshore approximately 300 yards at latitude 37°16′3.4″ North, longitude 076°01′36.6″ West, and bounded on the north by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′26.2″ North, longitude 076°01′14″ West, to a point offshore approximately 300 yards at latitude 37°16′28.9″ North, longitude 076°01′24.1″ West. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the East Coast Boat Racing Club power boat race under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Hampton Roads.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Effective period*. This section will enforced from 11:30 a.m. to 4:30 p.m. on August 4, 2007. If the race is postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day, August 5, 2007.

Dated: July 16, 2007.

Neil O. Buschman,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. E7–14401 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Docket No. EPA–R02–OAR–2006–0963, FRL–8446–4]

Approval of New Jersey's Title V Operating Permit Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving a revision to the New Jersey Operating Permit Program related to the permitting of stationary sources subject to title V of the Clean Air Act in the state of New Jersey. The revision consists of amendments to Subchapter 22 of Chapter 27 of Title 7 of the New Jersey Administrative Code, ''Operating Permits.'' The revision was submitted to amend the definition, permit application, and fees sections of the Operating Permit Rule. The changes add clarity to the rule and assure adequate funding for New Jersey's Operating Permit Program. The intended effect of this action is to approve the program revision requested by New Jersey to assure proper implementation of the requirements of title V of the CAA.

DATES: *Effective Date:* This rule will be effective August 27, 2007.

ADDRESSES: EPA has established a docket for this action under the Federal Docket Management System (FDMS) which replaces the Regional Materials in EDOCKET (RME) docket system. The new FDMS is located at *http://www.regulations.gov* and the docket ID for this action is EPA–R02–OAR–2006–0963. All documents in the docket are listed in the FDMS index. Publicly available docket materials are available either electronically in FDMS or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the New Jersey Department of Environmental Protection, Division of Air Quality, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Suilin Chan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4019.

SUPPLEMENTARY INFORMATION:

I. What was included in New Jersey's submittal?

On October 4, 2006, New Jersey Department of Environmental Protection (NJDEP) submitted to EPA a request to revise its Operating Permits Rule. The revisions consisted of amendments to sections 22.1, 22.3, 22.4, 22.6, 22.10, and 22.31 of the Operating Permits Rule codified at Title 7 of the New Jersey Administrative Code, Chapter 27, Subchapter 22. These revisions were adopted by the State on May 1, 2006 (inadvertently listed June 9, 2006 as the adoption date in the proposal) and became effective on June 19, 2006.

On March 20, 2007 (72 FR 13059), EPA proposed to approve the revised Subchapter 22 as part of New Jersey's Operating Permits Rule. For a detailed discussion on the content of the revisions to New Jersey's rule, the reader is referred to EPA's proposed rulemaking action.

II. What comments did EPA receive in response to its proposal?

In response to EPA's March 20, 2007, proposed rulemaking action, EPA received no comments.

III. What is EPA's conclusion?

EPA has evaluated New Jersey's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions to Subchapter 22, New Jersey's Operating Permits Rule meet title V of the CAA and its implementing regulations codified at Title 40 of the Code of Federal Regulations, part 70. Therefore, EPA is approving the subject revisions.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action 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.*). 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).

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 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. 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 is not economically significant.

In reviewing State Operating Permit Programs submitted pursuant to title V of the Clean Air Act, EPA will approve such regulations provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. 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 such regulations for failure to use VCS. It would, thus, be inconsistent with applicable law for EPA, when it reviews such regulations, to use VCS in place of a State regulation that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 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 70

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 8, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Appendix A to part 70 is amended by adding paragraph (d) to the entry for New Jersey to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

New Jersey

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(d) The New Jersey Department of Environmental Protection submitted program revisions on October 4, 2006; approval effective August 27, 2007.

* * * * *

[FR Doc. E7–14483 Filed 7–25–07; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 72, No. 143
Thursday, July 26, 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 Research Service

7 CFR Part 550

RIN 0518–AA03

General Administrative Policy for Non-Assistance Cooperative Agreements

AGENCY: Agricultural Research Service, Education, and Economics; USDA.

ACTION: Proposed rule.

SUMMARY: This Part establishes uniform guidelines within the Research, Education, and Economics (REE) mission area on the use, award, and administration of cooperative agreements awarded under the authority of 7 U.S.C. 3318(b).

DATES: Submit comments on or before September 24, 2007.

ADDRESSES: Send comments to Kim Hicks, Agricultural Research Service, Extramural Agreements Division, MS–5110, 5601 Sunnyside Ave., Beltsville, MD 20705–5110.

FOR FURTHER INFORMATION CONTACT: Kim Hicks, Chief, Grants & Agreements Management Staff, ARS 5601 Sunnyside Ave., Beltsville, MD 20705–5110; Telephone: (301) 504–1141, Fax: (301) 504–1262; E-mail: *kim.hicks@ars.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 1424 of the Food Security Act of 1985, Public Law 99–198, amended Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318(b)) to authorize the Secretary to use a cooperative agreement as a legal instrument reflecting a relationship between the Secretary and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal or private agency or organization, individual, or any other party, if the Secretary determines (a) The objectives of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, and teaching activities, including statistical reporting; and (b) all parties will contribute resources to the accomplishment of those objectives.

The cooperative agreements authorized by 7 U.S.C. 3318(b) have been determined to be neither procurement nor assistance in nature and, therefore, not subject to the provisions of Federal Grant and Cooperative Agreement Act of 1977. These cooperative agreements are exempt from Department of Agriculture (USDA) rules and regulations promulgated at 7 CFR parts 3015, 3016, and 3019. The agreements covered by this Part are characterized by mutual interest and benefit to both parties, and reflect the unique cooperative relationship that exists between the REE agencies and the various public and private organizations engaged in the conduct of agricultural research, extension, and teaching activities.

Although the nonassistance cooperative agreements described in this Rule are substantively different than the Federal assistance-type cooperative agreements used by most Federal awarding agencies and are not subject to the grants management Common Rule found at 2 CFR part 215, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' REE has decided to apply many of the provisions of the Common Rule as a matter of good business practice. Many of the standards and provisions of the Common Rule have been adopted in whole or in part in the proposed rule because they embody principles of good management and sound financial stewardship important to all Federal assistance and nonassistance awards. Additionally, we have included by reference specific provisions of other Federal assistance-type or procurement guidance documents such as 7 CFR 3052, 42 U.S.C. 6962, and the Cash Management Improvement Act, codified at 31 CFR part 205, for the same reasons.

Summary of Proposed Rule

This part provides a summary of some of the more significant sections of the rule as well as background information that will be used in reading and interpreting it. Sections on Definitions, Applicability, Competition policy, Duration of the agreement, Special Award Conditions and others, provide general information on REE requirements and expectations. Some of the sections contain provisions that apply only to statutes authorizing nonassistance cooperative agreements and may be unfamiliar to those that normally work under Federal assistance-type cooperative agreements and grants.

We are providing an analysis of some of the specific provisions of the sections in this part in an attempt to provide the commenter with a better understanding of their context in the rule and the reasons that they were written. Although commenters may offer comments on all aspects of this proposed rule there are a number of areas that are required by statute and therefore cannot be changed.

We offer additional explanation and information on the following sections of this Part:

Subpart A—General

Definitions

The definitions used in this Part are derived from several sources. They include USDA's implementation of Office of Management and Budget (OMB) Circular A–110 at 7 CFR part 3019 (2 CFR part 215), certain REE statutes authorizing the use of non-assistance agreements and other terms and definitions that have been commonly used in conjunction with REE's non-assistance agreement programs.

Eligibility

The eligibility standards referenced in this section were determined by statute. (7 U.S.C. 3318(b)(1)).

Competition

The non-assistance agreements awarded under this authority can be made without regard to any requirements for competition. The policy regarding competition referenced in this section was determined by statute. (7 U.S.C. 3318(e))

Duration

REE Agencies may enter into non-assistance cooperative agreements for a period not to exceed 5 years.

Subpart B—Formation of Agreements

Mutuality of Interest

The principle of mutuality of interest is extremely important in REE programs in which non-assistance agreements are used. Mutuality of interest is the cornerstone upon which decisions to enter into specific relationships with cooperators, on specific projects, are based. The statute authorizing the use of nonassistance cooperative agreements has, as one of the two principles for its use, the following provision: ''* * * the objectives of the agreement will serve a mutual interest of the parties to the agreement * * *''

Indirect Cost

The prohibitions and restrictions on payment of indirect costs on non-assistance cooperative agreements are based in statute (7 U.S.C. 3319).

Payment of indirect costs to State Cooperative Institutions referenced in the Definitions section of this document is prohibited. This prohibition does not apply to funds for international agricultural programs conducted by a State cooperative institution and administered by the Secretary or to funds provided by a Federal agency for such cooperative program or project through a fund transfer, advance or reimbursement (7 U.S.C. 3319). Payment of indirect costs to non-profit organizations is limited to 10 percent of the total direct cost of the project.

In accordance with the annual appropriations language as specified in the cooperative agreement General Provisions, payment of indirect costs on REE nonassistance cooperative agreements with all other cooperating organizations is limited to the percentage(s) established in the Cooperator's negotiated indirect cost rate schedule.

Resource Contribution

This section details the resource contributions that are required of Cooperators when participating in REE non-assistance cooperative agreements. Historically, there were no firm guidelines or requirements regarding the minimum contribution of resources on REE projects documented by non-assistance cooperative agreements. Contributions were expected to be ''* * * more than nominal.'' This vague guidance led to disparities among the contributions put forward by various organizations, confusion and a lack of direction among all parties charged with negotiating these awards and, in some cases a lack of true commitment to the project objectives on the part of the cooperator.

In a 1993 USDA, Office of General Counsel (OGC) opinion it was noted that the contributions that are required under the statute ''* * * must be substantial enough to evoke a partnership type relationship such that all parties to the agreement have a real stake in the activity * * *'' and that ''* * * the exact amount that each party must contribute is a policy decision best left to the discretion of the agency.''

REE Agencies have now established a minimum resource contribution of no less than 20 percent of the funded amount of the agreement. This decision was made after consultation with other USDA agencies and other Federal agencies. While it was noted during this consultation process that some other agencies had higher minimums of resource contributions, REE Agencies decided that a 20 percent minimum was reasonable and efficacious.

Further, REE Agencies decided that the contribution required of cooperators could consist of ''in kind'' contributions and unrecoverable indirect costs. The section goes on to cite and define these in kind contributions in a manner that is consistent with the standard practices found in Federal agencies' implementation of OMB's guidance to Federal agencies found at 2 CFR part 215.

As Federal resources become more scarce due to budget limitations it may become necessary to make changes to the way in which these costs are calculated. REE Agencies reserve the right and authority to increase the amount of the minimum contribution if and when it is necessary to do so.

Payment

Due to the true collaborative nature of the research and other projects that REE Agencies enter into with their cooperators REE has determined that the reimbursement method of payment is the preferred method of payment for nonassistance cooperative agreements. While advance payment has proven to be the most reasonable approach for payments to grantees under grant programs, REE Agencies have determined that the most effective method of payment under nonassistance cooperative agreements is the reimbursement method of payment. The reimbursement method of payment utilizes Electronic Fund Transfers which are common to most recipient organizations and the technology has been in use for many years with nearly seamless efficiency.

Subpart C—Management of Agreements

The Management of Agreements sections of this rule closely parallel the provisions of OMB's Circular A–110, codified as 2 CFR part 215 and other provisions previously published in USDA regulations found at 7 CFR part 3015 and successor regulations. Because most educational institutions and other organizations covered by this rule are already subject to these provisions, and because the provisions have been previously approved under other Federal rulemaking efforts, we believe it unnecessary to further explain their purpose or place in this rule.

We will review other aspects of the rule that differ due either to statutory exception or Agency discretion.

Section 550.29 Press Releases. REE agencies are involved in a wide variety of research projects in many different areas of research. Some of these projects involve national security concerns or classified areas of research and are performed in cooperation with the Department of Homeland Security or other Federal protection agencies.

This section was added to assure that only appropriate information is released to the public on REE projects.

Section 550.30 Advertising. This section was developed in order to preclude Cooperators from claiming the endorsement of USDA on products or research results that were funded either directly, or indirectly, by the Federal government.

Statements that include references to the REE agency in advertising media can imply the endorsement of the Federal government at large. This provision would not preclude such references but would require prior approval for their use.

Section 550.32 Project Supervision and Responsibilities and Section 550.33 Administrative Supervision were included here to assist in the delineation of duties between the Cooperator and the REE agency. This is necessary due to the extremely close collaboration between agency employees and the employees of the Cooperator. In many cases the employees of both entities work side-by-side often causing difficult work situations when it comes to matters such as overtime and holiday hours, and other common workplace and workday rules. The provisions of this section are an attempt to clarify some of the roles and rules that have historically presented challenges to administrators and program leaders of both entities.

Procurement Standards

The Procurement Standards established in this Part are consistent with the standards set out in 2 CFR part 215 and USDA's Federal assistance regulations at 7 CFR part 3019.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866.

Executive Order 12372

The programs covered by these regulations are listed in the Catalog of Federal Domestic Assistance (CFDA) under the following CFDA numbers: the Agricultural Research Service found at 10.001; the Economics Research Service found at 10.250; and the National Agricultural Statistics Service found at 10.950.

Because this proposed regulation does not authorize any programs or program expenditures, this notice is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, subpart V.)

Executive Order 12988—Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in Part 550

Agricultural research, Non-assistance, Procedural rules, Research, Science and technology.

For the reasons stated in the preamble, the Department of Agriculture, Agriculture Research Service, proposes to amend 7 CFR chapter V by adding part 550 as set forth below.

PART 550—GENERAL ADMINISTRATIVE POLICY FOR NON-ASSISTANCE COOPERATIVE AGREEMENTS

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Authority: Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. (7 U.S.C 3318(b).

Subpart A—General

§ 550.1 Purpose and scope.

This Part establishes REE-wide standards of USDA's award and administration of non-assistance cooperative agreements executed under the authority of Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. (7 U.S.C. 3318(b)). These agreements are neither procurement nor assistance in nature, and therefore, are not subject to the Federal Grant and Cooperative Agreements Act of 1977. Accordingly, proper use of these cooperative agreements will promote and facilitate partnerships between the REE Agency and the Cooperator in support of research, extension and education projects of mutual benefit to each party.

§ 550.2 Definitions.

Accrued expenditures means the charges incurred by the Cooperator during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Cooperator's regular accounting practices.

Advance means a payment made to a Cooperator upon its request either before outlays are made by the Cooperator or through the use of predetermined payment schedules.

Authorized Departmental Officer (ADO) means the REE Agency's official

delegated authority to negotiate, award, administer, suspend, and terminate non-assistance cooperative agreements.

Authorized Departmental Officer's Designated Representative (ADODR) means the REE Agency's technical representative, acting within the scope of delegated authority, who is responsible for participating with the Cooperator in the accomplishment of a cooperative agreement's objectives and monitoring and evaluating the Cooperator's performance.

Award means a nonassistance cooperative agreement which provides money or in-kind services or property in lieu of money, to an eligible Cooperator. The term does not include: financial assistance awards in the form of grants, cooperative agreements, loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and contracts which are required to be entered into and administered under procurement laws and regulations.

CFR means the Code of Federal Regulations.

Closeout means the process by which an REE Agency determines that all applicable administrative actions and all required work under the agreement have been completed by the Cooperator and REE Agency.

Contract means a procurement contract entered into by the Cooperator or a subcontractor of the cooperator pursuant to the cooperative agreement.

Cooperator means any State agricultural experiment station, State cooperative extension service, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other party, either foreign or domestic, receiving an award from an REE Agency.

Disallowed costs means those charges incurred under the cooperative agreement that REE determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the cooperative agreement.

Electronic Funds Transfer (EFT) means electronic payment methods used to transfer funds to a Cooperator's bank account. (Including HHS/PMS)

Equipment means tangible nonexpendable personal property contributed or acquired by either an REE Agency or by the Cooperator, having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with Cooperator policy, lower limits may be established.

Funding period means the period of time when Federal funding is available for obligation by the Cooperator.

HHS–PMS means the Department of Health and Human Services/Payment Management System (also see EFT).

i-Edison (Interagency Edison) is a database, which provides Federal grantee/Cooperator organizations and participating Federal agencies with the technology to electronically manage extramural invention portfolios in compliance with Federal reporting requirements.

Intangible property means trademarks, copyrights, patents and patent applications.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the Cooperator during the same or a future period.

OMB means the Office of Management and Budget.

Outlays or expenditures means charges made to the project or program. Outlays and expenditures also include cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the Cooperator for goods and other property received, for services performed by employees, contractors, subrecipients, and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Peer Review is a process utilized by REE Agencies to:

(1) Determine if agency sponsored research projects have scientific merit and program relevance;

(2) Provide peer input and make improvements to project design and technical approaches;

(3) Provide insight on how to conduct the highest quality research in support of Agency missions and programs.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Principle Investigator (PI) means the individual, designated by the Cooperator, responsible for directing and monitoring the performance, the day-to-day activities, and the scientific and technical aspects of the Cooperator's portion of an REE funded project. The PI works jointly with the ADODR in the development of project objectives and all other technical and performance related aspects of the program or project. See additional responsibilities of PI in § 550.32.

Prior approval means written approval by an ADO evidencing prior consent.

Program income means gross income earned by the Cooperator that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally funded projects, the sale of commodities or items fabricated under an award, and license fees and royalties on patents and copyrights. Program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them, or interest earned on advances of Federal funds.

Project costs means all allowable costs, incurred by the Cooperator and the REE Agency toward the completion of the project.

Project period means the period established in the cooperative agreement during which Federal contributions begin and end.

Property means, unless otherwise stated, personal property, equipment, intangible property.

Publications mean all types of paper based media including electronic and audio media.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

REE Agency means the USDA Agency that enters into a cooperative agreement with the cooperator.

State Cooperative Institutions are defined in statute as institutions designated or receiving funds pursuant to:

(1) The First Morrill Act—The Land Grant Institutions.

(2) The Second Morrill Act—The 1890 Institutions.

(3) The Hatch Act of 1887—The State Agricultural Experiment Stations.

(4) The Smith-Lever Act—The State Extension Services.

(5) The McIntire-Stennis Act of 1962—The Cooperating Forestry Schools.

(6) Public Law 95–113, Section 1430—A college or university having an accredited college of veterinary medicine or a department of veterinary science or animal pathology or similar unit conducting animal health and disease research in a State Agricultural Experiment Station.

(7) Public Law 97–98, Section 1475b—Colleges, universities, and Federal laboratories having a

demonstrated capacity in aquaculture research.

(8) Public Law 97–98, Section 1480—Colleges, universities, and Federal laboratories having a demonstrated capacity of rangeland research.

(9) Equity in Educational Land—Grant Status Act of 1994 (7 U.S.C. 301 note) 1994 Institutions.

Subaward means an award in the form of money or in-kind services or property in lieu of money, made under an award by a Cooperator to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the Cooperator for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the REE Agency.

Supplies means all personal property excluding equipment, intangible property, as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

Suspension means an action by a REE Agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the Cooperator or pending a decision to terminate the award by the REE Agency. Suspension of an award is a separate action from suspension under Federal Agency regulations implementing Executive Orders 12549 and 12689, ''Debarment and Suspension.''

Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Unliquidated obligations are the amount of obligations incurred by the Cooperator for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the REE Agency that has not been obligated by the Cooperator and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount, which could have been awarded under the Cooperator's approved negotiated indirect cost rate.

U.S.C. means the United States Code.

USDA means the United States Department of Agriculture.

§ 550.3 Applicability.

This Part applies to all REE non-assistance cooperative agreements awarded under the authority of 7 U.S.C. 3318(b).

§ 550.4 Eligibility.

REE agencies may enter into non-assistance cooperative agreements with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other party, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences. (7 U.S.C. 3318(b)(1)).

§ 550.5 Competition.

REE agencies may enter into non-assistance cooperative agreements, as authorized by this Part, without regard to any requirements for competition. (7 U.S.C. 3318(e)).

§ 550.6 Duration.

REE may enter into non-assistance cooperative agreements for a period not to exceed five years.

§ 550.7 Exceptions.

This Part does not apply to:

USDA Federal Financial Assistance agreements subject to 7 CFR parts 3015, 3016, or 3019;

Procurement contracts or other agreements subject to the Federal Acquisition Regulation (FAR) or the Agriculture Acquisition Regulation (AgAR); or Agreements providing loans or insurance directly to an individual.

§ 550.8 Conflicting policies and deviations.

This Part supersedes and takes precedence over any individual REE regulations and directives dealing with the award and administration of non-assistance cooperative agreements entered into under the delegated authority of 7 U.S.C. 3318(b). This Part may only be superseded, in whole or in part, by either a specifically worded statutory provision or a waiver authorized by the USDA–REE—Administrative and Financial Management (AFM)—Extramural Agreements Division (EAD) or any successor organization. Responsibility for developing, interpreting, and updating this Part is assigned to the USDA–REE–AFM–EAD or any successor organization.

§ 550.9 Other applicable regulations.

Related issuances are in other Parts of the CFR and the U.S.C. as follows:

(a) 7 CFR Part 3017 ''Governmentwide Debarment and Suspension'';

(b) 7 CFR Part 3018 ''New Restrictions on Lobbying'';

(c) 7 CFR Part 3052 ''Audits of States, Local Governments, and Nonprofit Organizations'';

(d) 7 CFR 3015.175 (b) ''Copyrights'';

(e) 37 CFR 401.14 ''Standard Patent Rights Clause'';

(f) 15 U.S.C. 205a *et seq.*—''The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act'';

(g) 42 U.S.C. 6962 ''Resource Conservation and Recovery Act (RCRA)''.

§ 550.10 Special award conditions.

(a) REE Agencies may impose special conditions and/or additional requirements to a nonassistance agreement if a Cooperator:

(1) Has a history of poor performance,

(2) Is not financially stable,

(3) Has a management system that does not meet the standards prescribed in this Part,

(4) Has not conformed to the terms and conditions of a previous award, or

(5) Is not otherwise responsible.

(b) Special conditions and/or additional requirements may be added to an award provided that the Cooperator is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed.

Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

Subpart B—Formation of Agreements

§ 550.11 Purpose.

Sections 12 through 18 prescribe instructions and other pre-award matters to be used in establishing a non-assistance cooperative agreement.

§ 550.12 Statutory authorization required (REE Agency).

REE Agencies must have programmatic statutory authority for the proposed project prior to entering into any non-assistance cooperative agreement.

§ 550.13 Mutuality of interest.

The REE Agency shall document both parties' interest in the project. Mutual interest exists when both parties benefit in the same qualitative way from the

objectives of the agreement. If one party to the agreement would independently have an interest in the project, which is shared by the other party, and both parties' pool resources to obtain the end result of the project, mutual interest exists.

§ 550.14 Indirect cost/tuition remission.

(a) Indirect Cost:

(1) State Cooperative Institutions.

Payment of indirect costs to State Cooperative Institutions in connection with non-assistance cooperative agreements awarded under the authority of 7 U.S.C. 3318(b) is prohibited. This prohibition does not apply to funds for international agricultural programs conducted by a State cooperative institution and administered by the Secretary or to funds provided by a Federal agency for such cooperative program or project through a fund transfer, advance or reimbursement. (7 U.S.C. 3319)

(2) Non-Profit Organizations:

Payment of indirect costs to non-profit institutions in connection with USDA cooperative agreement, under the authority of 7 U.S.C. 3318(b), is limited to 10 percent of the total direct cost of the project. (Annual Appropriations Bill for Agriculture and Related agencies, General Provisions)

(3) All other cooperating organizations:

With the exception of §§ 550.14(a)(1) and 550.14(a)(2), above, payment of indirect costs is allowable in connection with REE non-assistance cooperative agreements. Reimbursement of indirect costs is limited to the percentage(s) established in the Cooperator's negotiated indirect cost rate schedule.

(4) In any case, the REE Agency shall not reimburse indirect costs prior to receipt of the Cooperator's negotiated indirect cost rate schedule.

(b) Tuition Remission.

(1) State Cooperative Institutions.

Reimbursement of tuition expenses to State Cooperative Institutions in connection with REE non-assistance cooperative agreements is prohibited. (7 U.S.C 3319)

(2) All other cooperating organizations:

Except for § 550.14(b)(1), tuition remission is an allowable expense as determined in accordance with the cost principles applicable to the Cooperator. REE agencies shall negotiate and approve such payments as related to the scope and objectives of the non-assistance agreement.

§ 550.15 Resource contribution.

Each party must contribute resources towards the successful completion of the project. Required resource contributions must be substantial enough to substantiate a true stake in the project as determined by the ADO.

(a) REE Agency's Contribution.

(1) The REE Agency's contribution must consist of the total in-house costs to the REE Agency and the total amount to be reimbursed by the REE Agency to the Cooperator for all allowable costs agreed to in advance as reflected in the cooperative agreement.

(b) Cooperator's Contribution.

(1) The Cooperator's contribution must be no less than 20 percent of the total of the resource contributions under the cooperative agreement. Resource contributions of the Cooperator must consist of a sufficient amount of itemized direct costs to substantiate a true stake in the project as determined by the ADO. The Cooperator's contribution must be maintained at 20 percent of Federal funding throughout the life of the cooperative agreement.

(2) Cooperators share of contributions may consist of ''in-kind'' contributions and may also include unrecoverable indirect costs. Such costs may be accepted as part of the Cooperator's resource contribution when all of the following criteria are met:

(i) Costs are verifiable from the Cooperator's records.

(ii) Costs are not included as contributions for any other federally assisted project or program.

(iii) Costs are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(iv) Costs are allowable under the applicable cost principles.

(v) Costs are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(vi) Costs conform to other provisions of this Part, as applicable.

(3) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as resource contributions if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the Cooperator's organization. In those instances in which the required skills are not found in the Cooperator organization, rates shall be consistent with those paid for similar work in the labor market in which the Cooperator competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) When an employer other than the Cooperator furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(5) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(6) The value of donated property shall be determined in accordance with the usual accounting policies of the Cooperator, with the following qualifications.

(i) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the Cooperator as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the Cooperator.

(ii) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(iii) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

(iv) The value of loaned equipment shall not exceed its fair rental value.

(v) The following requirements pertain to the Cooperator's supporting records for in-kind contributions from third parties.

(A) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the Cooperator for its own employees.

(B) The basis for determining the valuation for personal service, material, equipment, buildings, and land shall be documented.

§ 550.16 Project Development.

REE provides partial funding to Cooperators to support research projects that contribute to REE program objectives and help carry out the REE mission. The Cooperator's PI and the REE Agency's ADODR shall jointly develop the following documentation:

(a) Project Plan—A plan that shall be jointly developed by the REE ADODR and the Cooperator that is compliant with an REE program requirement. The project plan will utilize the REE provided format for external peer review.

(b) Statement of Work—A detailed statement of work shall be jointly planned, developed and prepared by the Cooperator's PI and the awarding Agency's ADODR consisting of the following:

(1) Objective
(2) Approach
(3) Statement of Mutual Interest
(4) Performance Responsibilities
(5) Mutual Agreements

(c) Budget—A plan that shall be jointly developed by the REE ADODR and the Cooperator PI outlining the following resource contributions:

(1) Total amount to be reimbursed by the REE Agency to the Cooperator. (Direct and Indirect Costs as applicable)

(2) Total in-house costs to the REE Agency. (Direct and indirect costs)

(3) Total in-house costs to the Cooperator. (Direct and indirect costs)

§ 550.17 Peer review.

Upon request of the REE Agency, cooperators may be requested to provide documentation in support of peer review activities and cooperator personnel may be requested to participate in peer review forums to assist the REE Agency in their reviews.

§ 550.18 Assurances/certifications.

(a) Governmentwide Debarment and Suspension (Non procurement)—7 CFR part 3017;

(b) Governmentwide requirements for Drug-Free Workplace—7 CFR part 3021;

(c) Non-discrimination. The Cooperator assures compliance with the following requirement: No person in the United States shall, on the grounds of race, color, national origin, sex, age, religion, political beliefs, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity under a non-assistance cooperative agreement.

(d) Protection of Human Subjects Requirements: The Cooperator assures compliance with the following provisions regarding the rights and welfare of human subjects:

(1) The Cooperator is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this Agreement. The Cooperator may conduct research involving human subjects only as prescribed in the statement of work and as approved by the Cooperator's Cognizant Institutional Review Board. Prior to conducting such research, the Cooperator shall obtain and document a legally sufficient informed consent from each human subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waive, or to appear to waive, any of his or her legal rights, including any release of the Cooperator or its agents from liability for negligence.

(2) The Cooperator agrees to comply with U.S. Department of Health and Human Services' regulations regarding human subjects, appearing in 45 CFR Part 46 (as amended).

(3) It will comply with REE policy, which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

(4) Selection of subject or groups of subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

(e) Animal Welfare Act Requirements: The Cooperator assures compliance with the Animal Welfare Act, as amended, 7 U.S.C. 2131, *et seq.*, and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. The Cooperator may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

(f) Recombinant DNA Research Requirements: The Cooperator assures that it will assume primary responsibility for implementing proper conduct on recombinant DNA research and it will comply with the National Institute of Health Guidelines for Recombinant DNA Research, as revised.

(1) If the Cooperator wishes to send or receive registered recombinant DNA material which is subject to quarantine laws, permits to transfer this material into the U.S. or across state lines may be obtained by contacting USDA/APHIS/PPQ, Scientific Services-Biotechnology Permits, 4700 River Road, Unit 133, Riverdale, Maryland 20737. In the event that the Cooperator has not established the necessary biosafety committee, a request for guidance or assistance may be made to the USDA Recombinant DNA Research Officer.

(g) Agriculture Bioterrorism Protection Act Requirements: The Cooperator assures compliance with the Agriculture Bioterrorism Protection Act of 2002, as implemented at 7 CFR Part 331 and 9 CFR Part 121, by agreeing that it will not possess, use, or transfer any select agent or toxin without a certificate of registration issued by the Agency.

Subpart C—Management of Agreements

Financial Management

§ 550.19 Purpose.

Sections 550.20 through 550.25 of this subpart prescribe standards for financial management systems and program management requirements.

§ 550.20 Standards for financial management systems.

(a) REE agencies shall require Cooperators to relate financial data to performance data.

(b) Cooperators' financial management systems shall provide for the following.

(1) Accurate, current, and complete disclosure of the financial results of each REE sponsored project or program in accordance with the reporting requirements set forth in § 550.53 of this part. REE requires financial reporting on an accrual basis; however, the Cooperator shall not be required to establish an accrual accounting system. These Cooperators shall develop such accrual data through best estimated for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify the source and application of funds for federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Cooperators shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the Cooperator from the U.S.

Treasury and the issuance or redemption of a check, warrant or payment by other means for program purposes by the Cooperator. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR Part 205, ''Rules and procedures for efficient Federal State funds transfer.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223, ''Surety Companies Doing Business with the United States.''

§ 550.21 Funding availability.

The funding period will begin on the date of final signature, unless otherwise stated on the agreement, and continue for the project period specified on the cover page of the cooperative agreement.

§ 550.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the issuance or redemption of a check, warrant, or payment by other means by the Cooperators. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR Part 205.

(b) Reimbursement is the preferred method of payment. All payments to the Cooperator shall be made via EFT.

(1) When the reimbursement method is used, the REE Agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Cooperators shall be authorized to submit requests for payment not more than quarterly and not less frequently than annually.

(3) Content of Invoice.

At a minimum, the Cooperator's invoice shall state the following:

(i) The name and address of the Cooperator;

(ii) The name and address of the PI;

(iii) The name and address of the financial officer to whom payments shall be sent;

(iv) A reference to the cooperative agreement number;

(v) The invoice date;

(vi) The time period covered by the invoice; and

(vii) Total dollar amount itemized by budget categories (labor, direct costs, and indirect costs, etc).

(4) To facilitate the EFT process, the Cooperator shall provide the following information:

(i) The name, addresses, and telephone number of the financial institution receiving payment;

(ii) The routing transit number of the financial institution receiving payment;

(iii) The account to which funds are to be deposited; and

(iv) The type of depositor account (checking or savings).

(c) If the REE Agency has determined that reimbursement is not feasible because the Cooperator lacks sufficient working capital, the REE Agency may provide cash on an advance basis provided the Cooperator maintains or demonstrates the willingness to maintain: (1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Cooperator, and (2) financial management systems that meet the standards for fund control and accountability as established in § 550.20. Under this procedure, the REE Agency shall advance cash to the Cooperator to cover its estimated disbursement needs for an initial period. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the Cooperator organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to the requirements of 31 CFR Part 205.

(3) Requests for advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement.'' This form is not to be used when advance payments are made to the Cooperator automatically through the use of a predetermined payment schedule or if precluded by special REE Agency instructions for electronic funds transfer.

(4) Cooperators shall maintain advances of Federal funds in interest bearing accounts, unless § 550.22(c)(4)(i), (ii), or (iii) applies.

(i) The Cooperator receives less than $120,000 in Federal awards per year.

(ii) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(5) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. The Cooperator for administrative expense may retain interest amounts up to $250 per year. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the REE Agency, it waives its right to recover the interest under CMIA. Thereafter, the REE Agency shall reimburse the Cooperator for its actual cash disbursements.

(6) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the REE Agency to the Cooperator. The working capital advance method of payment shall not be used for Cooperators unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(d) To the extent available, Cooperators shall disburse funds available from repayments to and interest earned on program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(e) Unless otherwise required by statute, REE Agencies shall not withhold payments for proper charges made by Cooperators at any time during the project period unless (1) or (2) apply.

(1) A Cooperator has failed to comply with the project objectives, the terms and conditions of the award, or REE reporting requirements.

(2) The Cooperator owes a debt to the United States which is subject to offset pursuant to 7 CFR Part 3 and Federal Clause Collection Standard; 31 CFR Parts 901–904.

(f) Standards governing the use of banks and other institutions as depositories of funds advanced or reimbursed under awards are as follows.

(1) Except for situations described in § 550.22(f)(2), REE Agencies shall not require separate depository accounts for funds provided to a Cooperator or

establish any eligibility requirements for depositories for funds provided to a Cooperator. However, Cooperators must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

§ 550.23 Program income.

(a) REE Agencies shall apply the standards set forth in this section in requiring Cooperator organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in § 550.23(f), program income earned during the project period shall be retained by the Cooperator and shall be added to funds committed to the project by the REE Agency and Cooperator and used to further eligible project or program objectives.

(c) Cooperators shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(d) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(e) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 550.36 through 550.42).

(f) Cooperators shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. Chapter 25) apply to inventions made under an experimental, developmental, or research award.

§ 550.24 Non-Federal audits.

(a) Cooperators and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the REE agencies.

(d) Commercial organizations shall be subject to the audit requirements of the REE Agency or the prime recipient as incorporated into the award document.

§ 550.25 Allowable costs.

For each kind of Cooperator, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments'' codified at 2 CFR Part 225. The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations'' codified at 2 CFR Part 230. The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions'' codified at 2 CFR part 220. The allowability of costs incurred by hospitals is determined in accordance with the provisions of Subpart E of 45 CFR Part 74. The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Appendix C to Circular A–122 (2 CFR part 230) is determined in accordance with the contract cost principles and procedures of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.

Program Management

§ 550.26 Monitoring program performance.

(a) Cooperators are responsible for managing the day-to-day operations of REE nonassistance awards using their established controls and policies, as long as they are consistent with REE requirements. However, in order to fulfill their role in regard to the stewardship of Federal funds, REE Agencies monitor their agreements to identify potential problems and areas where technical assistance might be necessary. This active monitoring is accomplished through review of reports and correspondence from the cooperator, audit reports, site visits, and other information available to the REE Agency. It is the responsibility of the Cooperator to ensure that the project is being performed in compliance with the terms and conditions of the award.

(b) Monitoring of a project or activity will continue for as long as the REE Agency retains a financial interest in the project or activity. REE agencies reserve the right to monitor a project after it has been administratively closed out and no longer providing active support in order to resolve issues of accountability and other administrative requirements. Additional requirements regarding reporting and program performance can be found in §§ 550.51 through 550.55 of this part.

(c) The REE Agency reserves the right to perform site visits at Cooperator locations. Access to project or program records shall be provided in accordance with the provisions of § 550.55 ''Retention and access requirements for records.''

§ 550.27 Prior approvals.

(a) The budget is the financial expression of the project or program as approved during the award process. REE agencies require that all Federal costs be itemized on the approved budget. The budget shall be related to performance for program evaluation purposes.

(b) Cooperators are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions.

(c) Cooperators shall request prior approvals from REE Agencies for one or more of the following program or budget related reasons.

(1) Incur pre-award costs up to 90 days prior to award date. All pre-award costs are incurred at the Cooperator's risk (i.e., the REE Agency is under no obligation to reimburse such costs if for any reason the Cooperator does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) Extensions of time, within statutory limitations, to complete project objectives. This extension may not be requested merely for the purpose of using unobligated balances. The Cooperator shall request the extension in writing with supporting reasons.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

(6) The inclusion of costs that require prior approval in accordance with OMB

Circular A–21, ''Cost Principles for Educational Institutions,'' (2 CFR Part 220), OMB Circular A–122, ''Cost Principles for Non-Profit Organizations'' (2 CFR Part 230) or 45 CFR Part 74 Appendix E, or 48 CFR Part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) Unless described in the agreement and funded in the approved awards, the sub award, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) When requesting approval for budget revisions, Cooperators shall use the budget form used in the cooperative agreement.

(e) Within 30 calendar days from the date of receipt of the request for budget revisions, the ADO shall review the request and notify the Cooperator whether the budget revisions have been approved.

§ 550.28 Publications and Acknowledgment of Support.

(a) Publications. REE Agencies and the Federal Government shall enjoy a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any materials developed in conjunction with a nonassistance cooperative agreement or contract under such an agreement.

(b)(1) Cooperators shall acknowledge ARS, Economics Research Service (ERS), National Agricultural Statistics Service (NASS), and the Cooperative State Research, Education, and Extension Service (CSREES) support, whether cash or in-kind, in any publications written or published with Federal support and, if feasible, on any publication reporting the results of, or describing, a Federally supported activity as follows:

''This material is based upon work supported by the U.S. Department of Agriculture, (insert Agency name) under Agreement No. (Cooperator should enter the applicable agreement number here).''

(2) All such material must also contain the following disclaimer unless the publication is formally cleared by the awarding agency:

''Any opinions, findings, conclusion, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture.''

(3) Any public or technical information related to work carried out under a non-assistance cooperative agreement shall be submitted by the developing party to the other for advice and comment. Information released to the public shall describe the contributions of both parties to the work effort. In the event of a dispute, a separate publication may be made with effective statements of acknowledgment and disclaimer.

(c) Media. Cooperators shall acknowledge awarding Agency support, as indicated in § 550.28 (b) above, in any form of media (print, DVD, audio production, etc.) produced with Federal support that has a direct production cost to the Cooperator of over $5,000. Unless the terms of the Federal award provide otherwise, this requirement does not apply to:

(1) Media produced under mandatory or formula grants or under sub awards.

(2) Media produced as research instruments or for documenting experimentation or findings and intended for presentation or distribution to a USDA/REE audience.

§ 550.29 Press Releases.

Press releases or other forms of public notification will be submitted to the REE agency for review prior to release to the public.

The REE Agency will be given the opportunity to review, in advance, all written press releases and any other written information to be released to the public by the Cooperator, and require changes as deemed necessary, if the material mentions by name the REE Agency or the USDA, or any USDA employee or research unit or location.

§ 550.30 Advertising.

The Cooperator will not refer in any manner to the USDA or agencies thereof in connection with the use of the results of the project without prior specific written authorization by the awarding Agency. Information obtained as a result of the project will be made available to the public in printed or other forms by the awarding Agency at its discretion. The Cooperator will be given due credit for its cooperation in the project. Prior approval is required.

§ 550.31 Questionnaires and survey plans.

The Cooperator is required to submit to the REE Agency copies of questionnaires and other forms for clearance in accordance with the Paperwork Reduction Act of 1980 and 5 CFR part 1320.

§ 550.32 Project supervision and responsibilities.

(a) The Cooperator is responsible and accountable for the performance and conduct of all Cooperator employees assigned to the project. The REE Agency does not have authority to supervise Cooperator employees or engage in the employer employee relationship.

(b) The PI shall:

(1) Work jointly with the ADODR in the development of the project statement of work;

(2) Work jointly with the ADODR in the development of the project budget;

(3) Report, and obtain approval for, any change in the project budget;

(4) Report, and obtain approval for, any change in the scope or objectives of the project;

(5) Assure that technical project performance and financial status reports are submitted on a timely basis in accordance with the terms and conditions of the award;

(6) Advise the ADODR of any issues that may affect the timely completion of the project;

(7) Assure that the Cooperator meets its commitments under the terms and conditions of the non-assistance agreement;

(8) Assure that appropriate acknowledgements of support are included in all publications, in accordance with § 550.28 of this Part.

(9) Assure that inventions are appropriately reported in accordance with § 550.54 of this Part; and

(10) Upon request, provide the REE Agency with a project plan for use in for external peer review.

§ 550.33 Administrative supervision.

REE employees are prohibited from engaging in matters related to cooperator employer/employee relations such as personnel, performance and time management issues. The cooperator is solely responsible for the administrative supervision of its employees.

§ 550.34 Research misconduct.

(a) The Cooperator bears the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation and adjudication of research misconduct alleged to have occurred in association with their own institution.

(b) The Cooperator shall:

(1) Maintain procedures for responding to allegations or instances of research misconduct that has the following components:

(i) Objectivity
(ii) Due process
(iii) Whistle blower protection
(iv) Confidentiality
(v) Timely resolution;

(2) Promptly conduct an inquiry into any allegation of research misconduct;

(3) Conduct an investigation if an inquiry determines that the allegation or apparent instance of research misconduct has substance;

(4) Provide appropriate separation of responsibilities between those responsible for inquiry and investigation, and those responsible for adjudication;

(5) Advise REE Agency of outcome at end of inquiries and investigations into allegations or instances of research misconduct; and

(6) Upon request, provide the REE Agency, upon request, hard copy (or Web site address) of their policies and procedures related to research misconduct.

(c) Research misconduct or allegations of research misconduct shall be reported to the USDA Research Integrity Officer (RIO) and/or to the USDA, Office of Inspector General (OIG) Hotline.

(1) The USDA RIO can be reached at: USDA Research Integrity Officer, 214–W Whitten Building, Washington, DC 20250, Telephone: 202–720–5923, E-mail: *researchintegrity@usda.gov.*

(2) The USDA OIG Hotline can be reached on: 1–800–424–9121.

§ 550.35 Rules of the workplace.

Cooperator employees, while engaged in work at the REE Agency's facilities, will abide by the Agency's standard operating procedures regarding the maintenance of laboratory notebooks, dissemination of information, equipment operation standards, hours of work, conduct, and other incidental matters stated in the rules and regulations of the Agency.

Equipment/Property Standards

§ 550.36 Purpose of equipment/property standards.

Sections 550.37 through 550.42 of this part set forth uniform standards governing management and disposition of property furnished by the Federal Government or acquired by the Cooperator with funds provided by the Federal Government. The Cooperator may use its own property management standards and procedures provided it observes other applicable provisions of this Part.

§ 550.37 Title to equipment.

(a) As authorized by 7 U.S.C. 3318(d), title to expendable and nonexpendable equipment, supplies, and other tangible personal property purchased with Federal funding in connection with a non assistance cooperative agreement shall vest in the Cooperator from date of acquisition unless otherwise stated in the cooperative agreement.

(b) Notwithstanding any other provision of this rule the REE Agency may, at its discretion, retain title to equipment described in Paragraph (a) of this section that is or may be purchased with Federal funds when the REE agency determines that it is in the best interest of the Federal government.

§ 550.38 Equipment.

(a) The Cooperator shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(b) The Cooperator shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the REE Agency. When no longer needed for the original project or program, the Cooperator shall use the equipment in connection with its' other federally-sponsored activities, in the following order of priority: (a) Activities sponsored by the REE Agency which funded the original project, then (b) activities sponsored by other Federal awarding agencies.

(c) During the time that equipment is used on the project or program for which it was acquired, the Cooperator shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired as may be determined by the REE Agency. First preference for such other use shall be given to other projects or programs sponsored by the REE Agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the REE Agency. User charges shall be treated as program income.

(d) When acquiring replacement equipment, unless otherwise directed by the REE Agency, the Cooperator shall use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the REE Agency.

(e) The Cooperator's property management standards for equipment acquired with Federal funds and federally owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment;

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number;

(iii) Source of the equipment, including the award number;

(iv) Whether title vests in the Cooperator or the Federal Government;

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost;

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government);

(vii) Location and condition of the equipment and the date the information was reported;

(viii) Unit acquisition cost; and

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Cooperator compensates the REE Agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years and a copy provided to the ADO responsible for the agreement. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Cooperator shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented. If the Federal Government owns the equipment, the Cooperator shall promptly notify the REE Agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the Cooperator is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(f) When the Cooperator no longer needs the equipment, the equipment shall be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the Cooperator may retain the equipment for other uses provided that

compensation is made to the original REE Agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the Cooperator has no need for the equipment, the Cooperator shall request disposition instructions from the REE Agency. The REE Agency shall determine whether the equipment can be used to meet the Agency's requirements. If no requirement exists within that Agency, the availability of the equipment shall be reported to the General Services Administration (GSA) by the REE Agency to determine whether a requirement for the equipment exists in other Federal agencies. The REE Agency shall issue instructions to the Cooperator no later than 120 calendar days after the Cooperator's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Cooperator's request, the Cooperator shall sell the equipment and reimburse the REE Agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Cooperator shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the Cooperator's selling and handling expenses.

(2) If the Cooperator is instructed to ship the equipment elsewhere, the Cooperator shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the Cooperator's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Cooperator is instructed to otherwise dispose of the equipment, the Cooperator shall be reimbursed by the REE Agency for such costs incurred in its disposition.

(4) The REE Agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the Cooperator in writing.

(ii) The REE Agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with Federal funds and federally owned equipment. If the REE Agency fails to issue disposition instructions within the 120 calendar days, the Cooperator shall apply the standards of this section, as appropriate.

(iii) When the REE Agency exercises its right to take title, the equipment shall be subject to the provisions for federally owned equipment.

§ 550.39 Equipment replacement insurance.

If required by the terms and conditions of the award, the Cooperator shall provide adequate insurance coverage for replacement of equipment acquired with Federal funds in the event of loss or damage to such equipment.

§ 550.40 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the Cooperator upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the Cooperator shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The Cooperator shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 550.41 Federally-owned property.

Title to federally-owned property remains vested in the Federal Government. Cooperators shall submit annually an inventory listing of federally-owned property in their custody to the REE Agency. Upon completion of the award or when the property is no longer needed, the Cooperator shall report the property to the REE Agency for further Federal Agency utilization.

If the REE Agency has no further need for the property, it shall be declared excess and reported to the GSA, unless the REE Agency has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, ''Education technology: ensuring Opportunity for all children in the next century.'' Appropriate instructions shall be issued to the Cooperator by the REE Agency.

§ 550.42 Intangible property.

(a) The Cooperator may copyright any work that is subject to copyright and was developed, by the Cooperator, or jointly by the Federal Government and the Cooperator, or for which ownership was purchased, under a cooperative agreement REE Agencies reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so for Federal purposes.

(b) Cooperators are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) The REE Agency has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under a cooperative agreement; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a cooperative agreement that were used by the Federal Government in developing an Agency action that has the force and effect of law, the REE Agency shall request, and the Cooperator shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the REE Agency obtains the research data solely in response to a FOIA request, the Agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Agency, the Cooperator, and applicable subrecipients. This fee is in addition to any fees the Agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal;

(B) A Federal Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law; or

(C) Used by the Federal Government in developing an Agency action that has the force and effect of law is defined as when an Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law.

(e) All rights, title, and interest in any Subject Invention made solely by employee(s) of the REE Agency shall be owned by the REE Agency. All rights, title, and interest in any Subject Invention made solely by at least one (1) Employee of the REE Agency and at least one (1) employee of the Cooperator shall be jointly owned by the Agency and the Cooperator, subject to the provisions of 37 CFR part 401.

(f) REE Agencies shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

Procurement Standards

§ 550.43 Purpose of procurement standards.

Sections 44 through 50 set forth standards for use by Cooperators in establishing procedures for the procurement of supplies and other expendable property, equipment and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon Cooperators, unless specifically required by Federal statute or executive order or approved by OMB.

§ 550.44 Cooperator responsibilities.

The standards contained in this section do not relieve the Cooperator of the contractual responsibilities arising under its' contract(s). The Cooperator is the responsible authority, without recourse to the REE Agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a nonassistance agreement. This includes disputes, claims, award protests, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority, as may have proper jurisdiction.

§ 550.45 Standards of conduct.

The Cooperator shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Cooperator shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, Cooperators may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Cooperator.

§ 550.46 Competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Cooperator shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Cooperator, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offer shall fulfill in order for the bid or offer to be evaluated by the Cooperator. Any and all bids or offers may be rejected when it is in the Cooperator's interest to do so.

(b) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689, ''Debarment and Suspension.''

(c) Recipients shall, on request, make available for the REE Agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

§ 550.47 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 550.48 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) Basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

§ 550.49 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 550.50 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the cooperator, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the REE Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(d) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A, 2 CFR part 215, as applicable.

Reports and Records

§ 550.51 Purpose of reports and records.

Sections 550.52 through 550.55 of this part set forth the procedures for monitoring and reporting on the Cooperator's financial and program performance and the necessary reporting format. They also set forth record retention requirements, and property and equipment inventory reporting requirements.

§ 550.52 Reporting program performance.

(a) The REE Agency shall prescribe the frequency with which performance reports shall be submitted. Performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The REE Agency may require annual reports before the anniversary dates of multiple year agreements in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the period of agreement.

(b) When required, performance reports shall contain, for each award, detailed information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period and the findings of the investigator. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Cooperators shall not be required to submit more than the original and two copies of performance reports.

(d) Cooperators shall immediately notify the REE Agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

§ 550.53 Financial reporting.

Financial Status Report.

(a) Each REE Agency shall require Cooperators to report the status of funds as approved in the budget for the cooperative agreement. A financial status report shall consist of the following information:

(1) The name and address of the Cooperator.

(2) The name and address of the PI.

(3) The name, address, and signature of the financial officer submitting the report.

(4) A reference to the cooperative agreement.

(5) Period covered by the report.

(6) An itemization of actual dollar amounts expended on the project during the reporting period (in line with the approved budget) and cumulative totals expended for each budget category from the starting date of the cooperative agreement.

(b) The REE Agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(c) The REE Agency shall require Cooperators to submit the financial status report (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the REE Agency upon request of the Cooperator.

§ 550.54 Invention disclosure and utilization reporting.

(a) The Cooperator shall report Invention Disclosures and Utilization information electronically via i-Edison Web Interface at: *www.iedison.gov.*

(b) If access to InterAgency Edison is unavailable, the invention disclosure should be sent directly to: DEITR, National Institutes of Health, 6701 Rockledge Drive, Room 3175, MSC 7750, Bethesda, Maryland 20892–7750.

§ 550.55 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to Cooperators. REE agencies shall not impose any other record retention or access requirements upon Cooperators, excepting as set out in 550.42(d).

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of 3 years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the REE Agency. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-

year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition;

(3) When records are transferred to or maintained by the REE Agency, the 3-year retention requirement is not applicable to the Cooperator;

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (f) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the REE Agency.

(d) The REE Agency shall request transfer of certain records to its custody from Cooperators when it determines that the records possess long-term retention value. However, in order to avoid duplicate record keeping, a REE Agency may make arrangements for Cooperators to retain any records that are continuously needed for joint use.

(e) The REE Agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Cooperators that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Cooperator's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) No cooperator shall disclose its records that are pertinent to an award until the cooperator provides notice of the intended disclosure with copies of the relevant records to the REE Agency.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the Cooperator submits to the REE Agency or the subrecipient submits to the Cooperator the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the Cooperator is not required to submit to the REE Agency or the subrecipient is not required to submit to the Cooperator the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Suspension, Termination, and Enforcement

§ 550.56 Purpose of suspension, termination, and enforcement.

Sections 550.57 and 550.58 of this part set forth uniform suspension, termination, and enforcement procedures.

§ 550.57 Suspension and termination.

Awards may be suspended or terminated in whole or in part if 550.57(a), (b), or (c) apply.

(a) The REE Agency may terminate the award, if a Cooperator materially fails to comply with the provisions of this rule or the terms and conditions of an award.

(b) The REE Agency with the consent of the Cooperator, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(c) If costs are allowed under an award, the responsibilities of the Cooperator referred to in § 550.32, including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the Cooperator after termination, as appropriate.

§ 550.58 Enforcement.

(a) Remedies for noncompliance. If a Cooperator materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the REE Agency may, in addition to imposing any of the special conditions outlined in § 550.10, take one or more of the following actions.

(1) Temporarily withhold cash payments pending correction of the deficiency by the Cooperator or more severe enforcement action by the REE Agency.

(2) Disallow all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Effects of suspension and termination. Costs of a Cooperator resulting from obligations incurred by the Cooperator during a suspension or after termination of an award are not allowable unless the REE Agency expressly authorizes them in the notice of suspension or termination or thereafter. Other Cooperator costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if § 550.58 (1) and (2) apply.

(1) The costs result from obligations which were properly incurred by the Cooperator before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(3) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a Cooperator from being subject to debarment and suspension under Executive Orders 12549 and 12689 and USDA implementing regulations (7 CFR Part 3017).

Subpart D—Close Out

§ 550.59 Purpose.

Sections 550.60 through 550.62 of this part contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 550.60 Closeout procedures.

(a) Cooperators shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The REE Agency may approve extensions to the reporting period when requested by the Cooperator.

(b) Unless the REE Agency authorizes an extension, a Cooperator shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in Agency implementing instructions.

(c) The REE Agency shall make prompt payments to a Cooperator for allowable reimbursable costs under the award being closed out.

(d) The Cooperator shall promptly refund any balance of unobligated cash advanced or paid by the REE Agency that it is not authorized to retain for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the REE Agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The Cooperator shall account for any personal property acquired with Federal funds or received from the Federal Government in accordance with § 550.36 through § 550.42.

(g) In the event a final audit has not been performed prior to the closeout of an award, the REE Agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 550.61 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following.

(a) The right of the REE Agency to disallow costs and recover funds on the basis of a later audit or other review.

(b) The obligation of the Cooperator to return any funds due as a result of later refunds, corrections, or other transactions.

(c) Audit requirements in § 550.24.

(d) Property management requirements in § 550.36 through § 550.42.

(e) Records retention as required in § 550.56.

§ 550.62 Collection of amounts due.

(a) Any funds paid to a Cooperator in excess of the amount to which the Cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the REE Agency may in accordance with 7 CFR Part 3, reduce the debt by—

(1) Making an administrative offset against other requests for reimbursements or

(2) Withholding advance payments otherwise due to the Cooperator, or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the REE Agency shall charge interest on an overdue debt in accordance with 31 CFR Part 900, ''Federal Claims Collection Standards.''

Dated: July 5, 2007.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. E7–13550 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28432; Directorate Identifier 2007–CE–051–AD]

RIN 2120–AA64

Airworthiness Directives; Thrush Aircraft, Inc. Models S2R Series 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 certain Thrush Aircraft, Inc. (Thrush) Model S2R series airplanes. This proposed AD would require repetitive visual inspections of the vertical and horizontal stabilizer attach fitting, attach fitting bolts, and the vertical fin aft spar for cracks or corrosion and require immediate replacement of cracked or corroded parts and eventual replacement if no cracks or corrosion is found as terminating action for the repetitive inspections. This proposed AD results from reports of cracks in the empennage of Thrush S2R series airplanes. We are proposing this AD to detect and correct these cracks, which could cause the vertical stabilizer to lose structural integrity. This condition could lead to loss of control.

DATES: We must receive comments on this proposed AD by September 24, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, 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: Thrush Aircraft, Inc., P.O. Box 3149, 300 Old Pretoria Road, Albany, Georgia 31706–3149; telephone: 229–883–1440; facsimile: 229–436–4856; or on the Internet at: *http://www.thrushaircraft.com.*

FOR FURTHER INFORMATION, CONTACT ONE OF THE FOLLOWING:

—Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097; e-mail: *cindy.lorenzen@faa.gov;* or

—Mike Cann, Aerospace Engineer, ACE–117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6038; facsimile: (770) 703–6097; e-mail: *michael.cann@faa.gov.*

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–2007–28432; Directorate Identifier 2007–CE–051–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

We have received reports of cracks in the empennage of Thrush S2R series airplanes. Cracks may occur in the vertical stabilizer attach fitting, the horizontal stabilizer attach fitting, attach fitting bolts, and/or the vertical fin aft spar on airplanes with metal empennages. A metallurgy report suggests stress corrosion cracking is the

cause of these cracks. A report was received from the field that a 5/16-inch vertical attach bolt, part number (P/N) NAS1105–68, was found broken in two places, causing the rear spar of the vertical fin to crack. A separate incident found the attach fitting on the stabilizer itself cracked in both lugs from stress corrosion.

This condition, if not corrected, could cause the vertical stabilizer to lose structural integrity. This condition could lead to loss of control.

Relevant Service Information

We have reviewed Thrush Aircraft, Inc., Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007. The service information describes procedures for inspecting and upgrading the fin spar and attach fittings.

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 require repetitive visual inspections of the vertical and horizontal stabilizer attach fitting, attach fitting bolts, and the vertical fin aft spar for cracks or corrosion and require immediate replacement of cracked or corroded parts and eventual replacement if no cracks or corrosion is found as terminating action for the repetitive inspections.

Differences Between This Proposed AD and the Service Information

Thrush Aircraft, Inc. SB–AG–45, Revision B, dated June 1, 2007, recommends an immediate initial inspection. We consider immediately upon receipt action to be an urgent safety of flight compliance time. Because our risk assessment does not indicate this unsafe condition to be an urgent safety of flight condition, we propose to require an initial inspection within the next 50 hours time-in-service (TIS). The initial inspection time of 50 hours TIS is an adequate compliance for this AD action and meets the FAA requirements of an NPRM.

We propose to require a terminating action of replacing the parts within the next 2 years or 2,000 hours TIS, whichever occurs first. This is recommended because there is historic evidence that inspections alone can eventually miss detecting a crack.

Costs of Compliance

We estimate that this proposed AD would affect 910 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work-hours × $80 per hour = $640	Not applicable	$640	$582,400

We estimate the following costs to do any necessary replacements of the vertical fin aft spar that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
12 work-hours × $80 per hour = $960	$3,800	$4,760

We estimate the following costs to replace the vertical and horizontal stabilizer attach fittings and attachment bolt:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
30 work-hours × $80 per hour = $2,400	$1,550	$3,950	$3,594,500

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this 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) 647–5527) 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 adding the following new AD:

Thrush Aircraft, Inc.: Docket No. FAA–2007–28432; Directorate Identifier 2007–CE–051–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by September 24, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category and are equipped with metal empennage part numbers (P/N) 40220 or 95400 (applies to serial numbers with or without a ''DC'' suffix):

Model	Serial Nos.
(1) S2R	1416R through 5100R.
(2) S2R–R1340	R1340–001 through R1340–035.
(3) S2R–R1820	R1820–001 through R1820–036.
(4) S2R–T11	T11–001 through T11–005.
(5) S2R–T15	T15–001 through T15–044 and T27–001 through T27–044.
(6) S2R–T34	6000 through 6049, T34–001 through T34–279, T36–001 through T36–279, T41–001 through T41–279, T42–001 through T42–279.
(7) S2RHG–T34	T34HG–101 through T34HG–107.
(8) S2R–T45	T45–001 through T45–015.
(9) S2R–T65	T65–001 through T65–018.
(10) S2RHG–T65	T65–001 through T65–018 and T65HG–011 through T65HG–019.
(11) S2R–G1	G1–101 through G1–115.
(12) S2R–G5	G5–101 through G5–105.
(13) S2R–G6	G6–101 through G6–155.
(14) S2R–G10	G10–101 through G10–168.
(15) S2R–T660	T660–101 through T660–120.

Unsafe Condition

(d) This proposed AD results from reports of cracks in the empennage of Thrush Aircraft, Inc., S2R series airplanes. We are proposing this AD to detect and correct these cracks, which could cause the vertical stabilizer to lose structural integrity. This condition could lead to loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Perform a visual inspection of the vertical stabilizer attach fitting (P/N 40301–7), the horizontal stabilizer attach fitting (P/N 40303–1/–4/–7 or 95267–1), attachment bolt (P/N NAS1105–68), and vertical fin aft spar (P/N 40261–24 or P/N 95253–1), for cracks or corrosion.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD and repetitively thereafter at intervals not to exceed every 100 hours TIS for up to 2 years or a total of 2,000 hours TIS, whichever occurs first.	Follow Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007.
(2) If cracks or corrosion are found in P/N 40301–7, 40303–1/–4/–7, 95267–1, or NAS1105–68 during any inspection required in paragraph (e)(1) of this AD, replace all three parts with new P/Ns 95266–3, 95267–5 and NAS6207–68.	Before further flight after any inspection where cracks or corrosion are found.	Follow Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007.
(3) If cracks or corrosion are found in P/N 40261–24 or 95253–1 during any inspection required in paragraph (e)(1) of this AD, replace with a new P/N 40261–24 or 95253–1, or repair in accordance with Thrush SB–AG–45, Revision B.	Before further flight after any inspection where cracks or corrosion are found.	Follow Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007.

Actions	Compliance	Procedures
(4) Replace vertical stabilizer attach fitting P/N 40301–7 with P/N 95266–3, replace horizontal stabilizer attach fitting P/N 40303–1/–4/–7 or 95267–1 with P/N 95267–5, and replace attachment bolt NAS1105–68 with NAS6207–68 bolt.	Within the next 2,000 hours TIS after the effective date of this AD or within 2 years after the effective date of this AD, whichever occurs first. This action terminates the repetitive inspections required in paragraph (e)(1) of this AD, including the inspections of the vertical fin aft spar, P/N 40261–24 or 95253–1.	Follow Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007.

Special Flight Permit

(f) Under 14 CFR part 39.23, we are limiting the special flight permits authorized for this AD to ferry aircraft to a maintenance facility for inspection by the following conditions:

(1) Hopper must be empty.

(2) Vne reduced to 126 m.p.h. (109 knots); and

(3) No flight into known turbulence.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097; e-mail: *cindy.lorenzen@faa.gov;* or Mike Cann, Aerospace Engineer, ACE–117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6038; facsimile: (770) 703–6097; e-mail: *michael.cann@faa.gov.* 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

(h) To get copies of the service information referenced in this AD, contact Thrush Aircraft, Inc., P.O. Box 3149, 300 Old Pretoria Road, Albany, Georgia 31706–3149; telephone: 229–883–1440; facsimile: 229–436–4856; or on the Internet at: *http://www.thrushaircraft.com.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2007–28432; Directorate Identifier 2007–CE–051–AD.

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

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14433 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–149036–04]

RIN 1545–BE07

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to notice of proposed rulemaking by cross-reference to temporary regulations (REG–149036–04) that were published in the **Federal Register** on Thursday, June 21, 2007 (72 FR 34204) relating to the application of section 6404(g) of the Internal Revenue Code suspension provisions.

FOR FURTHER INFORMATION CONTACT: Stuart Spielman, (202) 622–7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations that are the subject of this correction are under section 6404(g) of the Internal Revenue Code.

Need for Correction

As published, proposed regulations (REG–149036–04) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG–149036–04), which was the subject of FR Doc. E7–12085, is corrected as follows:

On page 34204, column 1, in the preamble, under the caption **SUMMARY:**, lines 11 through 13, the language ''the gulf Opportunity zone act of 2005, and the Tax Relief and Health Care Act of 2006. The regulations provide'' is corrected to read ''the Gulf Opportunity Zone Act of 2005, the Tax Relief and Health Care Act of 2006, and the Small Business and Work Opportunity Tax Act of 2007. The regulations provide''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–14400 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–149036–04]

RIN 1545–BG75

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (REG–149036–04) that were published in the **Federal Register** on Thursday, June 21, 2007 (72 FR 34199) proposing regulations for the suspension of interest, penalties, additions to tax or additional amounts under section 6404(g) of the Internal Revenue Code that explain the general rules for suspension as well as exceptions to those general rules.

FOR FURTHER INFORMATION CONTACT: Stuart Spielman, (202) 622–7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 6404(g) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations (REG–149036–04) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG–149036–04), which was the subject of FR Doc. E7–12082, is corrected as follows:

1. On page 34200, column 1, in the preamble, under the caption **SUMMARY:**, lines 4 and 5, the language ''and the Tax Relief and Health Care Act of 2006. The proposed regulations affect'' is corrected to read ''the Tax Relief and Health Care Act of 2006, and the Small Business and Work Opportunity Tax Act of 2007. The proposed regulations affect''.

2. On page 34200, column 2, in the preamble, under the paragraph heading ''Background'', line 8, the language ''Law 110–28 (121 Stat. 112, 200),'' is corrected to read ''Law 110–28 (121 Stat. 190, 200),''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–14397 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–AT87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico and Reef Fish Fishery of the Gulf of Mexico; Amendment 14/27

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

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces the Gulf of Mexico Fishery Management Council (Council) has submitted a joint Amendment 14 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico and Amendment 27 to the FMP for the Reef Fish Resources of the Gulf of Mexico for review, approval, and implementation by NMFS. Amendment 14/27 proposes actions to reduce the red snapper catch, bycatch, and discard mortality in the directed commercial and recreational fisheries and the shrimp fishery. The intended effect of joint Amendment 14/27 is to end overfishing for red snapper between 2009 and 2010 and rebuild the stock by 2032 in compliance with the red snapper rebuilding plan.

DATES: Written comments must be received no later than 5 p.m., eastern time, on September 24, 2007.

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

- E-mail: *0648–AT87.NOA27–14@noaa.gov*. Include in the subject line the following document identifier: 0648–AT87–NOA27–14.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Peter Hood.

Copies of joint Amendment 14/27, which includes an Environmental Impact Statement, a Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis, are available in electronic format from the Council's web site at *http://www.gulfcouncil.org*, or by contacting the Council at 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607; phone: 813–348–1630; fax: 813–348–1711; e-mail: *gulfcouncil@gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Hood, 727–824–5305; fax 727–824–5308; e-mail: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

Elements of Amendment 14/27 constitute a revised rebuilding plan that has at least a 50–percent probability of rebuilding the red snapper stock by 2032. Proposed actions focus around a reduction in red snapper total allowable catch to 5 million lb (2.3 million kg). This would result in a commercial quota of 2.55 million lb (1.16 million kg) and a recreational quota of 2.45 million lb (1.11 million kg). Recreational bag limits would be reduced from four fish to two fish; the bag limit for captain and crew of for-hire vessels would be set at zero. The commercial minimum size limit would be reduced to 13 inches (33 cm) total length with the intent of reducing regulatory discards. To reduce discard mortality in the directed fisheries, Amendment 14/27 proposes an action to require the use of venting tools, dehooking devices, and non-stainless steel circle hooks (when using natural baits) for all reef fish fishery sectors. In addition, the amendment would establish a target reduction goal for shrimp trawl bycatch mortality on red snapper, establish options for time-area closures for the shrimp fishery that would maintain the target reduction goal, and establish a framework whereby NMFS could implement such closures in a timely fashion.

Length of the recreational fishing season will be determined by a number of factors. The proposed two-fish bag limit alone would allow a June 1 through September 15 (107 days) recreational fishing season. In addition to the two-fish bag limit, constraining the captain and crew of for-hire vessels to a zero-fish bag limit would allow the fishing season to be extended through the end of September (122 days). Based on extensive public comment, the Council chose to assume a 10–percent reduction in post-hurricane fishing effort and landings when evaluating recreational management measures. Application of this assumption, along with implementation of the two-fish bag limit and the zero-fish captain and crew limit of for-hire vessels, would allow the recreational fishing season to extend from May 15 through October 15 (154 days). This assumption is controversial because although preliminary data suggest some declines have occurred since the 2005 hurricane season, the magnitude of reductions varies- by fishing sector, is often less than 10 percent, and in some cases effort or landings have increased. Further, it is unknown how long post-hurricane reductions in landings and fishing effort may continue as the fisheries recover. Therefore, NMFS is specifically requesting comments on the assumed 10–percent reduction in effort and landings as proposed in Amendment 27/14, which would affect the designation of the length of the recreational fishing season established by this rule.

A proposed rule that would implement measures outlined in joint Amendment 14/27 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by September 24, 2007, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: July 23, 2007.

James P. Burgess,

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

[FR Doc. E7–14450 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–AV70

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Region Standardized Bycatch Reporting Methodology Omnibus Amendment

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

ACTION: Notice of availability of proposed fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic and New England Fishery Management Councils (Councils) have submitted an Omnibus Amendment to the Fishery Management Plans (FMPs) of the Northeast Region to establish a Standardized Bycatch Reporting Methodology (SBRM), incorporating a draft Environmental Assessment (EA) and preliminary Regulatory Impact Review (RIR), for review by the Secretary of Commerce, and is requesting comments from the public.

The SBRM Amendment would establish an SBRM for all 13 Northeast Region FMPs, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The proposed measures include: Bycatch reporting and monitoring mechanisms; analytical techniques and allocation of at-sea fisheries observers; an SBRM performance standard; a review and reporting process; framework adjustment and annual specifications provisions; a prioritization process; and provisions for industry-funded observers and observer set-aside programs.

DATES: Comments must be received on or before September 24, 2007.

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

- E-mail: *SBRM.Amend.NOA@noaa.gov*. Include in the subject line the following identifier: ''Comments on the SBRM Omnibus Amendment.''
- Federal e-rulemaking portal: *http://www.regulations.gov*.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on the SBRM Omnibus Amendment.''
- Fax: (978) 281–9135

Copies of the SBRM Amendment, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790; and from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/RIR is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, 978–281–9283.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. If approved by NMFS, this amendment would establish a comprehensive SBRM that applies to all Northeast Region FMPs developed by either the Mid-Atlantic or New England Councils. The amendment would also effect an administrative change to the regulations on framework adjustments.

Background

Section 303(a)(11) of the Magnuson-Stevens Act requires that all FMPs ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.'' In 2004, several conservation organizations challenged the approval of two major amendments to Northeast Region FMPs. In ruling on these suits, the U.S. District Court for the District of Columbia found that the FMPs did not clearly establish an SBRM as required under this section and remanded the amendments back to the agency to fully develop and establish the required SBRM. In particular, the Court found that the amendments (1) failed to fully evaluate reporting methodologies to assess bycatch, (2) did not mandate an SBRM, and (3) failed to respond to potentially important scientific evidence.

In response, the Councils, working closely with NMFS, undertook development of a remedy that would address all Northeast Region FMPs. In January 2006, development began on the Northeast Region Omnibus SBRM Amendment. This amendment covers 13 FMPs, 39 managed species, and 14 types of fishing gear. The purpose of the amendment is to: Explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries; determine whether these methods and processes need to be modified and/or supplemented; establish standards of precision for bycatch estimation for all Northeast Region fisheries; and, thereby, document the SBRM established for all fisheries managed through the FMPs of the Northeast Region. The amendment also responds to the ''potentially important scientific evidence'' cited by the Court in the two decisions referenced above.

The Northeast Region SBRM Amendment would establish an SBRM comprised of seven elements: (1) The methods by which data and information on discards are collected and obtained; (2) the methods by which the data obtained through the mechanisms identified in element 1 are analyzed and utilized to determine the appropriate allocation of at-sea observers; (3) a performance measure by which the effectiveness of the Northeast Region SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days; (4) a process to provide the Councils with periodic reports on discards occurring in Northeast Region fisheries and on the effectiveness of the SBRM; (5) a measure to enable the Councils to make changes to the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments; (6) a process to provide the Councils, and the

public, with an opportunity to consider, and provide input into, the decisions regarding prioritization of at-sea observer coverage allocations; and (7) to implement consistent, cross-cutting observer service provider approval and certification procedures and to enable the Councils to implement either a requirement for industry-funded observers or an observer set-aside program through a framework adjustment rather than an FMP amendment.

Public comments are being solicited on the SBRM Amendment and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement the SBRM Amendment will be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of the SBRM Amendment to be considered in the approval/disapproval decision on the amendment. All comments received by September 24, 2007, whether specifically directed to the SBRM Amendment or the proposed rule will be considered in the approval/disapproval decision on the amendment. Comments received after that date will not be considered in the decision to approve or disapprove the SBRM Amendment. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: July 20, 2007.

Emily Menashes,

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

[FR Doc. E7–14455 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 143

Thursday, July 26, 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

July 23, 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: Cotton Classing, Testing, and Standards.

OMB Control Number: 0581–0008.

Summary of Collection: The U.S. Cotton Standards Act, 7 U.S.C. 51 53 and 55, authorizes the USDA to supervise the various activities directly associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The Cotton Program of the Agricultural Marketing Service carries out this supervision and is responsible for the maintenance of the functions to which these forms relate. USDA is the only Federal agency authorized to establish and promote the use of the official cotton standards of the U.S. in interstate and foreign commerce and to supervise the various activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA standards.

Need and Use of the Information: The Agricultural Marketing Service uses the following forms to collection information:

Form FD–210 is submitted by owners of cotton to request cotton classification services. The request contains information for USDA to ascertain proper ownership of the samples submitted, to distribute classification results, and bill for services. Information about the origin and handling of the cotton is necessary in order to properly evaluate and classify the samples.

Form CN–246 is submitted by cotton gins and warehouses seeking to serve as licensed samplers. Licenses issued by the USDA–AMS Cotton Program authorize the warehouse/gin to draw and submit samples to insure the proper application of standards in the classification of cotton and to prevent deception in their use.

Form CN–383 is a package of forms designated as CN–383–a through CN–383–k that is submitted by cotton producers, ginners, warehousemen, cooperatives, manufacturers, merchants, and crushers interested in acquiring cotton classification standards and round testing services.

Description of Respondents: Business or other for-profit.

Number of Respondents: 967.

Frequency of Responses: Reporting: Annually; on occasion.

Total Burden Hours: 140.

Agricultural Marketing Service

Title: Cotton Classification and Market News Service.

OMB Control Number: 0581–0009.

Summary of Collection: The Cotton Statistics and Estimates Act, 7 U.S. Code 471–476, authorizes the Secretary of Agriculture to collect and publish annually statistics or estimates concerning the grades and staple lengths of stocks of cotton. In addition, Agricultural Marketing Service (AMS) collects, authenticates, publishes, and distributes timely information of the market supply, demand, location, and market prices for cotton (7 U.S.C. 473B). This information is needed and used by all segments of the cotton industry.

Need and Use of the Information: AMS will collect information on the quality of cotton in the carryover stocks along with the size or volume of the carryover. Growers use this information in making decisions relative to marketing their present crop and planning for the next one; cotton merchants use the information in marketing decisions; and the mills that provide the data also use the combined data in planning their future purchase to cover their needs. Importers of U.S. cotton use the data in making their plans for purchases of U.S. cotton. AMS and other government agencies are users of the compiled information.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,066.

Frequency of Responses: Reporting: On occasion; Weekly; Annually.

Total Burden Hours: 1,161.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–14471 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 23, 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.

Food and Nutrition Service

Title: Operating Guidelines, Forms and Waivers.

OMB Control Number: 0584–0083.

Summary of Collection: Section 11(d) of the Food Stamp Act of 1977, as amended, provides that the State agency of each participating State shall submit to the Secretary for approval a plan of operation specifying the manner in which the Food Stamp Program will be conducted within the State in every political subdivision. Section 11(e) of the Act provides that the State plan of operation shall provide for State agency verification of household eligibility prior to certification, completion of certification within 30 days of filing of the application, fair hearing, and submission of reports as required by the Secretary. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement (272.2(a)(2)). Under part 272.2(c), the State agency shall submit to the Food and Nutrition Service (FNS) for approval a Budget Projection Statement (which projects total Federal administrative costs for the upcoming fiscal year) and a Program Activity Statement (which provides program activity data for the preceding fiscal year). FNS will collect information using forms FNS 366A and FNS 366B.

Need and Use of the Information: FNS will collect information to estimate funding needs and also provide data on the number of applications processed, number of fair hearings, and fraud control activity. FNS uses the data to monitor State agency activity levels and performance. If the information were not collected it would disrupt budget planning and delay appropriation distributions.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 2,849.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–14472 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 23, 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.

Farm Service Agency

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Declared Incompetent.

OMB Control Number: 0560–0026.

Summary of Collection: Representatives or survivors of producers who die, disappear, or are declared incompetent must be afforded a method of obtaining any payment intended for the producer. 7 CFR part 707 provides that form, FSA–325, be used as the form of application for a person desiring to claim such payments. It is necessary to collect information recorded on FSA–325 in order to determine whether representatives or survivors of a producer are entitled to receive payments earned by a producer who dies, disappears, or is declared incompetent before receiving the payments due.

Need and Use of the Information: FSA will collect information to determine if the survivors have rights to the existing payments or to the unpaid portions of the producer's payments.

Description of Respondents: Individuals or households.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Other (when necessary).

Total Burden Hours: 3,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–14474 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection: Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the revision of currently approved information collection associated with the Emergency Conservation Program (ECP).

DATES: Comments on this notice must be received on or before September 24, 2007 to be assured consideration.

ADDRESSES: We invite you to submit comments on this Notice. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

E-mail: Send comments to: *Clayton.Furukawa@wdc.usda.gov.*

Fax: (202) 720–4619.

Mail: Farm Service Agency, USDA, Attn: Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, USDA, FSA, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Clayton Furukawa, ECP Program Manager, (202) 690–0571.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Emergency Conservation Program.

OMB Control Number: 0560–0082.

Expiration Date: February 28, 2010.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: This information collection is to allow FSA to effectively administer the regulations under the ECP. The regulations at 7 CFR part 701 set forth basic policies, program provisions, and eligibility requirements for owners and operators to enter into agreement with to apply for financial and technical assistance and for receiving cost-share payments under the ECP. The revision to the currently approved information collection is in response to, and consistent with, the new requirement that an Adjusted Gross Income Limitation be used when determining the eligibility of certain respondents who wish to participate in the ECP, pursuant to the provisions of Section 9004(b) of Public Law 110–28.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours (15 minutes) per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Respondents: Owners, operators and other eligible agricultural producers on eligible farmland.

Number of Respondents: 90,000.

Estimated Annual Number of Respondents: 90,420.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 67,610.

Comments

Comments are invited on:

(1) Whether this collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used;

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

(4) Ways to minimize the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public records. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on July 19, 2007.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

[FR Doc. E7–14385 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

PROJECT: Corralled Bear, Clearwater National Forest, Latah County, ID.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of timber harvest, prescribed fire, fuels reduction, watershed restoration, and access management activities in the Corralled Bear project area on the Palouse Ranger District of the Clearwater National Forest. The Corralled Bear project area is located north of the towns of Deary and Helmer within the East Fork of Big Bear Creek and Corral Creek drainages, approximately 21 air-miles northeast of the town of Moscow, Idaho.

DATES: This project was previously scoped in March 2006, and the comments received will be included in the documentation for the EIS. A 45-day public comment period will follow the release of the draft environmental impact statement (DEIS) that is expected in September 2007. The final environmental impact statement (FEIS) and Record of Decision (ROD) is expected in February 2008.

SUPPLEMENTARY INFORMATION: The Corralled Bear project area contains approximately 11,318 acres, which is all National Forest lands except for 160 acres of private land. The project area is located in portions of T40N, R1W; T40N, R2W; T41N, R1W; and T41N, R2W, Boise Meridian, Latah County, Idaho. The proposed actions would occur on National Forest lands and are all outside the boundaries of any inventoried roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Clearwater National Forest Plan or by any past or present legislative wilderness proposals.

Purpose and Need for Action is to: (1) Promote stand productivity, restore vegetative successional stages to reflect historical patch sizes and locations, and restore blister rust resistant white pine; (2) reduce fuel buildup in stands where fire suppression has interrupted the short-return fire interval and resulted in unnaturally high amounts of fuel and overgrown understory, and create a more defensible space to control wildfire on Forest Service land adjacent to private property; (3) reduce long-term sedimentation to streams caused by existing unsurfaced roads, and stabilize stream banks made unstable by motorized vehicles, cattle trailing, and channelization (historic railroad grades); (4) update fish/water quality standards for Corral Creek in Appendix K of the Clearwater Forest Plan to better meet the Clean Water Act standards supporting fisheries and reflect better information

on fisheries collected in stream surveys; and (5) provide for a reasonable level of off-highway vehicle (OHV) access, reduce user conflicts, and provide the necessary resource protection required by law, regulation, and good stewardship practices.

The Proposed Action would consist of timber harvest on about 812 acres, using improvement cuts, commercial thinning, and regeneration harvest methods. Some regeneration harvests could create openings exceeding 40 acres in size; however, all harvest will retain some healthy trees and replacement snags for structural diversity. Road activities associated with the timber sales would include reconstructing about 2.4 miles of existing roads and constructing 3.6 miles of temporary road (to be decommissioned after harvest activity). About 8.6 miles of open roads would be treated on each side to reduce fuel concentrations and ladder fuels. Watershed improvements would include 8.2 miles of road decommissioning, putting 14.4 miles of existing roads into intermittent stored service (self-maintaining), and installation of a rocked cattle crossing. Access management would consist of designating existing suitable OHV routes for future use and managing area roads and trails based on a Roads Analysis. Other components of the proposed action include designating areas to be managed for old growth and making a Forest Plan Amendment to raise the fish/water quality standards on Corrall Creek to incorporate better information on fish and their habitat.

Possible Alternatives the Forest Service will consider include the ''no action '' alternative in which none of the proposed activities would be implemented. Additional alternatives being considered include an alternative that does not build any new roads, an alternative that does not create any openings by utilizing only intermediate (non-regeneration) type harvests like thinnings and improvement cuts, an alternative that promotes patch placement for maximum wildlife and biological benefits, an alternative that does not include a Forest Plan Amendment to increase the fish and water standard for Corral Creek, and an alternative that only includes activities that would help stabilize watershed conditions, such as road obliteration, stream bank stabilization and OHV use management.

The Scoping Process was initiated with the release of a Scoping Letter on March 29, 2006. Comments received as a result of that effort will be included in the documentation for the EIS. Additional public input will be solicited following the release of the DEIS. This proposal also includes six openings greater than 40 acres in size that would be created by timber harvest. A 60-day public review of the proposed openings will be initiated by public notice in the newspaper of record.

Preliminary Issues that could be affected by proposed activities include: Access management, air quality, economic feasibility, fish habitat, heritage resources, sensitive and management indicator species of wildlife, sensitive plants, snag habitat, soil productivity, spread of noxious weeds, tribal treaty rights, and water quality. Issues expected not to be affected by the proposal include impacts of grazing, old growth habitat, risk of landslides, and threatened and endangered wildlife and plant species. Issues identified through previous scoping and found to be outside the scope of the project or not consistent with Forest Plan standards include using prescribed fire instead of timber harvest for vegetative treatments within the E1 management area and evaluating cattle grazing laws.

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 substantive 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)

The Responsible Official for this project is the Forest Supervisor of the Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544. The Responsible Official will decide if the proposed project will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations. The responsibility for preparing the DEIS and FEIS has been delegated to Kara Chadwick, District Ranger, Palouse Ranger District.

ADDRESSES: Written comments and suggestions concerning this project should be sent to: Kara Chadwick, District Ranger, Palouse Ranger District, 1700 Highway 6, Potlatch, ID 83855 or e-mailed to: *comments-northern-clearwater-palouse@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Tam White; Project Leader, North Fork Ranger District, at: *twhite@fs.fed.us* or phone: (208) 476–4541.

Dated: July 19, 2007.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 07–3653 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Project Proposals/Action, (5) Chairman's Perspective, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on August 9, 2007 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 5, 2007 will have the opportunity to address the committee at those sessions.

Dated: July 18, 2007.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 07–3646 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee, Caribou-Targhee National Forest, Idaho Falls, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Thursday, September 13, 2007 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on September 13, 2007 from 9 a.m. to 11 a.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Larry Timchak, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on September 13, 2007, begins at 9 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include approving projects for 2008 funding, and then heading into the field for a field trip to view past projects completed.

Dated: July 20, 2007.

Lawrence A. Timchak,

Caribou-Targhee Forest Supervisor.

[FR Doc. 07–3654 Filed 7–25–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Special Comprehensive License.

Agency Form Number: BIS–748P, BIS–752.

OMB Approval Number: 0694–0089.

Type of Request: Extension of a currently approved collection of information.

Burden Hours: 966.

Average Time per Response: 50 minutes to 40 hours per response.

Number of Respondents: 110.

Needs and Uses: The Special Comprehensive License Procedure authorizes multiple shipments of items from the U.S. or from previously-approved by BIS consignees abroad to conduct the following activities: Servicing, support services, stocking spare parts, maintenance, capital expansion, manufacturing, support scientific data acquisition, reselling and reexporting in the form received, and other activities as approved on a case-by-case basis.

Affected Public: Business or other for-profit organizations.

Respondent's Obligation: Required to retain or obtain benefits.

OMB Desk Officer: David Rostker, (202) 395–3987.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: July 20, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14452 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Application for the Low-Power Television and Translator Digital-to-Analog Conversion Program.

Form Number(s): DTV–4.

OMB Approval Number: None.

Type of Review: Regular submission.

Burden Hours: 4,000.

Number of Respondents: 4,000.

Average Hours per Response: 1.

Needs and Uses: The Digital Television Transition and Public Safety Act of 2005 (Act) permits low-power television and translator stations to continue to broadcast in analog after February 17, 2009, the date on which full-power television facilities are required to convert to digital

broadcasting. Most low-power television or translator stations extend the service area of a full-power television station by receiving the full-power station's off-air signal and then rebroadcasting the programming on another channel. After the full-power television station discontinues analog broadcasting on February 17, 2009, the low-power television station must be able to receive the full-power station's digital off-air signal.

The Act directs NTIA to administer a program through which an eligible low-power television or translator station may receive compensation toward the cost of the purchase of a digital-to-analog conversion device that enables the conversion of the incoming digital signal of its corresponding full-power television station to analog format for transmission on the station's analog channels.

The application makes possible the required review process for selecting applicants are funded.

Affected Public: Business or for-profit organizations; not-for-profit institutions; individuals or households; state, local, or tribal government.

Frequency: One-time-only.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, e-mail *Jasmeet_K._Seehra@omb.eop.gov* or fax (202) 395–5167.

Dated: July 23, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14454 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Census Employment Inquiry

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 24, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Neal E. McArthur, 4600 Silver Hill Rd., Room 5H036B, Suitland, MD 20746 (or via the Internet at *Neal.E.McArthur@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The BC–170A, BC–170B, and the BC–170D are used to collect information such as personal data and work experience from job applicants. Selecting officials review the information shown on the form to evaluate an applicant's eligibility for employment and to determine the best-qualified applicants to fill Census jobs. The three forms are tailored to the particular job type for which application is made.

The BC–170 series of forms is used throughout the census and intercensal periods for the special census, pretests, and dress rehearsals for short-term time limited appointments. Applicants completing the form for census related positions are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). In addition, the BC–170 may be used as an alternative when applying for temporary/permanent office and field positions (clerks, field representatives, supervisors) on a recurring survey in one of the Census Bureau's twelve Regional Offices (ROs) throughout the United States. During the decennial census, the BC–170 is intended to expedite hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The use of this form is limited to only situations which require the establishment of a temporary office and/or involve special, one-time or recurring survey operations at one of the ROs. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management (OPM) Optional Forms that are available for use by the public when applying for Federal positions.

II. Method of Collection

The information is collected in paper format at the time of testing for temporary and permanent positions. Potential employees being tested complete the application at that time.

III. Data

OMB Number: 0607–0139.

Form Numbers: BC–170A, BC–170B, and BC–170D.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,000,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 750,000.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Required to obtain or retain a benefit.

Legal Authority: Title 13 U.S.C. Section 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14453 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Business and Professional Classification Report

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration written comments must be submitted on or before September 24, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott Handmaker, Chief, Economic Classifications Operations Branch, U.S. Census Bureau, 8K149, Washington, DC 20233, Telephone: 301–763–7107; E-mail: *Scott.P.Handmaker@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Business and Professional Classification Report survey, (Form SQ–CLASS) collects information about new businesses to properly classify them for Census Bureau economic surveys. The survey samples businesses with newly assigned Employer Identification Numbers (EINs) from the Internal Revenue Service (IRS) quarterly, on the SQ–CLASS form. This survey is conducted only once for each new business that is sampled. The SQ–CLASS form collects minimum data about a business on such areas as: primary business activity, EIN verification, company structure, size, and business operations. This information is used to replenish the Census Bureau survey universe with properly classified new businesses, updated administrative information, and current business data, which reduce respondent burdens to Census surveys and assure high quality economic estimates.

The Census Bureau plans only minimal changes to the form and instruction sheet. The wording of the questions and instructions for both sales and inventory will be reworded to be in line with the Census Bureau's monthly and annual surveys.

II. Method of Collection

The information will be collected by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0189.
Form Number: SQ–CLASS.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 50,000.
Estimated Time per Response: 13 minutes.
Estimated Total Annual Burden Hours: 10,835.
Estimated Total Annual Cost: $316,057.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C. Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14456 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–07–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 JUNE 21, 2007 THROUGH JULY 20, 2007

Firm	Address	Date petition accepted	Product
Rex Granite Company Inc	*P.O. Box 924, 414 Lincoln Avenue, St. Cloud, MN 56302.*	6/29/2007	*Granite monuments, markers, countertops and other granite products produced from raw stone.*
Fit Well Prosthetic & Orthotic Center	*50 South 900 East, #1, Salt Lake City, UT 84102.*	7/2/2007	*Artificial limbs.*
Red Lion Manufacturing	*80 South Prospect Street, Hallam, PA 17406.*	7/3/2007	*Jackets, wind shirts, gloves, and hats.*
Repro-Med Systems, Inc	*24 Carpenter Road, Chester, NY 10918*	7/18/2007	*First aid boxes and kits.*

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD JUNE 21, 2007 THROUGH JULY 20, 2007—Continued

Firm	Address	Date petition accepted	Product
SolidTech Animal Health, Inc	*P.O. Box 790, Newcastle, OK 73065*	7/5/2007	*Hypodermic syringes, with or without their needles.*
Maine Wood Concepts	1687 *New Vinegard Rd., P.O. Box 268, New Vineyard, ME 04956.*	7/11/2007	*Diversified wood products such as handles, knobs, craft items, novelties, toys, etc.*
Channer Corporation	*13720 West Polo Trail Drive, Lake Forest, IL 60045.*	7/20/2007	*Wire leads and harnesses.*
Quality Filters, Inc	*23351 Grissom Drive, Robertsdale, AL 36567.*	7/18/2007	*Air purification equipment manufacturing.*
Molding Automation Concepts, Inc	*1760 Kilkenny Court, Woodstock, IL 60098.*	7/20/2007	*Conveyors, robots and automation equipment for the parts handling of plastic or metal processing machinery.*
Cox Manufacturing	*5500 N. Loop 1604 E., San Antonio, TX 78247.*	7/3/2007	*Parts and accessories for tractors, excluding agricultural use.*
Fiberoptic Components, LLC	*2 Spratt Technology Drive, Sterling, MA 01564.*	7/5/2007	*Insulated optical fiber cables.*
Pylon Tool Corporation	*1855 Holste Road, Northbrook, IL 60062.*	7/11/2007	*Electrical metal contacts for heading.*
Attbar, Inc	*5985 S. 6th Way, Ridgefield, Washington 98642.*	6/21/2007	*Articles of plastics/plastic parts.*
Belair Composites	*3715 E. Longfellow Avenue, Spokane, WA 99217–6716.*	6/21/2007	*Hoses.*
Franklin Instrument Company	*233 Railroad Drive, Warminster, PA 18974.*	6/29/2007	*Manufactures battery and AC operated wall clocks.*
RBB Systems, Inc	4265–C East Lincoln Way, Wooster, OH 44691.	7/5/2007	*Printed circuit assemblies.*
ESP Manufacturing, Inc	*1855 Holste Road, Northbrook, IL 60062.*	6/28/2007	*Electro mechanical brass and bronze metal stampings.*

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 Section 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: July 20, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. 07–3657 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 24, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW, Washington, DC 20230 or via Internet at *dHynek@doc.gov*. Telephone No. (202) 482–0266.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230; Phone number (202) 482–1660, fax number (202) 482–0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Congress, enacted legislation to implement the Nairobi Protocol to the Florence Agreement, included a provision for the Departments of Commerce and Homeland Security (''DHS'') to collect information on the import of articles for the handicapped. Form ITA–362P, Information on Articles for Physically and Mentally Handicapped Persons Imported Free of Duty, is the vehicle by which statistical information is obtained to assess whether the duty-free treatment of articles for the handicapped has had a significant adverse impact on a domestic industry (or portion thereof) manufacturing or producing a like or directly competitive article. Without the collection of data, it would be almost impossible for a sound determination to

be made and for the President to take appropriate action.

II. Method of Collection

A copy of Form ITA–362P may be printed from on the Department of Commerce's Web site at *http://ia.ita.doc.gov/sips/ita362p.html* or the potential importer may request a copy from the Department. The applicant completes the form and then sends it to Customs and Border Protection (''CBP''). Upon acceptance by CBP as a valid application, it is transmitted to Commerce for processing.

III. Data

OMB Number: 0625–0118.
Form Number: ITA–362P.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations; state, local or tribal Government; federal government; individuals or households.
Estimated Number of Respondents: 180.
Estimated Time per Response: 4 minutes.
Estimated Total Annual Burden Hours: 188.
Estimated Total Annual Costs: $14,437.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14458 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Folding Metal Tables and Chairs from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2008.

Antidumping duty proceedings	Period to be reviewed
JAPAN: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe	
A–588–850	06/01/06–05/31/07
JFE Steel Corporation.	
Nippon Steel Corporation.	
NKK Tubes.	
Sumitomo Metal Industries, Ltd.	
SPAIN: Chlorinated Isocyanurates	
A–469–814	06/01/06–05/31/07
Aragonesas Industrias y Energia S.A.	
TAIWAN: Certain Stainless Steel Butt-Weld Pipe Fittings	
A–583–816	06/01/06–05/31/07
Censor International Corporation.	
Liang Feng Stainless Steel Fitting Co., Ltd.	
PFP Taiwan Co., Ltd.	
Ta Chen Stainless Steel Pipe Co., Ltd.	
Tru-Flow Industrial Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates[1]	
A–570–898	06/01/06–05/31/07
Hebei Jiheng Chemical Co., Ltd.	
Nanning Chemical Industry Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Folding Metal Tables and Chairs[2]	
A–570–868	06/01/06–05/31/07
Dongguan Shichang Metals Factory Co., Ltd.	
Feili Furniture Development Ltd. Quanzhou City.	
Feili Furniture Development Co., Ltd.	
Feili Group (Fujian) Co., Ltd.	
Feili (Fujian) Co., Ltd.	
New-Tec Integration Co., Ltd.	
New-Tec Integration (Xiamen) Co., Ltd.	

Antidumping duty proceedings	Period to be reviewed
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings [3] A–570–601 ..... Peer Bearing Changshan. Yantai Timken Company Limited.	06/01/06–05/31/07

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of Chlorinated Isocyanurates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of Folding Metal Tables and Chairs from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Tapered Roller Bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consist with *Fag Italia* v. *United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: July 20, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–14459 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Notice of Intent to Rescind Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is currently conducting the semi–annual 2006 new shipper review of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the People's Republic of China (''PRC''). We preliminarily determine that Maoming Changxing Foods Co., Ltd. (''Maoming Changxing'') has failed to demonstrate its eligibility for a separate rate in this new shipper review. Therefore, we have preliminarily determined that this new shipper review should be rescinded. Interested parties are invited to comment on this preliminary notice of intent to rescind.

EFFECTIVE DATE: July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Anya Naschak, 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) 482–6375.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Maoming Changxing, in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on shrimp from the PRC.

On September 22, 2006, the Department found that the request for review with respect to Maoming Changxing met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated an antidumping duty new shipper review covering the period February 1, 2006, through July 31, 2006. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Initiation of New Shipper Review*, 71 FR 57469 (September 29, 2006) (''Initiation Notice'').

On March 13, 2007, the Department extended the deadline for the preliminary results of the new shipper review until July 19, 2007. *See Notice of Extension of the Preliminary Results of Antidumping Duty New Shipper Review: Certain Frozen Warmwater Shrimp from thePeople's Republic of China*, 72 FR 11324 (March 13, 2007).

On September 27, 2006, we issued an antidumping duty questionnaire to Maoming Changxing. *See* Letter to Maoming Changxing from Christopher Riker, dated September 27, 2006. On October 12, 2006, the Department placed on the record of this review U.S. Customs and Border Protection (''CBP'') documentation from Maoming Changxing's shipment to the United States during the period of review (''POR''). *See* Memorandum to the File: Certain Frozen Warmwater Shrimp from the People's Republic of China: Entry Package(s) from U.S. Customs and Border Protection (''CBP''), dated October 12, 2006 (''Entry Documents Memo''). On October 25, 2006, Maoming Changxing responded to section A of the Department's questionnaire. On November 21, 2006, the Department received Maoming Changxing's response to sections C and D, and importer–specific questionnaire response. Between December 5, 2006, and May 1, 2007, the Department issued supplemental section A, C, D, and importer–specific questions to Maoming Changxing, and received responses to these questionnaires between December 29, 2006, and May 10, 2007.

On April 2, 2007, the Department provided parties with an opportunity to submit publicly available information

on surrogate countries and surrogate values for consideration in these preliminary results. *See* Letter to All Interested Parties from Christopher D. Riker: Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Letter enclosing the Office of Policy List of Economically Comparable Countries and Schedule for Comments on Surrogate Country, dated April 2, 2007. The Department did not receive any comments on surrogate country or surrogate values from any interested party in this new shipper review.

Period of Review

The POR for this new shipper review is February 1, 2006, through July 31, 2006.

Verification

The Department conducted verification of Maoming Changxing's questionnaire responses between May 21, 2007, and May 23, 2007, at Maoming Changxing's facility in Maoming, Guangdong, PRC. We used standard verification procedures, including on–site inspection of the exporter's manufacturing and sales facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report. For a further discussion, *see* Memorandum to the File from Anya L. Naschak and Michael Holton: Verification of the Questionnaire Responses of Maoming Changxing Foods Co., Ltd. in the Antidumping New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, dated July 19, 2007 (''Maoming Changxing Verification Report''). The verification results are on file in the main Department of Commerce building, in the Central Records Unit, Room B–099.

Scope of Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, white–leg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell–on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp–based product: (1) That is produced from fresh (or thawed–from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Preliminary Intent to Rescind

Concurrent with this notice, the Department is issuing a memorandum detailing our analysis of the information on the record of this proceeding with respect to Maoming Changxing's ownership and affiliations. See Memorandum to James C. Doyle: Intent to Rescind the New Shipper Review of Maoming Changxing Foods Co., Ltd. in the Antidumping New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, dated July 19, 2007 (''Prelim Rescission Memo'').

We have considered whether Maoming Changxing is eligible for a separate rate. The Department's separate–rate test is not concerned, in general, with macroeconomic/border–type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), as amplified by *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) (''Silicon Carbide''), 59 FR at 22586–87. In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. As explained below, due to Maoming Changxing's failure to provide verifiable information with respect to its ownership and affiliations, it has not provided the information necessary for the Department to examine whether Maoming Changxing operates independently of *de facto* government control. Therefore, Maoming Changxing does not satisfy the standards for the assignment of a separate rate.

In its questionnaire responses, Maoming Changxing provided information to the Department regarding its corporate structure, ownership, affiliations with other entities, and its export sales negotiation process. However, as discussed in detail in the Prelim Rescission Memo, critical information submitted on the record of this proceeding by Maoming Changxing could not be verified. Specifically, the Department could not verify the information submitted on the record of this new shipper review regarding Maoming Changxing's ownership due to its failure to document the transfer of incorporating capital into Maoming Changxing from its claimed parent companies or ultimate owners. Maoming Changxing also failed to provide the Department with a complete and official version of the capital verification report of one of its claimed parent companies. Further, Maoming Changxing withheld specifically requested information concerning the existence of an affiliated company. In addition, Maoming Changxing's statements on the record of this proceeding with respect to the source of Maoming Changxing's incorporating capital and the financial interests of various owners were found to be inaccurate at verification. *See* Maoming Changxing Verification Report and Prelim Rescission Memo. As a result, Maoming Changxing has not affirmatively proven that it is free from de facto government control. Specifically, Maoming Changxing's ownership could not be verified and the information submitted on the record with respect to Maoming Changxing's affiliations could not be verified, thereby precluding the Department from conducting an accurate separate rates analysis. Due to the proprietary nature of these issues, we cannot discuss them in detail in this notice. See Prelim Rescission Memo for a further discussion.[1]

Because of deficiencies between Maoming Changxing's responses and the information discovered at verification, the Department was unable to verify information concerning Maoming Changxing's formation and ownership. As a result, and consistent with the Department's determinations in prior cases, where the Department is unable to verify information submitted regarding a company's formation and ownership, that information cannot serve as the basis for the Department's determination regarding the company's eligibility for a separate rate. *See Porcelain–on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 24641 (April 26, 2006), and accompanying Issues and Decision Memorandum (''POS Cookware I&D Memo'') at Comment 1. Therefore, the Department is unable to conduct a separate rates test. Because Maoming Changxing chose not to disclose the existence of an affiliated company (see Prelim Rescission Memo), and because discrepancies in Maoming Changxing's disclosed corporate structure were not discovered until verification, the Department was not able to ask supplemental questions or consider this entity's relationship with the PRC government. In fact, as noted in the POS Cookware I&D Memo at Comment 1, ''it is fundamental that the Department be presented with all of the details of a respondent's corporate structure to adequately determine whether the entity qualifies for a separate rate.'' Further, in this case, despite numerous supplemental questions by the Department regarding Maoming Changxing's corporate structure and affiliation, Maoming Changxing failed to notify the Department of the existence of any inaccuracies in information it reported to the Department or seek guidance on the applicable reporting requirements, as contemplated in section 782(c)(1) of the Act.

Therefore, because the Department was unable to determine the actual owners of Maoming Changxing, the Department was unable to determine: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has 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 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. *See Silicon Carbide, 59 FR at 22587; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

Accordingly, as Maoming Changxing did not demonstrate that it was eligible for a separate rate, the Department will continue to consider Maoming Changxing part of the NME entity. Further, with respect to Maoming Changxing's qualifications as a new shipper, because the reported information with respect to its affiliated entities could not be verified, the Department was precluded from conducting a meaningful analysis to determine whether Maoming Changxing or its affiliated companies had not exported or produced the subject merchandise to the United States during the period of investigation pursuant to section 751(a)(2)(B)(i)(II) of the Act. Consistent with the Department's practice, we have therefore determined that Maoming Changxing does not qualify as a new shipper under section 351.214(a) of the Department's regulations because it is part of an entity that shipped during the original period of investigation. Accordingly, we intend to rescind the new shipper review. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic's of China: Rescission of New Shipper Reviews*, 72 FR 26782 (May 11, 2007); *see also Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999).

[1] In addition, the Department found at verification information contrary to Maoming Changxing's description of the sales negotiation and sales execution process, which, if a separate rates test were conducted, calls into question the de facto absence of government control over Maoming Changxing's export activities. However, due to Maoming Changxing's failure to substantiate its ownership and affiliations, these issues are not separately addressed in this notice. See also Prelim Rescission Memo.

Schedule for Final Results of Review

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. See 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. If a hearing is held, an interested party must limit its presentation only to arguments raised in its briefs. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results or final rescission of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification

At the completion of this new shipper review, if a final rescission notice is published, a cash deposit of 112.81 percent *ad valorem* shall be collected for any entries produced and exported by Maoming Changxing. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. Should the Department reach a final result other than a rescission, an appropriate antidumping duty rate will be calculated for both assessment and cash deposit purposes.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 19, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–14461 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Western Alaska Community Development Quota Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 24, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Community Development Quota (CDQ) program is implemented under the Magnuson Stevens Fishery Conservation and Management Act, the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands, and regulations at 50 CFR part 679. The purpose of the CDQ program is to allocate a portion of the quotas for groundfish, Pacific halibut, crab, and prohibited species in the Bering Sea and Aleutian Islands Management Area to Western Alaska communities so that these communities can start and support regionally-based, commercial seafood or other fisheries-related businesses. Under the CDQ program, 65 eligible Western Alaska communities have organized into six separate CDQ groups. The CDQ groups have incorporated under Alaska law as nonprofit corporations.

CDQ and prohibited species quota (PSQ) allocations are made to CDQ groups. However, in many cases the CDQ groups contract with existing fishing vessels and processors to harvest CDQ on their behalf. The CDQ group is responsible to monitor the catch of CDQ and PSQ by all vessels fishing under its Community Development Plan and to take the necessary action to prevent overages. National Marine Fisheries Service (NMFS) monitors the reported catch to assure that quotas are not being exceeded.

II. Method of Collection

Paper reports and plans, and the method of submittal are through the U.S. mail.

III. Data

OMB Number: 0648–0269.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions, and business or other for-profit organizations.

Estimated Number of Respondents: 93.

Estimated Time Per Response: 520 hours for Community Development Plan; 20 hours for Annual Budget Report; 8 hours for Annual Budget Reconciliation Report; 40 hours for Substantial Amendment; 8 hours for Technical Amendment; 30 minutes for CDQ or PSQ Transfer Request; 1 hour for Request for Approval or Removal of an Eligible Vessel; 4 hours for Alternative Fishing Plan; 2 minutes for Prior Notice to Shoreside Observers; and 2 minutes for Prior Notice to Vessel Observers.

Estimated Total Annual Burden Hours: 3,470.

Estimated Total Annual Cost to Public: $747.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14460 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Gear-Marking Requirements for the Harbor Porpoise Take Reduction Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 24, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Gouveia or *david.gouveia@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Federal regulations found at 50 CFR 229.34 limits the number of gillnets that can be used in certain fisheries in the mid-Atlantic that appear to be most closely linked with accidental catch of harbor porpoises. The fishermen in these fisheries must obtain and attach numbered tags for their nets. Because the number of tags per vessel is capped, the tagging program helps to limit the number of nets in use and helps NOAA identify the number in use.

II. Method of Collection

Requests for tags are submitted to NOAA on a paper form.

III. Data

OMB Number: 0648–0357.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 2,450.

Estimated Time per Response: 1 minute to attach a tag to a net and 2 minutes to request tags.

Estimated Total Annual Burden Hours: 41.

Estimated Total Annual Cost to Public: $1,212.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14463 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting of Sea Turtle Entanglement in Pot Gear Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 24, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sara McNulty, (978) 281–9300 ext. 6520 or *sara.mcnulty@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information involves sea turtles becoming accidentally entangled in active or discarded fixed fishing gear. These entanglements may prevent the recovery of endangered and threatened sea turtle populations. The National Marine Fisheries Service (NMFS) has established the Sea Turtle Disentanglement Network to promote reporting and increase successful disentanglement of sea turtles. As there is limited observer coverage of pot gear fisheries, NMFS relies on the U.S. Coast Guard, fishing industry, stranding network, federal, state, and local

authorities, and the public for this information. The information provided will help NMFS better assess pot gear fisheries (lobster, whelk/conch, crab, fish trap) and their impacts on sea turtle populations in the northeast region (Maine to Virginia).

II. Method of Collection

Reports are made by telephone, or by fax or email.

III. Data

OMB Number: 0648–0496.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; Individuals or households; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Estimated Number of Respondents: 45.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost to Public: $675.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–14464 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Public Comment Period for the Revised Management Plan for the Wells (Maine) National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty day public comment period on the revised Wells (Maine) National Estuarine Research Reserve Management Plan which will begin on the day this announcement is published. Comments should be sent within the comment period in hard copy or e-mail to Doris Grimm at *Doris.Grimm@noaa.gov* or NOAA's Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

The Wells National Estuarine Research Reserve was designated in February 1984 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. Pursuant to 15 CFR 921.33(c), a state must revise its management plan every five years. The reserve has been operating under a management plan approved in 1996. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve.

Since the last management plan, the Wells Reserve acquired two key parcels of land, changed its boundary, constructed needed facilities, and has implemented several system-wide programs. It acquired the 27-acre Alheim property and the 2½-acre Lord parcel, and changed its boundary to include 359 acres of the watershed areas of the Reserve. The Reserve built the Maine Coastal Ecology Center, new interpretive exhibits, the Alheim Commons dormitory, and the Forest Learning Shelter, and equipped and opened the Coastal Resource Library. This new management plan serves as the primary guidance document for the operation of the Wells Reserve's core and system-wide programs in research and monitoring, education and coastal training, and resource management and stewardship. The plan provides guidance on the acquisition of land to be added to the Reserve and on the construction and renovation of buildings and exhibits that support NERR programs. It also guides the Reserve in important related programs, such as volunteerism and outreach to communities to encourage stewardship of coastal resources in southern Maine.

The Wells Reserve is a public/private partnership whose administrative oversight is vested in the Reserve Management Authority (RMA). This independent state agency was established in 1990 to support and promote the interests of the Wells Reserve. The RMA has a Board of Directors composed of representatives having a property, management, or program interest in the Wells Reserve. The RMA members represent the Maine Department of conservation, the U.S. Fish and Wildlife Service, the Town of Wells, the Laudholm Trust, the Maine State Planning Office, and the National Oceanic and Atmospheric Administration.

FOR FURTHER INFORMATION CONTACT: Doris Grimm at (301) 563–7107 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Wells Management Plan revision, visit *http://www.wellsreserve.org.*

Dated: July 20, 2007.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E7–14487 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AV61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendment 3 to the Fishery Management Plan for the Spiny Lobster Fishery of the Caribbean and Amendment 5 to the Joint Fishery Management Plan for the Spiny Lobster Fishery Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: The Caribbean Fishery Management Council (Council) intends to prepare a DEIS to describe and analyze management alternatives to be included in an amendment to the Fishery Management Plan (FMP) for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands and the FMP for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic. These alternatives will consider measures to implement a minimum import size on spiny lobster. The purpose of this notice of intent is to solicit public comments on the scope of issues to be addressed in the DEIS.

DATES: Written comments on the scope of issues to be addressed in the DEIS must be received by the Council by August 27, 2007. A series of scoping meetings will be held in September, 2007.

ADDRESSES: Written comments on the scope of the DEIS and requests for additional information on the amendment should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–25772203; telephone: 787–766–5927; fax: 787–766–6239. Comments may also be sent by e-mail to *Graciela.Garcia-Moliner@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Graciela Garcia-Moliner; phone: 787–766–5927; fax: 787–766–6239; e-mail: *Graciela.Garcia-Moliner@noaa.gov*.

SUPPLEMENTARY INFORMATION: Spiny Lobster (*Paniluris argus*)in the Southeast Region is managed under a Caribbean FMP and a joint Gulf of Mexico and South Atlantic FMP. All three Southeast fishery mangement councils have expressed concern recently about the effects of imports of spiny lobster that are smaller than the size limits in the U.S. spiny lobster FMPs. In many instances, imports are also undersized based on size limits established in the country of origin. Many Caribbean and Central and South American nations share these concerns, and scientific evidence suggests that larvae from one area or region within this species' range may contribute to stock recruitment in other areas or regions.

The Caribbean Fishery Management Council has expressed intent to amend its Spiny Lobster FMP to consider application of a minimum size limit on imported spiny lobster. NOAA Fisheries believes amendment of the Gulf and South Atlantic Spiny Lobster FMP should be addressed concurrently. After conferring with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, the Caribbean Council was designated as the administrative lead to address spiny lobster issues. Thus, the Caribbean Council will prepare one document, which contains an amendment to the Caribbean Spiny Lobster FMP and also an amendment to the Gulf and South Atlantic Spiny Lobster FMP.

The Caribbean Council will develop a DEIS to describe and analyze management alternatives to implement a minimum size limit on imported spiny lobster. The amendment will provide updates to the best available scientific information regarding Paniluris argus, and based on the information, the Councils will determine what actions and alternatives are necessary to protect spiny lobster throughout its range. Those alternatives may include, but are not limited to: a ''no action'' alternative regarding the fishery; alternatives to restrict the minimum import size based on carapace length; alternatives to restrict the minimum import size based on tail length; and alternatives to restrict the importation of meat, which is not whole lobster or tailed lobster.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Caribbean Council has identified this preliminary range of alternatives as a means to initiate discussion for scoping purposes only. This may not represent the full range of alternatives that eventually will be evaluated by the Caribbean Council.

Once the Caribbean Council completes the DEIS associated with the amendment to the Spiny Lobster Fishery of the Caribbean, it must be approved by a majority of the voting members, present and voting, of the Carribean Council. Similarly, the Gulf and South Atlantic Spiny Lobster FMP amendment and associated DEIS must be approved by those Councils. After the Councils approve this document, the DEIS will be submitted to NMFS for filing with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45–day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Councils will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS) and before adopting final management measures for the amendment. The Councils will submit both the final joint amendment and the supporting FEIS to NMFS for review by the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final joint amendment for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30–day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the final joint amendment.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final joint amendment, its proposed implementing regulations, and its associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the FEIS, prior to final agency action.

Dated: July 20, 2007.

Emily Menashes,

Acting Director, Office Of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7–14451 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020907C]

Marine Mammals; File Nos. 715–1883 and 881–1745

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

ACTION: Notice; issuance of permit and permit amendment.

SUMMARY: Notice is hereby given that Permit No. 715–1883 for conduct of research on northern fur seals (*Callorhinus ursinus*) has been issued to the North Pacific Universities Marine Mammal Research Consortium (NPUMMRC), University of British

Columbia, Vancouver, B.C.; and Permit Amendment No. 881–1745–02 has been issued to the The Alaska SeaLife Center (ASLC), Seward, AK, for conduct of research on Steller sea lions (*Eumetopias jubatus*) in captivity at the ASLC.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; *http://www.nmfs.noaa.gov/pr/permits/review.htm*; andAlaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 15, 2007, notice was published in the **Federal Register** (72 FR 7420) that a request for a scientific research permit and permit amendment to take the species identified above had been submitted by the above-named institutions, respectively. The requested permit and permit amendment have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), as applicable.

Permit No. 715–1883 issued to NPUMMRC authorizes the capture in Alaska and export to Canada of up to 6 female juvenile fur seals for captive research on nutritional physiology.

Permit Amendment No. 881–1745–02 authorizes captive breeding and research on captive Steller sea lions held at the ASLC related to studies on the physiology of gestation and lactation. This is in addition to already permitted studies, which include condition assessments, endocrinology and immunology studies, metabolism studies, and studies of foraging behavior.

The permit and permit amendment are valid through August 1, 2009, and contain requirements for coordination and monitoring of research as well as mitigation measures deemed appropriate by NMFS. The permit and permit amendment cannot be amended or extended.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a Programmatic Environmental Impact Statement (PEIS) for Steller Sea Lion and Northern Fur Seal Research was prepared to evaluate the potential environmental impacts of awarding grants and issuing permits to facilitate research on these species. Information about the PEIS is available at *http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm*.

Issuance of the permit to the ASLC, as required by the ESA, was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 19, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–14457 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB65

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee, in August, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, August 16, 2007, at 8:30 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02360; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review input from the Scallop Advisory Panels and Scallop Plan Development Team related to the development of Framework 19. The committee will also consider management measures for consideration in Framework 19 including days-at-sea allocations, access area allocations, specific measures for the general category scallop fishery, improvements to the observer set-aside program, and other measures. Framework 19 is a biennial action that will consider management measures for fishing years 2008 and 2009. The committee may consider other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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 Act, provided the public has been notified of the Council'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 Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: July 20, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–14387 Filed 7–25–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 27, 2007.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 20, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

National Institute for Literacy

Type of Review: New.

Title: LINCS Professional Development Mapping Survey.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 63.

Abstract: The LINCS Professional Development Mapping Survey will gather information about existing practices, approaches and delivery systems for the professional development of adult education practitioners and volunteers in the states. The LINCS Professional Development Mapping process includes surveying state-level staff to gather information about what professional development opportunities are provided for practitioners. This information will be useful in order to improve the services of the Institute.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3344. 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. E7–14449 Filed 7–25–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–161]

ANR Pipeline Company; Notice of Negotiated Rate Filing Amendement

July 18, 2007.

Take notice that on July 10, 2007, ANR Pipeline Company (ANR) tendered for filing and approval amendments to three negotiated rate agreements between ANR and Wisconsin Public Service Corporation. The amendments are being filed to reduce the MDQ's on two contracts and increase the MDQ on one contract.

ANR requests that the Commission accept and approve the subject filing to be effective August 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14412 Filed 7–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–595–007]

Discovery Gas Transmission LLC; Notice of Negotiated Rate Filing

July 18, 2007.

Take notice that on June 29, 2007, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective July 1, 2007:

Seventh Revised Sheet No. 22

Original Sheet No. 22.a

Discovery states that the filing is being made to revise it tariff to reflect a negotiated rate agreements with Texas Eastern Transmission, L.P. and Mariner Energy, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14410 Filed 7–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–527–000]

MIGC, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 18, 2007.

Take notice that on July 16, 2007, MIGC, Inc. (MIGC) tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 15, 2007:

Tenth Revised Sheet No. 4
Twelfth Revised Sheet No. 6
Original Sheet No. 52C

MIGC states that copies of its filing have been served upon all jurisdictional customers of MIGC and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14409 Filed 7–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 18, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–70–001.
Applicants: Entergy Gulf States, Inc.; Calcasieu Power, LLC.
Description: Calcasieu Power, LLC and Entergy Gulf States, Inc submit their responses to FERC Staff's letter dated 6/7/07.
Filed Date: 06/28/2007.
Accession Number: 20070628–4005; 20070703–0121.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 25, 2007.

Docket Numbers: EC07–113–000.
Applicants: AES Mid-West Wind, L.L.C.; AES Mid-West Holdings, L.L.C.; Lake Benton Power Partners LLC; Lake Benton Power Partners II, LLC.
Description: AES Mid-West Wind, LLC, et al, submit an application for authorization for disposition of jurisdictional facilities, request for confidential treatment and request for expedited action.
Filed Date: 07/12/2007.
Accession Number: 20070716–0189.
Comment Date: 5 p.m. Eastern Time on Thursday, August 02, 2007.

Docket Numbers: EC07–114–000.
Applicants: Pinnacle West Marketing & Trading Co, LLC; Morgan Stanley Capitol Group Inc.
Description: Pinnacle West Marketing & Trading Co, LLC and Morgan Stanley Capital Group Inc. submit their application for authorization to transfer jurisdictional facilities.
Filed Date: 07/13/2007.
Accession Number: 20070716–0176.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: EC07–116–000.
Applicants: KGen Acquisition I LLC; LSP Energy Limited Partnership; La Paloma Generating Company, LLC.
Description: Joint Application for KGen Acquisition I LLC et al for disposition of jurisdictional facilities.
Filed Date: 07/13/2007.

Accession Number: 20070717–0186.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–67–000.
Applicants: Mansfield 2007 Trust A.
Description: Mansfield 2007 Trust A submits its Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to Sections 366.1 and 366.7(a) of the Commission's Regulations.
Filed Date: 07/13/2007.
Accession Number: 20070717–0074.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: EG07–68–000.
Applicants: Mansfield 2007 Trust B.
Description: Mansfield 2007 Trust B submits its Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to Sections 366.1 and 366.7 of the Commission's Regulations.
Filed Date: 07/13/2007.
Accession Number: 20070717–0073.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: EG07–69–000.
Applicants: Mansfield 2007 Trust C.
Description: Mansfield 2007 Trust C submits its Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to Sections 366.1 and 366.7 of the Commission's Regulations.
Filed Date: 07/13/2007.
Accession Number: 20070717–0072.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: EG07–70–000.
Applicants: Mansfield 2007 Trust D.
Description: Mansfield 2007 Trust D submits its Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to §§ 366.1 and 366.7 of the Commission's Regulations.
Filed Date: 07/13/2007.
Accession Number: 20070717–0071.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: EG07–71–000.
Applicants: Mansfield 2007 Trust E.
Description: Mansfield 2007 Trust E submits its Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to Sections 366.1 and 366.7 of the Commission's Regulations.
Filed Date: 07/13/2007.
Accession Number: 20070717–0070.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: EG07–72–000.
Applicants: Mansfield 2007 Trust F.
Description: Mansfield 2007 Trust F submits its Notice of Self-Certification of Exempt Wholesale Generator Status pursuant to Sections 366.1 and 366.7 of the Commission's Regulations.
Filed Date: 07/13/2007.
Accession Number: 20070717–0069.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2284–007; ER99–1773–007; ER99–1761–003; ER00–1026–014; ER01–1315–003; ER01–2401–009; ER98–2184–012; ER98–2186–013; ER00–33–009; ER03–1207–004; ER05–442–001; ER98–2185–012; ER99–1228–005; ER98–4222–009.
Applicants: AEE 2 LLC; AES Creative Resources, LP; AES Eastern Energy, LP; Indianapolis Power & Light Company; AES Ironwood, LLC; AES Red Oak, LLC; AES Huntington Beach, LLC; AES Redondo Beach, LLC; AES Placertia, Inc.; AES Delano, Inc.; Storm Lake Power Partners II LLC; Lake Benton Power Partners LLC.
Description: The AES Corporation *et al.* submit a notice of change in status in connection with the indirect acquisition by a subsidiary of AES of two windpower electric generation projects etc.
Filed Date: 07/13/2007.
Accession Number: 20070717–0182.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER99–2541–008; ER05–731–002; ER97–3556–016; ER99–221–011; ER99–220–013; ER97–3553–004; ER01–1764–005; ER04–582–006.
Applicants: Carthage Energy, LLC; Central Maine Power Company; Energetix, Inc.; New York State Electric & Gas Corporation; NYSEG Solutions, Inc.; Rochester Gas and Electric Corporation; PEI Power II, LLC, Hartford Steam Company.
Description: Carthage Energy LLC et al. submit a notification related to each of the Energy East Companies authority to sell electric energy and capacity at market based rates.
Filed Date: 07/13/2007.
Accession Number: 20070717–0181.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER04–878–001.
Applicants: Equus Power I, L.P.
Description: Equus Power I, LP submits its triennial updated market power analysis.
Filed Date: 07/16/2007.
Accession Number: 20070717–0076.
Comment Date: 5 p.m. Eastern Time on Monday, August 06, 2007.

Docket Numbers: ER07–529–002.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits an errata to a compliance filing to revise Module D of the Open Access Transmission and Energy Markets Tariff.
Filed Date: 07/11/2007.
Accession Number: 20070716–0162.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07–1141–000.
Applicants: International Transmission Company; Michigan Electric Transmission Company, LLC; Midwest Independent Transmission System, LLC.
Description: International Transmission Co dba ITC Transmission and Michigan Electric Transmission Co, LLC et al. submit a request to modify the Open Access Transmission and Energy Markets Tariff to include Attachment FF etc.
Filed Date: 07/10/2007.
Accession Number: 20070711–0038.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 31, 2007.

Docket Numbers: ER07–1143–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revised rate sheets to the Expedited Service and Interconnection Agreement with Wintec Energy LTD designated as Service Agreement 28.
Filed Date: 07/13/2007.
Accession Number: 20070716–0186.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1145–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc agent for Entergy Arkansas, Inc et al. submits revisions to the Interconnection and Operating Agreement with Mississippi Delta Energy Agency.
Filed Date: 07/11/2007.
Accession Number: 20070713–0057.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07–1147–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corporation agent for Indiana Michigan Power Company submits an executed Letter Agreement 2 w/ Michigan Electric Transmission Company dated 7/2/07.
Filed Date: 07/13/2007.
Accession Number: 20070716–0185.
Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07–1148–000.
Applicants: PurEnergy Caledonia, LLC.
Description: PurEnergy Caledonia LLC submits a notice of cancellation of its Rate Schedule 1 effective 9/11/07.
Filed Date: 07/13/2007.

Accession Number: 20070717–0183.

Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14413 Filed 7–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12429–001]

Clark Canyon Hydro, LLC; Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

July 18, 2007.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* 12429–001.

c. *Date Filed:* August 1, 2006.

d. *Applicant:* Clark Canyon Hydro, LLC.

e. *Name of Project:* Clark Canyon Dam Hydroelectric Project.

f. *Location:* On the Beaverhead River, 18 air miles southwest of the Town of Dillon, Beaverhead County, Montana. The project would occupy 3.5 acres of federal land administered by the Bureau of Reclamation.

g. *Filed Pursuant To:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834 or Dr. Vincent Lamarra, Ecosystems Research Institute, Inc., 975 South State Highway, Logan, UT 84321.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, Dianne.rodman@ferc.gov.

j. *Deadline for filing scoping comments:* September 20, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The proposed project would utilize the existing Bureau of Reclamation's Clark Canyon dam, and would consist of the following new facilities: (1) A steel liner in the existing 9-foot-diameter concrete outlet conduit; (2) a new outlet gate structure; (3) a 9-foot-diameter steel penstock bifurcating into an 8-foot diameter and a 6-foot diameter steel penstock directing flow to the turbine units about 70 feet from the bifurcation; (4) a powerhouse containing two generating units with a combined capacity of 4.75 megawatts; (5) a 300-foot-long access road; (6) a switchyard; (7) a 0.3-mile-long, 24.9-kilovolt overhead transmission line connecting the project to the local utility's existing transmission system at a proposed substation; and (8) appurtenant facilities. The average annual generation is estimated to be 16.5 gigawatt hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY at (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Tuesday, August 21, 2007.
Time: 2 p.m.
Place: National Guard Armory,
Address: 1070 Highway 41 North, Dillon, MT 59725.

Public Scoping Meeting

Date: Tuesday, August 21, 2007.
Time: 7 p.m.
Place: National Guard Armory,
Address: 1070 Highway 41 North, Dillon, MT 59725.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 9 p.m. on August 21, 2007. All interested individuals, organizations, and agencies are invited to attend. All participants are responsible for their own transportation to the site. All participants should meet at the public fishing access area immediately below Clark Canyon dam. To reach the access area from Dillon, Montana, (1) proceed south on I–15 approximately 22 miles to the exit marked ''Clark Canyon Dam and Recreation Area;'' (2) proceed about 0.75 mile across the crest of the dam and take the first right turn about 0.25 mile past the dam to the Beaverhead River Fishing Access; and (3) continue to the public fishing access area immediately below the dam. Upon arrival, all participants must be prepared to present proper identification (e.g., current driver's license or alternate source with picture identification). All participants are subject to government identification investigations and, upon completion, may receive a temporary identification badge for the duration of the visit. Anyone with questions about the site visit should contact Mr. Matt Cutlip of the Commission at 503–552–2762.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14408 Filed 7–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2299–060]

Modesto Irrigation District, Turlock Irrigation District; Notice To Hold a Public Meeting To Discuss the Fisheries Study Plan for the Don Pedro Project

July 18, 2007.

The Modesto Irrigation District and the Turlock Irrigation District (licensees) filed a Fisheries Study Plan on March 20, 2007, in response to the Commission's December 20, 2006, request made pursuant to Article 58 of the license, as amended.[1] The Commission issued a Preliminary Staff Assessment (PSA) of the plan on June 15, 2007, and requested that interested parties file comments by July 15, 2007.

Commission staff will conduct a public meeting to discuss the design and schedule for future monitoring studies based on the licensees' plan and the comments received to date on the staff's PSA. Commission staff will be prepared to lead the discussion, and asks that all participating parties be prepared to support their oral statements with documented information.

The meeting will be held on Wednesday, August 8, 2007, from 9 a.m. to 5 p.m. (PDT) at the John E. Moss Federal Building and Courthouse, 650 Capitol Mall, Stanford Room, 1st floor, Sacramento, California 95814. The licensees, resource agency personnel, and other persons interested in this matter are invited to participate. This meeting will not be recorded by a stenographer.

The following is the agenda for the meeting:

9 a.m.–9:15 a.m. Introductions/Purpose for Meeting
9:15 a.m.–10:30 a.m. Instream Flow Schedule
10:30 a.m.–10:45 a.m. Break
10:45 a.m.–11:30 a.m. Habitat Restoration
11:30 a.m.–2:15 p.m. Fry Survival
12:15 p.m.–1:30 p.m. Lunch
1:30 p.m.–2:30 p.m. Steelhead Presence/Protection
2:30 p.m.–3:15 p.m. Predator Control
3:15 p.m.–4 p.m. River Temperature
4 p.m.–4:30 p.m. Other Monitoring
4:30 p.m.–5 p.m. Wrap up/What's next

Special security precautions are employed at this Federal building. Visitors must go through full security screening and are not permitted to bring in cell phones or cameras with digital photo capability. Laptops and PDAs must be booted up at the security entrance. Any questions about this notice should be directed to Philip Scordelis at the Federal Energy Regulatory Commission, (415) 369–3335, or by e-mail at *philip.scordelis@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–14411 Filed 7–25–07; 8:45 am]

BILLING CODE 6717–01–P

[1] See 76 FERC ¶ 61,117 (1996).

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OAR–2007–0014; FRL–8445–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Refrigerant Recycling and Emissions Reduction Program; EPA ICR No. 1626.10, OMB Control No. 2060–0256

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that 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 information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 27, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0014 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *A-and-R-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: 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: Julius Banks; Stratospheric Protection Division, Office of Air and Radiation, Office of Atmospheric Programs; Mail Code 6205J; Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9870; fax number: (202) 343–2338; e-mail address: *banks.julius@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 March 14, 2007 (72 FR 11864), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. 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 No. EPA–HQ–OAR–2007–0014, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Air and Radiation Docket is 202–566–1742.

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 on 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: National Refrigerant Recycling and Emissions Reduction Program.

ICR Numbers: EPA ICR No. 1626.10, OMB Control No. 2060–0256.

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, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA has developed regulations under the Clean Air Act Amendments of 1990 (the Act) establishing standards and requirements regarding the use and disposal of class I and class II ozone-depleting substances used as refrigerants during the service, maintenance, repair, or disposal of refrigeration and air-conditioning equipment. Section 608(c) of the Act states that effective July 1, 1992 it is unlawful for any person in the course of maintaining, servicing, repairing, or disposing of refrigeration or air-conditioning equipment to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in the equipment in a manner which permits the substance to enter the environment.

In 1993, EPA promulgated regulations under section 608 of the Act for the recycling of ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. These regulations were published on May 14, 1993 (58 FR 28660) and codified in 40 CFR part 82, subpart F (§ 82.150 *et seq.*).

The regulations require persons servicing refrigeration and air-conditioning equipment to observe certain service practices that reduce emissions of ozone depleting refrigerants. The regulations also establish certification programs for technicians, recycling and recovery equipment, and off-site refrigerant reclaimers. In addition, EPA requires that ozone depleting refrigerants contained ''in bulk'' in appliances be removed prior to disposal of the appliances and that all refrigeration and air-conditioning equipment, except for small appliances and room air conditioners, be provided with a servicing aperture that facilitates recovery of the refrigerant. Moreover, the Agency requires that substantial refrigerant leaks in equipment be repaired when they are discovered. These regulations significantly reduce emissions of ozone depleting refrigerants, and therefore aid U.S. and global efforts to minimize damage to the ozone layer and the environment as a whole.

To facilitate compliance with and enforcement of section 608 requirements, EPA requires reporting and record keeping requirements of technicians; technician certification programs; equipment testing organizations; refrigerant wholesalers and purchasers; refrigerant reclaimers; refrigeration and air-conditioning equipment owners; and other establishments that perform refrigerant removal, service, or disposal. The record keeping requirements and periodic submission of reports, to EPA's Office of Air and Radiation, Office of Atmospheric Programs, occur on an annual, biannual, onetime, or occasional basis depending on the nature of the reporting entity and the length of time that the entity has been in service. Specific reporting and recordkeeping requirements were published in 58 FR 28660 and codified under 40 CFR Part 82, Subpart F (i.e., § 82.166). These reporting and recordkeeping requirements also allow EPA to evaluate the effectiveness of the refrigerant regulations, and help the Agency determine if we are meeting the obligations of the Unites States', under the 1987 Montreal Protocol, to reduce use and emissions of ozone-depleting substances to the lowest achievable level.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 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: Entities potentially affected by this action are those that recover, recycle, reclaim, sell, or distribute in interstate commerce ozone-depleting refrigerants that contain chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs); and those that service, maintain, repair, or dispose of appliances containing CFC or HCFC refrigerants. In addition, the owners or operators of appliances containing more than 50 pounds of CFC or HCFC refrigerants are regulated.

Estimated Number of Respondents: 361,383.

Frequency of Response: On occasion, biannually, and annually.

Estimated Total Annual Hour Burden: 2,404,913.

Estimated Total Annual Cost: $88,019,807, which includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 2,194,052 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is not due to a change in any program requirement. The adjustment is the result of changes in EPA's estimates of time required to submit reports and maintain records, the number of reports submitted to the agency, and the overall number of respondents.

Dated: July 19, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–14479 Filed 7–25–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–0266; FRL–8445–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Proficiency Testing Studies for Drinking Water Laboratories, EPA ICR No. 2264.01, OMB Control No. 2040–New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 27, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2007–0266, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2007–0266, and (2) OMB by mail to: 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: David J. Munch, Technical Support Center, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; telephone (513) 569–7843; e-mail address *munch.dave@epa.gov*. For general information, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding legal holidays, from 8:30 a.m. to 4:30 p.m., Eastern Time.

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 May 3, 2007 (72 FR 24582), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. 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 No. EPA–HQ–OW–2007–0266, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

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: Proficiency Testing Studies for Drinking Water Laboratories.

ICR numbers: EPA ICR No. 2264.01, OMB Control No. 2040–New.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Proficiency Testing (PT) studies provide an objective demonstration that participating laboratories are capable of producing valid data for monitored pollutants. PT studies that relate to drinking water analyses are mandated under 40 CFR 141.23(k)(3), 141.24(f)(17) and 141.131(b)(2). EPA initiated these studies and originally administered them as part of the Agency's mandate to assure the quality of environmental monitoring data. Subsequently, all of these studies were privatized. PT vendors manufacture and distribute samples to the participating laboratories who then submit their analytical results to these vendors for evaluation. The PT

vendors then send evaluations of the submitted data to the laboratory and any other designated certifying/accrediting authority.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7.32 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: Drinking Water Laboratories.

Estimated Number of Respondents: 2,363.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 17,291.

Estimated Total Annual Cost: $1,803,343, which includes $908,055 annualized capital or O&M costs and $895,288 in labor costs.

Changes in the Estimates: Since this is a new information collection request, there is no currently-approved burden. However, as this collection does exist under another expiring ICR (Performance Evaluation Studies of Water and Wastewater Laboratories (OMB Control No. 2080–0021, EPA ICR No. 0234.08)), the requested burden under this ICR effectively offsets the decrease in burden in the currently-approved ICR from which it is being removed.

Dated: July 19, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–14482 Filed 7–25–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0216; FRL–8446–6]

Human Studies Review Board (HSRB); Notification of a Public Teleconference To Review Its Draft Report From the April 18–20, 2007 HSRB Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Human Studies Review Board (HSRB) announces a public teleconference meeting to discuss its draft HSRB report from the April 18–20, 2007 HSRB meeting.

DATES: The teleconference will be held on August 14, 2007, from 3 to approximately 5 p.m. (Eastern Time).

Location: The meeting will take place via telephone only.

Meeting Access: For information on access or services for individuals with disabilities, please contact the DFO at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the telephone conference, to request a current draft copy of the Board's report or to obtain further information, may contact Crystal Rodgers-Jenkins, EPA, Office of the Science Advisor, (8105), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail at (202) 564–5275. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/*.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2007–0216, by one of the following methods: *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center (EPA/DC), Public Reading Room, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–ORD–2007–0216. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0216. 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.

I. Public Meeting

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA, or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this

action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using *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/*.

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 ORD Docket, EPA/DC, Public Reading Room, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

The April 18–20, 2007 HSRB meeting draft report is now available. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the *regulations.gov* Web site and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/*. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2007–0216 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to August 7, 2007. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, August 7, 2007, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB DFO to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are limited to 5 minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments.

2. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least 5 business days prior to the beginning of this teleconference. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, August 7, 2007. You should submit your comments using the instructions in Unit 1.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The EPA Human Studies Review Board will be reviewing its draft report from the April 18–20, 2007 HSRB meeting. Background on the April 18–20, 2007 HSRB meeting can be found at **Federal Register** 72 57, 14101 (March 26, 2007) and at the HSRB Web site *http://www.epa.gov/osa/hsrb/*. The Board may also discuss planning for future HSRB meetings.

Dated: July 20, 2007.

George Gray,

EPA Science Advisor.

[FR Doc. E7–14468 Filed 7–25–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Advisory Committee on Diversity for Communications in the Digital Age

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Advisory Committee on Diversity for Communications in the Digital Age (''Diversity Committee'') will hold a meeting on September 27, 2007, at 10 a.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. Reports from the subcommittees will be presented. Barbara Kreisman is the Diversity Committee's Designated Federal Officer.

DATES: September 27, 2007.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, Designated Federal Officer of the FCC's Diversity Committee (202) 418–7452 or e-mail: *Barbara.kreisman@fcc.gov*.

SUPPLEMENTARY INFORMATION: At this meeting, the Diversity Committee will discuss and consider possible areas in which to develop recommendations that will further enhance the ability of minorities and women to participate in the telecommunications and related industries.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The public may submit written comments before the meeting to: Barbara Kreisman, the FCC's Designated Federal Officer for the Diversity Committee by e-mail: *Barbara.Kreisman@fcc.gov* or U.S. Postal Service Mail (Barbara Kreisman, Federal Communications Commission, Room 2–A665, 445 12th Street, SW., Washington, DC 20554).

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the Diversity Committee can be found at *www.fcc.gov/DiversityFAC*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–14379 Filed 7–25–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Jill M. Crumpacker, Executive Director; Federal Labor Relations Authority (FLRA); 1400 K Street, NW., Washington, DC 20424–0001; (202) 218–7945.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires that each agency, in accordance with the regulations prescribed by the Office of Personnel Management, establish one or more Performance Review Boards. The Board(s) shall review and evaluate the initial appraisal of a senior executive.

The following persons will serve on the FLRA's FY 2007 Performance Review Board: Debra A. Carr, Associate Deputy Staff Director, U.S. Commission on Civil Rights; Jill M. Crumpacker, Executive Director, Federal Labor Relations Authority; Peggy R. Mastroianni, Associate Legal Counsel, Equal Employment Opportunity Commission.

Authority: 5 U.S.C. 4134(c)(4).

Dated: July 19, 2007.

Jill M. Crumpacker,

Executive Director.

[FR Doc. E7–14443 Filed 7–25–07; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7–14154) published on pages 40153 and 40154 of the issue for Monday, July 23, 2007.

Under the Federal Reserve Bank of Kansas City heading, the entry for Thew Randall L. Pieper Trust, Randall L. Pieper, trustee; and Joan L. Lawson Trust, Joan L. Lawson, trustee, all of Calhan, Colorado; Candice S. Enix Trust, Candice S. Enix, trustee, both of Centennial, Colorado; John A. Pieper Trust, John A. Pieper, trustee, Albuquerque, New Mexico, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The Randall L. Pieper Trust, Randall L. Pieper, trustee; and Joan L. Lawson Trust, Joan, L. Lawson, trustee, all of Calhan, Colorado; Candice S. Enix Trust, Candice S. Enix, trustee, both of Centennial, Colorado; John A. Pieper Trust, John A. Pieper, trustee, Albuquerque, New Mexico; to acquire voting shares of Pieper Bancorp, Inc., and thereby indirectly acqure voting shares of Farmers State Bank of Calhan, both of Calhan, Colorado, by becoming general partners of the Pieper Family Limited Partnership, LLP, which controls Pieper Bancorp, Inc., and Farmers State Bank of Calhan, both of Calhan, Colorado.

Comments on this application must be received by August 7, 2007.

Board of Governors of the Federal Reserve System, July 23, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–14447 Filed 7–25–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Pan American Acquisition, Inc., Oak Brook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of JD

Financial Group, Inc., and thereby indirectly acquire voting shares of Pan American Bank, both of Chicago, Illinois.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Millstadt Bancshares, Inc., and thereby indirectly acquire voting shares of First National Bank of Millstadt, both of Millstadt, Illinois.

Board of Governors of the Federal Reserve System, July 23, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–14446 Filed 7–25–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Global Health Affairs; Guidance Regarding Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003

AGENCY: Office of Global Health Affairs, HHS.

ACTION: Guidance.

SUMMARY: Section 301(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (the ''Leadership Act''), P.L. No. 108–25 (May 27, 2003), 22 U.S.C. 7631(f), prohibits the award of grants, contracts or cooperative agreements for activities funded under the Act to any organization that does not have an explicit policy opposing prostitution and sex trafficking. Section 301(f) states as follows:

Limitation.—No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.

The following guidance provides additional information on the policy requirement expressed in this law for entities that receive grants, contracts, or cooperative agreements from the U.S. Department of Health and Human Services (''HHS'') to implement programs or projects under the authority of the Leadership Act. Specifically, it describes the legal, financial, and organizational separation that should exist between these recipients of HHS funds and an affiliate organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking.

FOR FURTHER INFORMATION CONTACT: Maggie Wynne, Office of Global Health Affairs, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 639H, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: This guidance is designed to provide additional clarity for Contracting and Grant officers, Contracting Officers' Technical Representatives, Program Officials and implementing partners (e.g., grantees, contractors) of HHS regarding the application of language in Notices of Availability, Requests for Proposals, and other documents pertaining to the policy requirement expressed in 22 U.S.C. 7631(f), which provides that organizations receiving Leadership Act funds must have a policy explicitly opposing prostitution and sex trafficking (the ''policy requirement'').

In enacting the statute from which this requirement originates, the Leadership Act, Congress developed a framework to combat the global spread of HIV/AIDS, tuberculosis, and malaria. As a part of that Act, to ensure that the Government's organizational partners will not undermine this goal through the promotion of counterproductive activities, the Leadership Act provides that all funding recipients, subject to limited exceptions, must have a policy explicitly opposing prostitution and sex trafficking. It is critical to the effectiveness of Congress's plan and to the U.S. Government's foreign policy underlying this effort, that the integrity of Leadership Act programs and activities implemented by organizations receiving Leadership Act funds is maintained, and that the U.S. Government's message opposing prostitution and sex trafficking is not confused by conflicting positions of these organizations.

Accordingly, the U.S. Government provides this ''Organizational Integrity'' Guidance to clarify that the Government's organizational partners that have adopted a policy opposing prostitution and sex-trafficking may, consistent with the policy requirement, maintain an affiliation with separate organizations that do not have such a policy, provided that such affiliations do not threaten the integrity of the Government's programs and its message opposing prostitution and sex trafficking, as specified in this guidance. To maintain program integrity, adequate separation as outlined in this guidance is required between an affiliate which expresses views on prostitution and sex trafficking contrary to the government's message and any federally-funded partner organization.

The criteria for affiliate independence in this guidance is modeled on criteria upheld as facially constitutional by the U.S. Court of Appeals for the Second Circuit in *Velzquez* v. *Legal Services Corporation,* 164F.3d 757,767 (2d cir. 1999), and *Brooklyn Legal Services Corp.* v. *Legal Services Corp.,* 462 F.3d 219, 229–33 (2d Cir. 2006), cases involving similar organization-wide limitations applied to recipients of federal funding.

This guidance clarifies that an independent organization affiliated with a recipient of Leadership Act funds need not have a policy explicitly opposing prostitution and sex trafficking for the recipient to maintain compliance with the policy requirement. The independent affiliate's position on these issues will have no effect on the recipient organization's eligibility for Leadership Act funds, so long as the affiliate satisfies the criteria for objective integrity and independence detailed in the guidance. By ensuring adequate separation between the recipient and affiliate organizations, these criteria guard against a public perception that the affiliate's views on prostitution and sex-trafficking maybe attributed to the recipient organization and thus to the government, thereby avoiding the risk of confusing the Government's message opposing prostitution and sex trafficking.

This guidance may be shared with HHS implementing partners. *Guidance:* HHS contractors, grantees and recipients of cooperative agreements (''Recipients'') must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking (''restricted activities''). A recipient will be found to have objective integrity and independence from such organization if:

(1) The affiliated organization is a legally separate entity;

(2) The affiliated organization receives no transfer or Leadership Act funds, and Leadership Act funds do not subsidize restricted activities; and

(3) The Recipient is physically and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors

relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel, management, and governance;

(ii) The existence of separate accounts, accounting records, and timekeeping records;

(iii) The degree of separation from facilities, equipment and supplies used by the affiliated organization to conduct restricted activities, and the extent of such restricted activities by the affiliate;

(iv) The extent to which signs and other forms of identification which distinguish the Recipient from the affiliated organization are present, and signs and materials that could be associated with the affiliated organization or restricted activities are absent; and

(v) The extent to which HHS, the U.S. Government and the project name are protected from public association with the affiliated organization and its restricted activities in materials such as publications, conference and press or public statements.

EFFECTIVE DATE: This guidance is effective on the final date of publication.

Dated: July 23, 2007.

William R. Steiger,

Director.

[FR Doc. 07–3658 Filed 7–23–07; 11:59 am]

BILLING CODE 4150–38–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0666]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB Control No. 0920–0666)—Revision—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and to promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. The data will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks.

Healthcare institutions that participate in NHSN voluntarily report their data to CDC using a web browser-based technology for data entry and data management. Data are collected by trained surveillance personnel using written standardized protocols. This application to OMB includes a significant increase in the number of burden hours to the previously approved data collection. The increase is due to inclusion of new forms and an increased number of respondents.

NHSN was first approved by OMB in 2005 and CDC proposes to revise this data collection by adding new modules to the NHSN as well as modifying currently approved forms. Four new forms are proposed: (1) Healthcare Worker Influenza Vaccination form; (2) Healthcare Worker Influenza Antiviral Medication Administration form; (3) Pre-season survey on Influenza Vaccination Programs for Healthcare Workers; and (4) Post-season Survey on Influenza Vaccination Programs for Healthcare Workers. The purpose of these new forms is to help participating healthcare institutions and CDC to: (1) Monitor influenza vaccination coverage among healthcare personnel at individual facilities and to provide aggregate coverage estimates for all participating facilities; (2) monitor progress towards attaining the Healthy People 2010 goal of 60% vaccination coverage among healthcare personnel; (3) monitor influenza vaccination coverage by ward/unit of the facility or occupational group so that areas or groups with low vaccination rates can be targeted for interventions; (4) monitor adverse reactions related to receipt of the vaccine or receipt of antiviral medications; and (5) assess the characteristics of influenza vaccination programs pre- and post-influenza season to identify practices associated with high immunization rates. The total estimated annual burden for these forms is 13,800 hours.

CDC is proposing to add an additional form, Central Line Insertion Practices Monitoring Form, to the Patient Safety Component Device Associated Module. This new form will enable participating facilities and CDC to (1) monitor central line insertion practices in individual patient care units and facilities and provide aggregate data for all participating facilities (facilities have the option of recording inserter-specific adherence data); (2) link gaps in recommended practice with the clinical outcome both in individual facilities and for all participating facilities; (3) facilitate quality improvement by identifying specific gaps in adherence to recommended prevention practices, thereby helping to target intervention strategies for reducing central line infection rates. The total estimated annual burden for this form is 12,500 hours.

CDC proposes to add the Multi-Drug Resistant Organism (MDRO) Prevention Process Monitoring Module to the Patient Safety Component. This module consists of four forms: (1) MDRO Prevention Process Monitoring Form; (2) MDRO Infection Event Form; (3) Laboratory-identified MDRO Event Form; and (4) Laboratory-identified MDRO Event Summary Form. The purpose of these forms is to: (1) Monitor processes and practices in individual patient care units and facilities and to provide aggregate adherence data for all participating facilities; (2) link gaps in recommended practice with the clinical outcome (i.e., MDRO infection) both in individual facilities and for all participating facilities; (3) facilitate quality improvement by identifying specific gaps in adherence to

recommended prevention practices, thereby helping to target intervention strategies for reducing MDRO infection rates. The total estimated annual burden for these forms is 244,500 hours.

The fourth new proposed collection to the NHSN is the High Risk Inpatient Influenza Vaccination Module. This module consists of four forms: (1) Influenza High Risk Inpatient Influenza Vaccine Summary Form—Method A; (2) Influenza High Risk Inpatient Influenza Vaccine Summary Form—Numerator Data Form Method B; (3) Influenza High Risk Inpatient Influenza Vaccine Summary Form—Method B; and (4) Influenza High Risk Inpatient Influenza Vaccine—Denominator Form Method B. The purpose of these forms is to: (1) Monitor influenza vaccination practices for high risk patients and provide aggregate data in regard to the number of high risk patients receiving vaccination, those already vaccinated, and those who decline due to medical contraindications or other reasons; and (2) to identify reasons that high risk patients are not receiving influenza vaccination. The total estimated annual burden of these forms is 161,250 hours.

CDC is also proposing to open enrollment to any healthcare facility; therefore this submission includes a registration form (Registration Form) to collect necessary registration information. The total estimated annual burden for this form is 125 hours.

A Long Term Acute Care Hospital (LTACH) survey form is included in this submission. This survey will allow long term acute care hospitals and CDC to collect information on LTACH characteristics, infection control practices, and microbiology laboratory practices. This data will provide CDC with more comprehensive information on all of the types of facilities that utilize the NHSN. The total estimated annual burden for this form is 38 hours.

Finally, CDC also proposes to make minor edits and modifications to currently approved forms.

CDC is also adding an increased number of participating healthcare institutions from a wide spectrum of settings. Part of this increase in burden hours is due to the passage of legislation in many states requiring mandatory reporting of healthcare-associated infections. Some states plan to use or are using NHSN as their data collection system to meet this mandate.

Participating institutions must have a computer capable of supporting an Internet service provider (ISP) and access to an ISP. The only other cost to respondents is their time to complete the appropriate forms.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form	Number of respondents	Average number of responses per respondent	Average burden per response (in hours)	Total burden hours
Facility Contact Information	1,500	1	10/60	250
Patient Safety Component Hospital Survey	1,500	1	30/60	750
Agreement to Participate and Consent	1,500	1	15/60	375
Group Contact Information	1,500	1	5/60	125
Patient Safety Monthly Reporting Plan	1,500	9	35/60	7,875
Healthcare Personnel Safety Reporting Plan	150	9	10/60	225
Primary Bloodstream Infection (BSI)	1,500	36	30/60	27,000
Pneumonia (PNEU)—also includes Any Patient Pneumonia Flow Diagram and Infant and Children Pneumonia Flow Diagram	1,500	72	30/60	54,000
Urinary Tract Infection (UTI)	1,500	27	30/60	20,250
Surgical Site Infection (SSI)	1,500	27	30/60	20,250
Dialysis (DI)	80	90	15/60	1,800
Antimicrobial Use and Resistance (AUR)—Microbiology Laboratory Data	1,500	45	3	202,500
Antimicrobial Use and Resistance—Pharmacy Data	1,500	36	2	108,000
Denominators for Intensive Care Unit (ICU)/Other locations (Not NICU or SCA)	1,500	18	5	135,000
Denominators for Specialty Care Area (SCA)	1,500	9	5	67,500
Denominators for Neonatal Intensive Care Unit (NICU)	1,500	9	4	54,000
Denominator for Procedure	1,500	540	8/60	108,000
Denominator for Outpatient Dialysis	80	9	5/60	60
Patient Safety Component—Outpatient Dialysis Center Practices Survey	80	1	1	80
List of Blood Isolates	1,500	1	1	1,500
Manual Categorization of Positive Blood Cultures	1,500	1	1	1,500
Exposures to Blood/Body Fluids	150	50	1	7,500
Healthcare Personnel Post-exposure Prophylaxis	150	10	15/60	375
Healthcare Personnel Demographic Data	150	200	20/60	10,000
Healthcare Personnel Vaccination History	150	300	10/60	7,500
Annual Facility Survey	150	1	8	1,200
Implementation of Engineering Controls	150	1	30/60	75
Healthcare Worker Survey	150	100	10/60	2,500
Healthcare Personnel Influenza Vaccination Form	150	500	10/60	12,500
Healthcare Personnel Influenza Antiviral Medication Administration Form	150	50	10/60	1,250
Pre-season Survey on Influenza Vaccination Programs for Healthcare Workers	150	1	10/60	25
Post-Season Survey on Influenza Vaccination Programs for Healthcare Workers	150	1	10/60	25
Central Line Insertion Practices Adherence Monitoring Form (CLIP)	1,500	100	5/60	12,500
Laboratory Testing	150	100	15/60	3,750
MDRO Prevention Process and Outcome Measures Monthly Monitoring Form	1,500	24	10/60	6,000
MDRO Infection Event Form	1,500	72	30/60	54,000
Laboratory Identified MDRO Event Form (LIME)	1,500	240	30/60	180,000
Registration Form	1,500	1	5/60	125

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Form	Number of respondents	Average number of responses per respondent	Average burden per response (in hours)	Total burden hours
High Risk Inpatient Influenza Vaccine—Summary Form Method A	1,500	5	16	120,000
High Risk Inpatient Influenza Vaccine-Numerator Data Form Method B	500	250	10/60	20,833
High Risk Inpatient Influenza Vaccine—Summary Form Method B	500	5	4	10,000
High Risk Inpatient Influenza Vaccine—Denominator Data Form Method B	500	250	5/60	10,417
Laboratory Identified MDRO Event—Summary Form	1,500	3	1	4,500
Long-term Acute Care Hospital Survey	75	1	30/60	38
Total				1,276,153

Dated: July 19, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–14432 Filed 7–25–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–0106]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Preventive Health and Health Services Block Grant, Annual Application and Reports—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1994, OMB approved the collection of information provided in the grant applications and annual reports for the Preventive Health and Health Services Block Grant (OMB #0920–0106). This approval expires on October 31, 2008. * * * CDC is requesting OMB clearance for this legislatively mandated information collection until January 31, 2011. The request is to approve the development and adherence to *Healthy People 2010*, the Nation's Health Objectives which was released the Spring of 2000. The PHHS block grant is mandated according to section 1904 to adhere to the Healthy People framework, therefore, the current application and report format was restructured to coincide with 2010.

This information collected through the applications from the official State health agencies is required from section 1905 of the Public Health Service Act. The information collected from the annual reports is required by section 1906. * * * The data collection tool is being moved from software that is installed to each user's desktop to a web-based system. The following changes will be incorporated into the web-based system: (1) Applications are referred to as Work Plans, (2) Grantees are asked to submit Work Plans within recommended page ranges based on the amount of funding with the objective of reducing the number of pages submitted per grantee, (3) Review functions have been added to the Work Plan, Success Stories, and Annual Report sections, (4) The rationale that was used by the Preventive Health and Health Services Block Grant (PHHSBG) Advisory Committee to prioritize use of PHHSBG funds is identified via check boxes versus a free form text field, (5) Information is captured relative to the percent of time dedicated to the PHHSBG by the Block Grant Coordinator and other Full Time Equivalents (FTEs) that are paid for in whole or in part with Block Grant dollars, (6) Grantees select the Evidence Based Guideline or Best Practice that is used as the basis for interventions from a pre-defined list, (7) Grantees select the CDC Goals that are being addressed with Block Grant Funds from a pre-defined list and identify the location wherein the funds are being applied, (8) Information items are broken down into discrete fields, for example, specific begin and end dates are entered for objectives and activities, and the components for a SMART (Specific Measurable Achievable, Realistic and Time based) objective are entered individually versus via free form text fields, (9) Grantees select a percent from a pre-defined list in the Annual Report section to identify the extent to which objectives and activities have been accomplished. Written detail is provided only for those items that are 'exceptions' to projected outcomes, (10) A Compliance Review section has been added to provide grantees with general information regarding the Compliance Review process and specific information that pertains to past reviews of their state/territory/tribe.

The total burden hours is estimated at 3355 hours, a reduction of 915 hours below the previous data collection estimate (4270). The number of hours is equal to 61 grantees × 25 hours (1525 hrs) for completion of the application and 61 grantees × 30 hours (1830 hrs) for completion of the annual report. Respondent burden is based upon experience with the Grant Application and Reporting system that is used to complete applications and annual reports.

There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hours)
Grantees	Annual Application	61	1	25	1525
	Annual Report	61	1	30	1830
Total					3355

Dated: July 20, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–14439 Filed 7–25–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC), Science and Program Review Subcommittee

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces, the following meeting for the aforementioned committee and subcommittee:

Name: Science and Program Review Subcommittee (SPRS).

Times and Date: 11:30 a.m.–11:35 a.m., August 20, 2007 (Open). 11:35 a.m.–12:30 p.m., August 20, 2007 (Closed).

Place: CDC, Koger Center, Vanderbilt Building, Room 1006, 2939 Flowers Road, Atlanta, Georgia 30341–3724.

Purpose: The subcommittee provides advice on the needs, structure, progress, and performance of programs in the National Center for Injury Prevention and Control (NCIPC).

Matters To Be Discussed: The subcommittee will have a secondary review, discussion, and evaluation on the individual research grant and cooperative agreement applications submitted in response to the two Fiscal Year 2007 Requests for Applications (RFAs) related to the following individual research announcements: RFA–CE–05–020, Youth Violence Prevention through Community-Level Change; and RFA–CE–07–011, Multi-Level Parent Training Effectiveness Trial—Phase II (U49).

Following this meeting, the voting members of ACIPC will meet via teleconference to vote on the recommendations of the SPRS regarding the RFAs.

Name: Advisory Committee for Injury Prevention and Control.

Times and Date: 12:30 p.m.–12:55 p.m., August 20, 2007 (Open). 12:55 p.m.–1:30 p.m., August 20, 2007 (Closed).

Place: CDC, Koger Center, Vanderbilt Building, Room 1006, 2939 Flowers Road, Atlanta, Georgia 30341–3724.

Purpose: The committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Director, CDC, and the Director, NCIPC regarding feasible goals for the prevention and control of injury. The committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters To Be Discussed: Agenda items for the open portion include the call to order and introductions and request for public comments. The committee will vote on the results of the secondary review. This portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and (b), title 5 U.S.C., and the Determination of the Acting Director, Management Analysis and Services Office, CDC pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Ms. Amy Harris, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S K61, Atlanta, Georgia 30341–3724, Telephone (770) 488–4936.

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: July 17, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–14430 Filed 7–25–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0290]

Draft Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells (PBSCs)'' dated July 2007. The draft guidance document discusses certain cell selection devices that minimally manipulate autologous PBSCs at the point of care for specific clinical indications, and the applicability of the requirements to such PBSCs. The guidance also discusses the submission of data intended to support approval of cell selection devices.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance submit written or electronic comments on the draft guidance by October 24, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–

800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Cell Selection Devices for Point of Care Production of Minimally Manipulated Autologous Peripheral Blood Stem Cells (PBSCs)'' dated July 2007. The draft guidance document discusses certain cell selection devices that minimally manipulate autologous PBSCs at the point of care for specific clinical indications, and the applicability of the requirements of 21 CFR part 1271 to such PBSCs. The guidance also discusses the submission of data intended to support approval of cell selection devices.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under 0910–0078; the collections of information in 21 CFR part 814 have been approved under 0910–0231; the collections of information in 21 CFR part 820 have been approved under 0910–0073; and the collections of information in 21 CFR part 822 have been approved under 0910–0449.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–3659 Filed 7–23–07; 12:02 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0347]

Draft Guidance for Industry and Food and Drug Administration Staff; In Vitro Diagnostic Multivariate Index Assays; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance entitled ''In Vitro Diagnostic Multivariate Index Assays.'' FDA is issuing this revised draft guidance to address the definition and regulatory status of a class of In Vitro Diagnostic Devices referred to as In Vitro Diagnostic Multivariate Index Assays (IVDMIAs). The revised draft guidance also addresses premarket and postmarket requirements with respect to IVDMIAs. The initial draft of this guidance was issued September 7, 2006.

DATES: Submit written or electronic comments on this draft guidance by August 27, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''In Vitro Diagnostic Multivariate Index Assays'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850 or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Courtney Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0694.

For further information concerning the guidance as it related to devices regulated by CBER: Martin Ruta, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3518.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 7, 2006 (71 FR 52800). FDA published a notice of availability of the initial draft guidance to address the definition and regulatory status of a class of in vitro diagnostic devices referred to as ''In Vitro Diagnostic Multivariate Index Assays (IVDMIAs).'' The initial draft guidance also addressed premarket and postmarket requirements with respect to IVDMIAs.

An IVDMIA, as defined in the draft guidance document, is a device within the meaning of the Federal Food, Drug, and Cosmetic Act (the act). Some IVDMIAs are laboratory-developed tests (LDTs); laboratory-developed IVDMIAs are a specific subset of LDTs. While FDA has stated that ''clinical laboratories that develop (in-house) tests

are acting as manufacturers of medical devices and are subject to FDA jurisdiction under the Act,'' 62 FR 62243 to 62249 (November 21, 1997), the agency has generally exercised enforcement discretion over most standard LDTs. However, in the draft guidance, FDA recognizes that IVDMIAs include elements that are not among the primary ingredients of standard LDTs (e.g., complex, unique, interpretation functions). IVDMIAs thus do not fall within the scope of LDTs over which FDA has generally exercised enforcement discretion.

IVDMIAs raise significant issues of safety and effectiveness. These types of tests are developed based on observed correlations between multivariate data and clinical outcome, such that the clinical validity of the claims is not transparent to patients, laboratorians, and clinicians who order these tests. Additionally, IVDMIAs frequently have a high risk intended use. FDA is concerned that patients and healthcare practitioners are relying upon IVDMIAs with high risk intended uses to make critical healthcare decisions without any independent assurance that the IVDMIA has been properly clinically validated, and without any ability to assess whether the test yields clinically valid results.

With this revised draft guidance document, FDA seeks to identify IVDMIAs as a discrete category of device, and to clarify that, even when offered as LDTs, IVDMIAs must meet pre- and post-market device requirements under the act and FDA regulations, including premarket review requirements in the case of most class II and III devices.

FDA received and considered approximately 60 sets of comments on the initial draft guidance document, including comments provided at a public meeting that was held on February 8, 2007. After taking the comments into consideration, the FDA has updated the draft guidance document to provide clarifications as needed.

Certain comments on the initial draft guidance document requested that FDA undertake notice and comment rulemaking rather than issue a guidance document in order to allow sufficient opportunity for public input. In response to this concern, FDA extended the comment period on the draft guidance document from 90 days to 180 days, March 5, 2007 (71 FR 68822), and held a public meeting to provide a forum for presentations and comments on the draft guidance document. The meeting was attended by 266 people representing a cross-section of interested stakeholders including industry, consumer groups, and the medical community. FDA has carefully considered the comments it has received. Many comments reflect that stakeholders construed the definition of IVDMIAs in the initial draft guidance document to encompass a wider range of tests than FDA had intended. The initial draft guidance document has been revised to clarify the definition of an IVDMIA and to provide examples of tests that the agency does and does not consider to be IVDMIAs. This section of the draft guidance was modified so that stakeholders can more easily understand the nature of tests designated as IVDMIAs, and manufacturers can more easily determine whether their tests are IVDMIAs. However, the clarifications do not alter the scope or intent of the definition of an IVDMIA found in the initial draft guidance document.

In response to additional comments received, the revised draft guidance document now clarifies FDA regulatory mechanisms in general, such as how devices are classified and reviewed based on the risk of the intended use, how laboratory-developed IVDMIAs should be labeled, and how manufacturers can update and improve cleared or approved devices using existing mechanisms within the regulatory framework. These existing mechanisms enable manufacturers to bring innovative new tests to the market and ensure that they can be updated and improved as new scientific information becomes available. While this information is generally available in existing regulations, guidance documents, and on the FDA Web site, the revised draft guidance provides a summary of this information with a focus on IVDMIAs in order to assist those stakeholders who are not familiar with existing FDA requirements.

In other comments, some stakeholders expressed concern that requiring FDA regulatory compliance for IVDMIAs has the potential to discourage the development of new tests for rare diseases. A manufacturer of an IVDMIA for a disease or condition that affects small patient populations may find that research and development costs exceed market returns. The draft guidance has been revised to indicate FDA's intent to exercise enforcement discretion for laboratory-developed IVDMIAs that are intended to diagnose rare diseases (i.e., IVDMIAs that meet the definition of Humanitarian Use Devices under 21 CFR part 814 Subpart H).

Finally, the draft guidance document clarifies that laboratories that manufacture IVDMIAs should follow the Medical Device Reporting requirements for manufacturers, 21 CFR part 803 for their IVDMIA device(s). As in the initial draft guidance, the revised draft guidance indicates that FDA intends to issue guidance to assist laboratories that manufacture IVDMIAs in complying with the Quality System regulation (QS), 21 CFR part 820. In response to comments that expressed concern about coming into compliance with the QS regulation, the revised draft guidance indicates that until such a final guidance is published, FDA intends to exercise enforcement discretion with regard to post-market QS requirement enforcement for laboratories that manufacture IVDMIAs, recognizing that some Clinical Laboratory Improvement Amendments of 1988 (CLIA' 88) requirements may partially fulfill corresponding QS regulation requirements.

FDA is issuing this revised draft in order to gather significant new comments before issuing a final version of the guidance. Because the agency believes it has addressed the most important concerns raised by the comments it received on the initial draft, and because it is important to issue a final guidance to provide clarity for stakeholders, FDA is providing a comment period of 30 days following publication of this document.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on IVDMIAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''In Vitro Diagnostic Multivariate Index Assays,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1610 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal**

Register reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the CBER Internet site at *http://www.fda.gov/cber/guidelines.htm* or on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notifications (21 CFR part 807, subpart E, OMB control number 0910–0120) premarket approval applications (21 CFR part 814, OMB control number 0910–0231), investigational device exemptions (21 CFR part 812, OMB control number 0910–0078), quality system regulation (21 CFR part 820, OMB control number 0910–0073), and medical device reporting (21 CFR part 803, OMB control number 0910–0437). The labeling provisions addressed in this guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document on or before August 27, 2007. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–3660 Filed 7–23–07; 12:02 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0333]

Guidance; Emergency Use Authorization of Medical Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Emergency Use Authorization of Medical Products.'' The guidance explains FDA's policies for authorizing the use of an unapproved medical product or an unapproved use of an approved medical product during a declared emergency. This guidance finalizes the draft guidance published in the **Federal Register** of July 5, 2005 (70 FR 38689).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Counterterrorism Policy and Planning (HF–29), Food and Drug Administration, 5600 Fishers Lane, rm. 14C–26, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–827–5671. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Charlotte Christin, Office of Counterterrorism Policy and Planning (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4067.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry, government agencies, and FDA staff entitled ''Emergency Use Authorization of Medical Products.'' This guidance describes the agency's general recommendations and procedures for issuance of emergency use authorizations (EUA) under section 564 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bbb–3), which was amended by the Project BioShield Act of 2004 (Public Law 108–276).

Section 564 of the act provides for authorization of ''emergency use'' of a medical product, after a declaration of emergency justifying an authorization is issued by the Secretary of Health and Human Services (the Secretary) based on one of the following grounds: A determination by the Secretary of Homeland Security that there is an actual or potential ''domestic emergency;'' a determination by the Secretary of Defense that there is an actual or potential ''military emergency;'' or a determination by the Secretary that there is a public health emergency under section 319 of the Public Health Service Act that affects or has the significant potential to affect national security. The Commissioner of Food and Drugs may issue an EUA for an unapproved drug, device, or biologic, or an unapproved use of an approved drug, device, or biologic, during a declared emergency if the statutory criteria set forth in section 564 of the act are met.

On July 5, 2005, FDA published for comment in the **Federal Register** a draft of this guidance. Comments received from industry, associations, health care professionals, consumers, and staff of other Federal agencies have been taken into consideration in finalizing this guidance. Changes are based on a thorough review of all comments received. As revised, the guidance includes a more detailed discussion of the scope of preemption (where applicable) and also provides points of contact for further information on several Federal liability protection and compensation programs.

This guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). It represents the agency's current thinking on emergency use authorizations of medical products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). These collections of information have been approved under OMB control numbers 0910–0308, 0910–0230, 0910–0471, 0910–0014, 0910–0078, and 0910–0595.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–3661 Filed 7–23–07; 12:28 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Stone Lakes National Wildlife Refuge, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan and finding of no significant impact.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Stone Lakes National Wildlife Refuge (Refuge) Final Comprehensive Conservation Plan (CCP), and Finding of No Significant Impact (FONSI) are available for distribution. The CCP prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuge for the next 15 years.

DATES: The CCP and FONSI are available now. Implementation of the CCP may begin immediately.

ADDRESSES: Copies of the CCP may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: David Bergendorf, CNO Refuge Planning Office, 2800 Cottage Way, W–1832, Sacramento, CA 95825. Copies of the CCP may be viewed at this address or at Stone Lakes National Wildlife Refuge, 1624 Hood-Franklin Road, Elk Grove, CA 95757. The CCP is also available for viewing and downloading online at: *http://www.fws.gov/stonelakes/ccp.htm.*

Printed copies of the CCP and FONSI are also available at the following libraries: Sacramento Central Library, 828 I Street, Sacramento, CA 95814; Arden-Dimick Library, 891 Watt Avenue, Sacramento, CA 95864; Belle Cooledge Library, 5600 South Land Park Drive, Sacramento, CA 95822; Elk Grove Library, 8962 Elk Grove Blvd., Elk Grove, CA 95624; Clarksburg Yolo County Library, 52915 Netherlands Road, Clarksburg, CA 95612; Colonial Heights Library, 4799 Stockton Blvd., Sacramento, CA 95820; Courtland Library Neighborhood Library, 170 Primasing Avenue, Courtland, CA 95615; and the Galt Branch Library (Marian O. Lawrence Library), 1000 Caroline Avenue, Galt, CA 95632.

FOR FURTHER INFORMATION CONTACT: Beatrix Treiterer, acting Project Leader, Stone Lakes National Wildlife Refuge, 1624 Hood-Franklin Road, Elk Grove, CA 95757 or David Bergendorf, Refuge Planner, 2800 Cottage Way, W–1832, Sacramento, CA 95825, phone (916) 414–6503.

SUPPLEMENTARY INFORMATION:

Background

The Refuge was established in 1994 primarily to protect and manage wintering habitat for migratory birds and to protect endangered and threatened species. The Refuge is located in the Beach-Stone Lakes Basin within the Sacramento Valley in southwestern Sacramento County; it lies south of the city of Sacramento, straddling Interstate 5 from the town of Freeport south to Lost Slough.

The Draft CCP and Environmental Assessment (EA) was available for a 30-day public review and comment period, which was announced via several methods including press releases; updates to constituents; and in the **Federal Register** (71 FR 55801, September 25, 2006). Due to requests from constituents, the review and comment period was extended for an additional 30 days. The Draft CCP/EA identified and evaluated three alternatives for managing the Refuge for the next 15 years. Alternative A was the no-action alternative, which described current Refuge management activities. Alternative B emphasized continued focus on providing wintering habitat for migratory birds and management for the benefit of special status species as well as expanding overall visitor services. Alternative C focused on providing wintering habitat for migratory birds and management for the benefit of endangered species, while placing greater emphasis on management and restoration of historic habitat conditions and expanding overall visitor services.

The Service received 25 letters, faxes and e-mails, and one phone call on the Draft CCP and EA during the review period. Many comments were also received during two public comment meetings, which were held on October 4 and 5, 2006. The comments received were incorporated into the CCP, when possible, and are responded to in an appendix to the CCP. In the FONSI, Alternative B was selected for implementation and is the basis for the CCP. The FONSI documents the decision of the Service and is based on the information and analysis contained in the EA.

Under the selected alternative, the Refuge will continue its focus of providing wintering habitat for migratory birds and management to benefit endangered species. Management programs for migratory birds and other Central Valley wildlife will be expanded and improved and public use opportunities will also be expanded. The number of Refuge units open to the public will increase from one to five. In addition, environmental education, interpretation, wildlife observation, wildlife photography, hunting, and fishing programs will be expanded.

The selected alternative best achieves the Refuge's purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Dated: July 20, 2007.

Ken McDermond,

Acting Manager, California/Nevada Operations, Sacramento, California.

[FR Doc. E7–14425 Filed 7–25–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act (CAA)

In accordance with 28 CFR 50.7, notice is given that on July 20, 2007, the proposed Consent Decree in *United States* v. *E.I. du Pont de Nemours & Co.,* Civil Action Number 1:07CV558, was lodged with the United States District Court for the Southern District of Ohio.

In this action, the United States alleges that E.I. du Pont de Nemours & Co. (DuPont) violated these provisions of the Clean Air Act: standards of performance for new stationary sources, 42 U.S.C. 7411, also known as New Source Performance Standards (''NSPS'') preconstruction requirements, 42 U.S.C. 7475, also known as Prevention of Significant Deterioration (''PSD'') requirements; and permit requirements, 42 U.S.C. 7503, also known as Title V requirements. The claims relate to four DuPont sulfuric acid manufacturing plants that are located in Darrow, La.; North Bend, Ohio; Richmond, Va., and Wurtland, Ky.

The Consent Decree requires DuPont to pay a civil penalty of $4,125,000 of which $2,100,000 (60 percent) will be paid to the United States and the rest will be divided among the State of Louisiana, the State of Ohio, and the Commonwealth of Virginia. The Consent Decree further requires DuPont, at all four plants, to meet certain emission limits (for sulfur dioxide and acid mist) and to comply with applicable NSPS requirements (including performance testing and monitoring). At the plant in Louisiana, DuPont will comply with the new emission limits by installing pollution control technology. At each of the other three plants, the Consent Decree provides DuPont an option to install the required technology or to cease operations and surrender the air pollution permits and/or emissions credits.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *E.I. du Pont de Nemours & Co.,* D.J. Ref. 90–5–2–1–08181.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 221 E. 4th St., Suite 400, Cincinnati, Ohio 45202, and at U.S. EPA Region V, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the ''U.S. Treasury'' or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3648 Filed 7–25–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,801]

Alcraft, Pawtucket, RI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 9, 2007 in response to a worker petition filed by a company official on behalf of workers at Alcraft, Pawtucket, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 13th day of July 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14414 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,771A]

Burlington House Pioneer Plant, Burlington House Division, a Subsidiary of International Textile Group Currently Known as Burlington Manufacturing Services, Burlington, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 9, 2007, applicable to workers of Burlington House Pioneer Plant, Burlington House Division, a subsidiary of International Textile Group, Burlington, North Carolina. The notice was published in the **Federal Register** on February 21, 2007 (72 FR 7908).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of dyed yarn and warps for ticking.

New information shows that due to a change in ownership on May 1, 2007, Burlington House Pioneer Plant, Burlington House Division, a subsidiary of International Textile Group is currently known as Burlington Manufacturing Services.

Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Burlington Manufacturing Services.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Burlington House Pioneer Plant, Burlington House Division, a subsidiary of International Textile Group, currently known as Burlington Manufacturing Services who were adversely affected by increased company imports.

The amended notice applicable to TA–W–60,771A is hereby issued as follows:

All workers of Burlington House Pioneer Plant, Burlington House Division, a subsidiary of International Textile Group, currently known as Burlington

Manufacturing Services, Burlington, North Carolina, who became totally or partially separated from employment on or after December 23, 2006, through February 9, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of July 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14417 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,284]

Continental Structural Plastics, Petoskey, MI; Notice of Revised Determination on Reconsideration

On June 20, 2007, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on July 11, 2007 (72 FR 37800).

The previous investigation initiated on April 11, 2007, resulted in a negative determination issued on May 16, 2007, was based on the finding that imports of plastic automotive parts did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on May 30, 2007 (72 FR 30033).

In the request for reconsideration, the petitioner provided additional information regarding the impact of foreign trade on production and employment at the subject firm.

Upon further review of the initial investigation, the Department requested additional list of customers from the subject firm. The new information revealed that Continental Structural Plastics, Petoskey, Michigan, supplied plastic automotive parts that were used in the production of passenger vehicles, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Continental Structural Plastics, Petoskey, Michigan, qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Structural Plastics, Petoskey, Michigan, who became totally or partially separated from employment on or after March 20, 2006, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 19th day of July 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14420 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,428]

Dana Corporation Heavy Vehicle Technologies and System Operations Product Service Center Including On-Site Leased Workers of Adecco, Statesville, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 24, 2007, applicable to workers of Dana Corporation, Heavy Vehicle Technologies and System Operations, Product Service Center, Statesville, North Carolina. The notice was published in the **Federal Register** on June 7, 2007 (72 FR 31616).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of axles, transmissions, torque converters and transfer cases.

New information shows that leased workers of Adecco were employed on-site at the Statesville, North Carolina location of Dana Corporation, Heavy Vehicle Technologies and System Operations, Product Service Center. The Department has determined that the Adecco workers were sufficiently under the control of Dana Corporation to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Adecco working on-site at the Statesville, North Carolina location of the subject firm.

The intent of the Department's certification is to include all workers employed at Dana Corporation, Heavy Vehicle Technologies and System Operations, Product Service Center, Statesville, North Carolina who were adversely affected by a shift in production to Belgium.

The amended notice applicable to TA–W–61,428 is hereby issued as follows:

All workers of Dana Corporation, Heavy Vehicle Technologies and System Operations, Product Service Center, including on-site leased workers of Adecco, Statesville, North Carolina, who became totally or partially separated from employment on or after April 30, 2006, through May 24, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of July 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14419 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *July 9 through July 13, 2007.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61,603; Gage Pattern Inc., Norway, ME: May 30, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,622; ADP Leo Wolleman, Inc., d/b/a Color Craft, New York, NY: June 2, 2006

TA–W–61,705; RF Monolithics, Inc., Dallas, TX: June 18, 2006

TA–W–61,706; Wheeling-Pittsburgh Steel, Mingo Junction, OH: May 31, 2006

TA–W–61,741; Ameriwood Industries, Inc., A Wholly Owned Subsidiary of Dorel Industries, Dowagiac, MI: June 19, 2006

TA–W–61,484; Intermet Corporation, Lynchburg Foundry LLC, Lynchburg, VA: May 3, 2006

TA–W–61,500; Lancaster Glass Corp, Lancaster, OH: April 17, 2006

TA–W–59,929; Cochrane Furniture Co., Case Division, Lincolnton, NC: August 5, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,675; American Kleaner Manufacturing Company, Select Temporary Staffing, Rancho Cucamonga, CA: June 12, 2006

TA–W–61,688; Saline Metal Systems, LLC, Saline Division, On-Site Leased Workers of Phoenix Services, LLC, Saline, MI: June 14, 2006

TA–W–61,690; Kentucky Derby Hosiery, Hopkinsville, KY: June 12, 2006

TA–W–61,694; Kone, Inc, McKinney, TX: June 11, 2006

TA–W–61,698; Dan River Inc., New York, NY: February 17, 2007

TA–W–61,718; U.S. Optical Disc, Inc., Sanford, ME: June 20, 2006

TA–W–61,739; Solectron Puerto Rico, Ltd, Ponce, PR: June 22, 2006

TA–W–61,594; Robert Bosch Tool Corporation, Holesaw Department, Lincolnton, NC: May 29, 2006

TA–W–61,594A; Robert Bosch Tool Corporation, Router Table Department, Lincolnton, NC: May 29, 2006

TA–W–61,733; Tubular Textile Machinery, Inc., d\b\a Navis Global Division, Lexington, NC: June 21, 2006

TA–W–61,736; Jones Companies, Ltd, 312 South 14th Plant, On-Site Leased Workers of Personnel Placements, Humboldt, TN: June 13, 2006

TA–W–61,747; Kimball Electronics, Kelly Services, Gaylord, MI: June 24, 2006

TA–W–61,756; Rogers Corporation, Durel Division, Chandler, AZ: June 26, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,553; Honeywell Resins and Chemicals, Resins and Chemicals Division, On-Site Leased Workers of Defender Services, Anderson, SC: May 21, 2006

TA–W–61,731; Biesemeyer Manufacturing Corp., On-Site Leased Workers of Allied Forces Temporary Services, Mesa, AZ: June 19, 2006

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,664; Quality Inspection & Consulting, Linden, TN: May 31, 2006

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–61,603; Gage Pattern Inc., Norway, ME

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–61,702; Hewlett Packard Co., Vancouver, WA

TA–W–61,723; Robin Industries, Inc., Fredericksburg Division, Fredericksburg, OH.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,627; Kimberly Clark Corporation, On-Site Leased

Workers From Warehouse Specialists, Corinth, MS

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,207; Gorecki Manufacturing, Inc., Milaca, MN.

TA–W–61,377; Mereen-Johnson Machine Company, Minneapolis, MN.

TA–W–61,760; Hutchinson Technology, Eau Claire, WI.

TA–W–61,531; James Jones Company, El Monte, CA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–61,606; Qwest Services Corporation, Quality Assurance Team, Denver Sales Center, Denver, CO.

TA–W–61,617; Ryder Integrated Logistics, Inc., Spring Hill, TN.

TA–W–61,724; Nukote International, Franklin, TN.

TA–W–61,762; St. Anthony's Health Center, Patient and Accounts Billing Department, Alton, IL.

TA–W–61,763; Unicare Life and Health Insurance Co., A Subsidiary of Wellpoint, Inc., Bolingbrook, IL.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *July 9 through July 13, 2007.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours, or will be mailed to persons who write to the above address.

Dated: July 20,2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14416 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,802]

Hoffman Industries, Inc., Sinking Spring, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 9, 2007, in response to a worker petition filed by a company official on behalf of workers at Hoffman Industries, Inc., Sinking Spring, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 18th day of July 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14421 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,648]

International Business Machines Corporation Tulsa, OK; Certification Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

The Department adopted a new interpretation regarding the Alternative Trade Adjustment Assistance (ATAA) program in order to provide equitable access to ATAA for worker groups whose petitions for Trade Adjustment Assistance (TAA) were still in process at the time of implementation of the ATAA program on August 6, 2003 or used an obsolete petition form that did not allow the petitioners to indicate whether or not they wished to request ATAA certification. Under this new interpretation, worker groups covered by the certification of a TAA petition that was in process on August 6, 2003 may request ATAA consideration for the TAA certified worker group. In addition, certified worker groups who filed TAA petitions after that date may also request ATAA if the petition did not include an option to apply for ATAA. The request must be made to the Department and may be made by anyone who was entitled to file the original petition under section 221(a)(1) of the Trade Act of 1974, as amended.

By letter dated June 4, 2007, five workers requested ATAA consideration for workers and former workers of International Business Machines Corporation, Tulsa, Oklahoma (subject firm) who are eligible to apply for TAA under petition TA–W–53,648.

In order for the Department to issue a certification of eligibility to apply for ATAA for the subject workers, the group eligibility requirements of section 246(a)(3)(A) of the Trade Act—(1) a significant number of adversely affected workers age 50 or over; (2) whether workers possess skills that are easily transferable; and (3)whether competitive conditions within the workers' industry are adverse—must be met. The Department has determined in this case that the requirements have been met.

The investigation revealed that at least five percent of the workforce at the subject firm is at least fifty years of age; that the subject worker group possesses skills that are not easily transferable; and that competitive conditions within the accounting industry are adverse.

Conclusion

After careful review of the facts obtained on investigation, I conclude that the requirements of section 246(a)(3)(A) of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of International Business Machines Corporation, Tulsa, Oklahoma, who became totally or partially separated from employment on or after November 26, 2002 through May 2, 2009, are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of July 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14418 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,751]

Tyco Electronics Corporation; Reading, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 26, 2007 in response to a worker petition filed by a company official on behalf of workers of Tyco Electronics Corporation, Reading, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of July 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–14422 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

SUMMARY: The Mine Safety and Health Administration (MSHA) enforces mine operator compliance with mandatory safety and health standards that protect miners and improve safety and health conditions in U.S. Mines. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web Site at *http://www.msha.gov/indexes/petition.htm.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Edward Sexauer, Chief, Regulatory Development Division at 202–693–9444 (Voice), *sexauer.edward@dol.gov* (e-mail), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (e-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2005–076–C.
FR Notice: 70 FR 75221 (December 19, 2005).
Petitioner: Blue Mountain Energy, Inc., 3607 County Road #65, Rangely, Colorado 81648.
Mine: Deserado Mine, MSHA I.D. No. 05–03505.
Regulation Affected: 30 CFR 75.312(c) (Main mine fan examinations and records).

• *Docket Number:* M–2005–086–C.
FR Notice: 71 FR 3890 (January 24, 2006).
Petitioner: Bear Gap Coal Company, Box 64 Kushwa Road, Spring Glen, Pennsylvania.
Mine: Bear Gap Coal Company No. 6 Slope Mine, MSHA I.D. No. 36–09296.
Regulation Affected: 30 CFR 49.2(b) (Availability of mine rescue teams).

• *Docket Number:* M–2006–001–C.
FR Notice: 71 FR 3890 (January 24, 2006).
Petitioner: Oxbow Mining, LLC, P.O. Box 535, 3737 Highway 133, Somerset, Colorado 81434.
Mine: Elk Creek Mine, MSHA I.D. No. 05–04674.
Regulation Affected: 30 CFR 75.1726(a) (Performing work from a raised position; safeguards.

• *Docket Number:* M–2006–010–C.
FR Notice: 71 FR 28714 (May 17, 2006).
Petitioner: Six M Coal Company, 647 South Street, Lykens, Pennsylvania 17048.
Mine: No. 1 Slope Mine, MSHA I.D. No. 36–09138.
Regulation Affected: 30 CFR 49.2(b) (Availability of mine rescue teams).

• *Docket Number:* M–2006–011–C.
FR Notice: 71 FR 28714 (May 17, 2006).
Petitioner: Six M Coal Company, 647 South Street, Lykens, Pennsylvania 17048.
Mine: No. 1 Slope Mine, MSHA I.D. No. 36–09138.
Regulation Affected: 30 CFR 75.1202–1(a) (Temporary notations, revisions, and supplements).

• *Docket Number:* M–2006–037–C.
FR Notice: 71 FR 56178 (September 26, 2006).
Petitioner: Ohio County Coal Company, 19050 Highway 1078 South, Henderson, Kentucky 42420.
Mine: Freedom Mine, MSHA I.D. No. 15–17587.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2006–041–C.
FR Notice: 71 FR 56179 (September 26, 2006).
Petitioner: Orchard Coal Company, 214 Vaux Road, Tremont, Pennsylvania 17981.
Mine: Orchard Slope Mine, MSHA I.D. No. 36–08346.
Regulation Affected: 30 CFR 75.360 (Preshift examination at fixed intervals).

• *Docket Number:* M–2006–085–C.
FR Notice: 72 FR 8204 (February 23, 2007).
Petitioner: Drummond Company, Inc., P.O. Box 10236, Birmingham, Alabama 35202.
Mine: Shoal Creek Mine, MSHA I.D. No. 01–02901.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2005–005–M.
FR Notice: 70 FR 48985 (August 22, 2005).
Petitioner: Phelps Dodge Bagdad, Inc., P.O. Box 245, Bagdad, Arizona 86321.
Mine: Phelps Dodge Bagdad, Inc. Mine, MSHA I.D. No. 02–00137.
Regulation Affected: 30 CFR 56–6309(b) (Fuel oil requirements for ANFO).

• *Docket Number:* M–2005–006–M.
FR Notice: 70 FR 52449 (September 2, 2005).
Petitioner: Chino Mines Company, P.O. Box 7, Hurley, New Mexico 88043.
Mine: Chino Mine, MSHA I.D. No. 29–00708.
Regulation Affected: 30 CFR 56.6309 (Fuel oil requirements for ANFO).

• *Docket Number:* M–2006–001–M.
FR Notice: 71 FR 13433 (March 15, 2007).
Petitioner: FMC Corporation, Box 872, Green River, Wyoming 82935.
Mine: FMC Westvaco Mine, MSHA I.D. No. 48–00152.
Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

• *Docket Number:* M–2006–002–M.
FR Notice: 71 FR 17145 (April 5, 2006).
Petitioner: Phelps Dodge Sierrita, Inc., 6200 W. Duval Mine Road, Green Valley, Arizona 85614.
Mine: Phelps Dodge Sierrita, Inc. Mine, MSHA I.D. No. 02–001447.
Regulation Affected: 30 CFR 5609 (Fuel oil requirements for ANFO).

• *Docket Number:* M–2006–005–M.
FR Notice: 71 FR 56175 (September 26, 2006).
Petitioner: Round Mountain Gold Corporation, P.O. Box 480, Round Mountain, Nevada 89045.
Mine: Smoky Valley Common Operation, MSHA I.D. No. 26–00594).
Regulation Affected: 30 CFR 56–6309(b) (Fuel oil requirements for ANFO).

• *Docket Number:* M–2006–016–M.
FR Notice: 72 FR 8204 (February 23, 2007).
Petitioner: Phelps Dodge Morenci, Inc., 4521 U.S. Highway 191, Morenci, Arizona 85540.
Mine: Morenci Mine, MSHA I.D. No. 02–00024.
Regulation Affected: 30 CFR 56.6309(b) (Fuel oil requirements for ANFO).

Dated: July 20, 2007.

Jack Powasnik,

Acting Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–14445 Filed 7–25–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

National Science Board ad hoc Committee on Nominations for the Class of 2008–2014; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Nominations for the class of 2008–2014, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

Date and Time: Thursday, July 26, 2007 at 12 Noon.

Subject Matter: Discussion of candidates for the National Science Board Membership for the term 2008–2014.

Status: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Ann Noonan, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Russell Moy,

Attorney-Advisor.

[FR Doc. E7–14523 Filed 7–25–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Comprehensive Decommissioning Program, Including Annual Data Collection, OMB 3150–xxxx.

2. *Current OMB approval number:* OMB No. 3150–xxxx.

3. *How often the collection is required:* Annually (to keep site information current).

4. *Who is required or asked to report:* Agreement States who have signed Section 274(b) Agreements with NRC and are regulating uranium recovery and/or complex sites undergoing decommissioning.

5. *The number of annual respondents:* 34.

6. *The number of hours needed annually to complete the requirement or request:* 677 hours (approximately 20 hours per respondent).

7. *Abstract:* Agreement States will be asked to provide information about uranium recovery and complex sites undergoing decommissioning regulated by the Agreement States on an annual basis. The information request will allow the NRC to compile, in a centralized location, more complete information on the status of decommissioning and decontamination in the United States in order to provide a national perspective on decommissioning. The information will be made available to the public by the NRC in order to ensure openness and promote communication to enhance public confidence in the national decommissioning program. This does not apply to information, such as trade secrets and commercial or financial information provided by the Agreement States as privileged or confidential. Information such as financial assurance and the status of decommissioning funding would need to be identified by the Agreement State as privileged or confidential, whereupon the NRC would withhold such information from public access and treat it as sensitive or non-sensitive, per the considerations in 10 CFR 2.390 and 9.17. This does not apply to financial assurance or decommissioning funding information that is already available to the public. Although specific details of the funding mechanisms are treated as confidential, beneficial lessons learned regarding the improvement of decommissioning-related funding will be shared with the Agreement States.

Submit, by September 24, 2007, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 18th day of July, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–14438 Filed 7–25–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–08793]

Notice of Environmental Assessment Related to the Issuance of a License Amendment To Terminate Byproduct Material License No. 21–15209–01, NSF International, Ann Arbor, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Peter J. Lee, PhD, CHP, Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9870; fax number: (630) 515–1259; or by e-mail at *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a licensee amendment to terminate NRC Byproduct Materials License No. 21–15209–01, which is held by NSF International (licensee). The amendment would authorize the unrestricted release of the licensee's former facility located at 789 North Dixboro Road, Ann Arbor, Michigan. The NRC has prepared an Environmental Assessment in support of this action in accordance with the requirements of 10 CFR part 51. Based on the Environmental Assessment, the NRC has determined that a Finding of No Significant Impact is appropriate. The amendment to NSF International's license will be issued following the publication of this Environmental Assessment and Finding of No Significant Impact.

I. Environmental Assessment

Identification of Proposed Action

The proposed action would approve NSF International's request to terminate its license and release the licensee's former facility for unrestricted use in accordance with 10 CFR part 20, subpart E. The proposed action is in accordance with NSF International's request to the U.S. Nuclear Regulatory Commission (NRC) to terminate its NRC Byproduct Material License by letter dated April 30, 2007 (ADAMS Accession No. ML071220400). The licensee is authorized to use byproduct materials, primarily carbon-14, for research and development in waste water technology. On May 1, 2007, NSF International completed removal of licensed

radioactive material from the facility located at 789 North Dixboro Road, Ann Arbor, Michigan.

The licensee conducted surveys of the facility and provided this information to the NRC to demonstrate that the radiological condition of the Ann Arbor facility is consistent with radiological criteria for unrestricted use in 10 CFR 20.1402. No radiological remediation activities are required to complete the proposed action.

Need for the Proposed Action

The licensee is requesting this license amendment because it has discontinued licensed activities. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on the proposed action for decommissioning that ensures that residual radioactivity is reduced to a level that is protective of the public health and safety and the environment, and allows the facility to be released for unrestricted use.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided and surveys performed by the licensee to demonstrate that the release of the Ann Arbor facility is consistent with the radiological criteria for unrestricted use specified in 10 CFR 20.1402. Based on its review, the staff determined that there were no radiological impacts associated with the proposed action because no radiological remediation activities were required to complete the proposed action, and that the radiological criteria for unrestricted use in § 20.1402 have been met.

Based on its review, the staff determined that the radiological environmental impacts from the proposed action are bounded by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496). Additionally, no non-radiological or cumulative impacts were identified. Therefore, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment.

Alternatives to the Proposed Action

An alternative to the proposed action is to take no action. Under the no-action alternative, the licensee's facility would remain under an NRC license and would not be released for unrestricted use. This would result in no change to current conditions at the Ann Arbor facility. The no-action alternative is not acceptable because it is inconsistent with 10 CFR 30.36, which requires that a licensee who has permanently ceased licensed activities begin decommissioning its facility. This alternative would impose an unnecessary regulatory burden in controlling access to the former Ann Arbor facility, and limit potential benefits from the future use of the facility.

Conclusion

The NRC staff concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC staff has determined that the proposed action will not affect listed species or critical habitats. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action is not a type of activity that has potential to cause effect on historic properties. Therefore, consultation under Section 106 of the National Historic Preservation Act is not required.

The NRC consulted with Mr. Robert Skowronek, Chief, Radioactive Material and Medical Waste Materials Unit, Waste and Hazardous Materials Division, Michigan Department of Environmental Quality. Mr. Skowronek was provided an electronic draft of the EA for comment on July 9, 2007. Mr. Skowronek responded to the NRC by e-mail on July 10, 2007, indicating that the State had no comments regarding the NRC Environmental Assessment for the release of the licensee's Ann Arbor facility located at 789 North Dixboro Road.

II. Finding of No Significant Impact

On the basis of the EA in support of the proposed license amendment to release the site for unrestricted use, the NRC has determined that the proposed action will not have a significant effect on the quality of the human environment. Thus, an environmental impact statement for the proposed action is not warranted.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The documents and ADAMS accession numbers related to this notice are:

1. Lori Bestervelt, NSF International, letter to U.S. Nuclear Regulatory Commission, April 30, 2007 (ADAMS Accession No. ML071220400).
2. U.S. Nuclear Regulatory Commission, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,'' NUREG–1748, August 2003.
3. U.S. Nuclear Regulatory Commission, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, August 1994.
4. NRC, NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volumes 1–3, September 2003.

Documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 18th day of July 2007.

For the Nuclear Regulatory Commission.

Patrick Louden,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 07–3666 Filed 7–25–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Week of July 30, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL MATTERS TO BE CONSIDERED: Week of July 30, 2007—Tentative

Thursday, August 2, 2007

1:25 p.m. Affirmation Session (Public Meeting) (Tentative) a. Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP–07–9 (June 29, 2007) (Tentative).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–415–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 23, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–3676 Filed 7–24–07; 12:16 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56112; File No. SR–NASDAQ–2007–064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the Nasdaq Market Center

July 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, as establishing or changing a due, fee, or other charge applicable to a member, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify pricing for Nasdaq members using the Nasdaq Market Center. Nasdaq will implement this rule change on July 2, 2007. The text of the proposed rule change is available at Nasdaq, *www.nasdaq.com,* and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1.Purpose

On June 1, 2007,[5] Nasdaq increased its fees for routing orders in securities other than exchange-traded funds to the New York Stock Exchange (''NYSE'') in instances where the order does not check the Nasdaq book prior to routing. Nasdaq also changed its fee schedule to provide that orders that do not attempt to execute in Nasdaq prior to routing to other venues do not count in determining a member's average daily volume of shares of liquidity accessed and/or routed for purposes of determining the pricing tier applicable to a particular member. Nasdaq is now further amending the fee schedule to increase the fees for orders that check the Nasdaq book but only to the extent of displayed liquidity, rather than for the full size of the order.

Market participants using Nasdaq for routing orders have the ability to instruct as to the conditions under which routing should occur. One possibility is to route without checking the Nasdaq book; another is to route after checking the Nasdaq book only to extent of displayed liquidity; and another is to send the full order for execution against the book prior to routing, thereby allowing undisplayed reserved size to be accessed. For example, if displayed size at the inside was 1000 shares and 10,000 shares were in reserve at that price, an order for 10,000 shares could be fully executed in Nasdaq if the full order was sent, but would be routed if the order accessed only the displayed size.

Both the changes made in the instant proposed rule change and the changes made in SR–NASDAQ–2007–055 are designed to enhance the quality of Nasdaq's market by providing an incentive for members to enter orders that check the full size of the Nasdaq book prior to routing. An increase in the extent to which members check the book will in turn encourage liquidity providers to post executable quotes in Nasdaq. Moreover, since there is generally far more undisplayed liquidity than displayed liquidity at the inside price, the proposed change will encourage members to execute their orders in Nasdaq to the fullest extent possible.

For orders that check the book only to the extent of displayed interest, the fee will be $0.00035 per share executed when routed to the NYSE for execution and $0.0035 per share executed when routed elsewhere. At the same time, however, Nasdaq is lowering the fee for Directed Intermarket Sweep Orders sent to the NYSE, from $0.0035 to $0.00035 per share executed, in keeping with the overall prevailing level of fees for routing to NYSE.

Finally, for the month of July 2007, Nasdaq is lowering: (i) The volume level required for receiving a liquidity provider credit of $0.0025 per share executed from 35 million average daily shares of liquidity provided to 30

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55979 (June 28, 2007), 72 FR 37065 (July 6, 2007) ((SR–NASDAQ–2007–055) (May 29, 2007)).

million average daily shares of liquidity provided; (ii) the volume level required for paying a fee of $0.000275 per share executed when routing to the NYSE from 35 million average daily shares of liquidity provided to 30 million average daily shares of liquidity provided; and (iii) one of the criteria for paying an execution/routing fee of $0.0026 per share executed from 35 million average daily shares of liquidity provided to 30 million average daily shares of liquidity provided.[6] The change reflects Nasdaq's expectation that overall trading volumes will be low during the month of July due to the Fourth of July holiday and the vacation schedules of member employees.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the fee change reflects an allocation of fees that recognizes the benefits to Nasdaq market quality of liquidity provision and orders that access all available liquidity in Nasdaq prior to routing.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–064 and should be submitted on or before August 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–14386 Filed 7–25–07; 8:45 am]

BILLING CODE 8010–01–P

[6] Specifically, in July 2007, the $0.0026 fee will be available to members with an average daily volume through the Nasdaq Market Center in all securities during the month of: (i) More than 30 million shares of liquidity provided, and (ii) more than 55 million shares of liquidity accessed and/or routed; or: (i) More than 25 million shares of liquidity provided, and (ii) more than 65 million shares of liquidity accessed and/or routed.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–28755]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 24, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA-2007–28755 by any of the following methods:

Web Site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or

comments received, go to *http://dms.dot.gov* at any time or to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cindy McMickens, 202–366–6363, Office of Human Resources, Student Outreach and Career Entry Group, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Summer Transportation Internship Program for Diverse Groups (STIPDG).

Background: STIPDG is authorized by The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Section 5204–Training and Education/Surface Transportation Workforce Development, Training, and Education Act. Section 5204 states that subject to project approval by the Secretary, a State may obligate funds apportioned to the State for primary core programs workforce development, training, and education, including student internships; university or community college support; and outreach to develop interest and promote participation in surface transportation careers. STIPDG is an important part of DOT's intermodal effort to promote the entry of women, persons with disabilities, and members of diverse groups into transportation careers where traditionally these groups have been under-represented. Accordingly, FHWA's Office of Civil Rights will continue to actively support the STIPDG by working closely with FHWA's Office of Human Resources, Student Outreach and Career Entry Group, which has responsibility for administering the program. The program includes participation and placement of college students into summer intern placement nationwide, for all the DOT operating administrations. FHWA implements the program via a contractor that is selected through open competition. The STIPDG accepts approximately 500 applications each year, placing as few as 60 and as many as 100 undergraduate, graduate, and law students in transportation-related, non-administrative, technical, hands-on assignments with a Federal and State mentor providing on-the-job training. The STIPDG provides college students with an opportunity to work on current transportation-related topics and issues identified in or directly pertaining to the current DOT Strategic Plan. The STIPDG is open to all qualified applicants regardless of race, color, religion, sex, national origin, political affiliation, sexual orientation, marital status, disability, age, membership in an employee organization, or other non-merit factor. The STIPDG is open to all applicants based on the following eligibility requirements. Applicants must be currently enrolled in degree-granting programs of study at accredited U.S. institutions of higher education recognized by the U.S. Department of Education. Undergraduate applicants must be juniors or seniors for the fall of 2007. Undergraduate applicants from Junior, Tribal, or Community Colleges must have completed their first year. Law applicants must be entering their second or third year of law school in the fall of 2007. Applicants who are scheduled to graduate during the coming spring or summer semesters are not eligible for consideration for the STIPDG unless: (1) They have been accepted for graduate school enrollment; (2) they have been accepted for enrollment at an institution of higher education; or (3) their acceptance is pending. In all instances, the applicant must submit their completed application packages and documentation (with the school's logo) reflecting their status. Former STIPDG interns may apply but will not receive preferential consideration. Applicants will be evaluated based on the completeness of the application and the required documents listed below. Priority will be given to those with GPA's of 3.0 or better (for the Major and/or cumulatively). Applicants must be available and able to participate in the entire 10-week program.

Respondents: Approximately 500 applicants.

Frequency: Student applies every fall by going to the STIPDG Web site at: *http://www.fhwa.dot.gov/education/Stipdg.htm*, reading the requirements, retrieving the necessary 1-page forms, completing them, and packaging and forwarding all required documents to the designated P.O. Box identified on the Web site. Applications are received during the fall, with student offer letters sent by the spring, and placement offered by the first week of June for the majority of participants. The summer internship is managed by a contractor who responds to each applicant within 24 hours of receipt of the application, confirms via e-mail notification to the applicant whether or not the application package is received and deemed completed; and within 90 days notifies the applicant regarding the status of acceptance into the program. The required STIPDG Application documents include:

- The actual 1-page STIPG Application.
- A copy of the most recent Transcript/Grade Record/Report.
- At least one reference (if possible with comments) from a department chair, professor, advisor, employer using the attached 1-page Reference Form.
- A current 1-page resume reflecting work experience, volunteerism, awards, leadership, and extra curricular activities.
- And the actual 1-page, 2007 Applicant's Area of Interest/Geographical Preference Sheet, also included on this site.
- For Undergraduate Students: A typed essay, 1-page, double-spaced, minimum 12-point type, on your transportation interests, describing how participation in the 2007 STIPDG will enhance educational and career plans and goals.
- For Graduate Students: A writing sample representing your educational and career plans and goals.
- For Law Students: A legal writing sample.

Estimated Average Burden per Response: The estimated average burden is 4 hours per respondent.

Estimated Total Annual Burden Hours: The estimated total annual burden is 2,000 hours per year.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 19, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–14404 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sarpy County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed interchange on U.S. Interstate Highway 80 in Sarpy County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty/Environmental Officer, FHWA, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, NE 68508–3851, (402) 437–5765. Mr. Randy Peters, Planning and Project Development Engineer, Nebraska Department of Roads, Box 94759, 1500 Highway 2, Lincoln, NE 68509, (402) 479–4795. Mr. Thomas Lynam, Highway Superintendent, Sarpy County, 15100 South 84th Street, Papillion, NE 68046, (402) 339–4606.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Nebraska Department of Roads and Sarpy County, Nebraska, will prepare an Environmental Impact Statement (EIS) to study a proposed interchange on U.S. Interstate Highway 80 (I–80) at the location of the existing Pflug Road overpass in Sarpy County. The proposed interchange location is approximately three miles east of the Platte River Bridge.

The Pflug Road overpass has recently been reconstructed as part of widening I–80 to six lanes between Omaha and Lincoln. The reconstructed overpass consolidates the Pflug and Ruff Road overpass bridges at one location 1,300 feet southwest of Pflug Road to not preclude possible future interchange improvements, including construction of ramps.

The proposed Pflug Road interchange is shown in the Sarpy County Comprehensive Development Plan adopted by the Sarpy County Board in 2005, as well as in the (Omaha) Metropolitan Area Planning Agency's (MAPA) 2030 Long Range Transportation Plan adopted in 2006. The impetus for the project is anticipated future growth and development in southern Sarpy County and along the I–80 corridor.

Alternatives to be analyzed in the Interchange Justification Report (IJR) and EIS include (1) a partial cloverleaf at the current Pflug Road location, (2) a tight diamond with a skew at the current Pflug Road location, (3) improvements to the existing Gretna interchange, (4) an interchange at the 180th Street location, and (5) the no build alternative. The proposed study area for the alternatives analysis will extend from the Platte River to 180th Street. The study area for the EIS will be based on the area of potential effect for those alternatives carried forward for further analysis.

To date, the main environmental concern that has been expressed is the effect of cumulative impacts on fish and wildlife resources. Concerns have been raised that increased access from the interchange will result in private development that may negatively affect the Platte River.

A Coordination Plan is being prepared for the project to define the agency and public participation process for the environmental review. An agency scoping meeting and a public information meeting are planned. 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 are known to be interested in this proposed project. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the time and place of the public meetings and public hearing.

To ensure that the full range of issues related to this proposed action are 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 the FHWA or the Nebraska Department of Roads at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Dated: July 19, 2007.

Edward W. Kosola,

Realty/Environmental Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 07–3652 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in the State of Alaska. Those actions grant approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before January 22, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Dale J. Lewis, Area Liaison Engineer, FHWA Alaska Division, P.O. Box 21648, Juneau, Alaska 99802–1648; office hours 7 a.m.–4:30 p.m. (AST), phone (907) 586–7429; e-mail *DaleJ.Lewis@fhwa.dot.gov.* You may also contact Jerry O. Ruehle, DOT&PF Central Region Environmental Coordinator, Alaska Department of Transportation and Public Facilities, 4111 Aviation Drive, P.O. Box 196900, Anchorage, Alaska 99519–6900; office hours 7:30 a.m.–5 p.m. (AST), phone (907) 269–0534, e-mail *Jerry_Ruehle@dot.state.ak.us.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing approvals for the following highway projects in the State of Alaska that are listed below. The actions by the Federal agency on the projects, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) issued in connection with the projects. The EA, FONSI, and other documents from the FHWA files for the listed projects are available by contacting the FHWA or the State of Alaska Department of Transportation & Public Facilities at the addresses provided above. EA and FONSI documents can be viewed and downloaded from the project Web site at *http://projects.ch2m.com/Sewardhwy* and *http://projects.ch2m.com/SewardMeridian* or viewed at 4111 Aviation Avenue, Anchorage, Alaska 99519.

This notice applies to all FHWA decisions and approvals on the listed projects as of the issuance date of this notice and all laws and Executive

Orders under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. Wildlife: Endangered Species Act of 1973 [16 U.S.C. 1531–1544 and Section 1536]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act 1976 as amended [16 U.S.C. 1801 *et seq.*].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.] Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act [33 U.S.C. 1251–1377]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13186 Migratory Birds; E.O. 11514 Protection and Enhancement of Environmental Quality.

The projects subject to this notice are:

1. Project Location: Anchorage, Alaska, Municipality of Anchorage, New Seward Highway (NSH). Project Reference Number: FRAF–CA–MGS–NH–OA3–1(27). Project type: Road improvements to NSH between Rabbit Creek Road and 36th Avenue, a distance of approximately eight miles. The NSH will remain a controlled access corridor and noise barriers, fencing, and pathways throughout the corridor will be upgraded or constructed as warranted and continuous illumination will be added to augment the existing high-mast interchange lighting. Between O'Malley Road and Dimond Boulevard the existing NSH will be widened from four to six lanes to address current and future travel demand and mobility needs. NEPA document; Environmental Assessment and Finding of No Significant Impact issued November 4, 2006 and available electronically at *http://projects.ch2m.com/Sewardhwy.*

2. Project Location: Wasilla, Alaska, Matanuska-Susitna Borough, Seward Meridian Parkway (SMP). Project Reference Number: IM–0001(302). Project type: Road improvements to SMP from the Parks Highway to Bogard Road and extension of the road one mile from Bogard Road to Seldon Road; a distance of approximately three miles. The selected alternative will expand the existing SMP from a two-lane facility to a four-lane facility with a center turn lane and a multi-use separated pathway. The project will increase the capacity of SMP and provide a key system line from Seldon Road to the Park Highway. NEPA document; Environmental Assessment and Finding of No Significant Impact issued April 2, 2007 and available electronically at *http://projects.ch2m.com/SewardMeridian.*

(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.)

Authority: 23 U.S.C. § 139(l)(1).

David C. Miller,

Division Administrator, Juneau, Alaska.

[FR Doc. 07–3662 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–RY–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Idaho

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, Army Corps of Engineers (USACE), DoD, and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Cheyenne Overpass, Project No. DHP–1564(001), Key No. 7508, Pocatello in Bannock County in the State of Idaho. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 22, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For HWA: Mr. Peter Hartman, Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane Suite 126, Boise, Idaho 83703; telephone: (208) 334–1843; e-mail: *Idaho.FHWA@fhwa.dot.gov.* The FHWA Idaho Division Office's normal business hours are 8 a.m. to 4 p.m. (Mountain Time). For ITD: Mr. Mark Snyder, Project Development Engineer, Idaho Transportation Department, District 5, 5151 South 5th Avenue, Pocatello, Idaho 83205–4700; Normal business hours are 8 a.m. to 4 p.m. (Mountain Time), telephone: (208) 239–3336.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 129(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Idaho: Cheyenne Overpass, Pocatello from Bannock Highway to South 5th Avenue in Bannock County. The project will be a 1.1 mile long, five-lane arterial street with grade separations at 2nd Avenue and Interstate 15. It will begin at Bannock Highway south of Tech Farm Road and proceed to the east over the Portneuf River, Union Pacific Railroad tracks, and 2nd Avenue. Further east the new roadway will cross under Interstate 15 and end at South 5th Avenue. The proposed arterial will be on new alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and supporting documentation for the project. The EA was released for public review on August 24, 2005; a Finding of No Significant Impact (FONSI) was issued by the FHWA on May 14, 2007. The EA, FONSI, and other supporting information are available by contacting the FHWA or the Idaho Transportation Department at the addresses provided above. The EA and FONSI can be viewed and downloaded from the project Web site at: *http://itd.idaho.gov/Projects/D5/CheyenneOverpassEA/* or viewed at public libraries in the project area. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General Environmental Statutes

National Environmental Policy Act: 42 U.S.C. 4321–4335 (Pub. L. 91–190), (Pub. L. 94–83).

Section 4(f) of The Department of Transportation Act: 23 U.S.C. 138, 49 U.S.C. 303 (Pub. L. 100–17), (Pub. L. 97–449), (Pub. L. 86–670).

Economic, Social, and Environmental Effects: 23 U.S.C. 109(h), (Pub. L. 91–605), 23 U.S.C. 128;

Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.,* (Pub. L. 91–646) as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100–17);

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) 23 U.S.C. 324; Americans with Disabilities Act (42 U.S.C. 12101) and related statutes.

Executive Order 12898: Environmental Justice.

Public hearings: 23 U.S.C. 128.

Health

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976: 42 U.S.C. 6901, *et seq.,* especially 42 U.S.C. 6961–6964 (Pub. L. 89–272) (Pub. L. 91–512) (Pub. L. 94–580).

Historical and Archeological Preservation

Section 106 of the National Historic Preservation Act, as Amended: 16 U.S.C. 470f (Pub. L. 89–665) (Pub. L. 91–243) (Pub. L. 93–54) (Pub. L. 94–422) (Pub. L. 94–458) (Pub. L. 96–199) (Pub. L. 96–244) (Pub. L. 96–515) (Pub. L. 102–575).

Section 110 of the National Historic Preservation Act, as Amended: 16 U.S.C. 470H–2 (Pub. L. 96–515).

Archeological and Historic Preservation Act: 16 U.S.C. 469–469C (Pub. L. 93–291) (Moss-Bennett Act).

Archeological Resources Protection Act: 16 U.S.C. 470aa–11 (Pub. L. 96–95).

American Indian Religious Freedom Act: 42 U.S.C. 1996 (Pub. L. 95–341).

Native American Grave Protection and Repatriation Act: (Pub. L. 101–601) 25 U.S.C. 3001 *et seq.*

Land and Water Usage

Executive Order 11988: Floodplain Management, as amended by Executive Order 12148.

Federal Water Pollution Control Act (1972), as Amended by the Clean Water Act (1977 & 1987): 33 U.S.C. 1251–1376 (Pub. L. 92–500) (Pub. L. 95–217) (Pub. L. 100–4).

Wildflowers 23 U.S.C. 319(B) (Pub. L. 100–17).

Farmland Protection Policy Act of 1981: 7 U.S.C. 4201–4209 (Pub. L. 97–98) (Pub. L. 99–198).

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended: 42 U.S.C. 9601–9657 (Pub. L. 96–510). Superfund Amendments and Reauthorization Act of 1986: (SARA) (Pub. L. 99–499).

Endangered Species Act of 1973, as amended: 16 U.S.C. 1531–1543 (Pub. L. 93–205) (Pub. L. 94–359) (Pub. L. 95–632) (Pub. L. 96–159) (Pub. L. 97–304).

Intermodal Surface Transportation Efficiency Act of 1991 Sec. 1038 Recycled Paving Material: (Pub. L. 102–240).

Noise

Standards: 23 U.S.C. 109(i) (Pub. L. 91–605) (Pub. L. 93–87).

Air Quality

Clean Air Act (as amended), Transportation Conformity Rule: 23 U.S.C. 109(j) 42 U.S.C. 7521(a) (Pub. L. 101–549).

Intermodal Surface Transportation Efficiency Act of 1991: Congestion Mitigation and Air Quality Improvement Program (CMAQ): Sec. 1008 23 U.S.C. 149.

(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.)

Authority: 23 U.S.C. 139(1)(1).

Issued on: July 19, 2007.

B. Renee Sigel,

Assistant Division Administrator.

[FR Doc. 07–3645 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–RY–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28790]

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 LAZZARONE.

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–2007–28790 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 August 27, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28790. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. 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, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LAZZARONE is:

Intended Use: ''Sailing charters''.

Geographic Region: ''East coast, central Florida, Saint Lucie County, Port Pierce inlet''.

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: July 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–14434 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–28791]

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 Sancerre.

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–2007–28791 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 August 27, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2007–28791. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. 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, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SANCERRE is:

Intended Use: ''Sailing instruction and coastal tours in a six-pack charter operation.''

Geographic Region: ''California coast and coastal 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: July 19, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–14436 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Revisions to the Voluntary Tanker Agreement

AGENCY: Maritime Administration, Department of Transportation

ACTION: Notice of revised Voluntary Tanker Agreement (VTA); notice of meeting.

SUMMARY: The Maritime Administration announces the text of a revised Voluntary Tanker Agreement, pursuant to Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158). This text revises and replaces the Agreement as it was last published in Volume 48 of the **Federal Register** at page 38715 (August 25, 1983) and is issued in accordance with the provisions of 44 CFR Part 332. Because this revised Agreement contains extensive changes, both former and new participants should submit new applications which are available from the Maritime Administration. The complete, draft text of the VTA is published below. Copies of the Agreement and Application are being sent to U.S. companies that own, operate, or charter tankers and ocean-going tugs and tank barges. Copies are also available to the public upon request. The Maritime Administration will also hold a public meeting to receive input for developing the final text of the VTA.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Christensen, Director, Office of Emergency Preparedness, Room W23–304, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–5909, *tom.christensen@dot.gov.*

DATES: An open meeting for the purpose of developing the final text of the VTA will convene at 10 a.m., Wednesday, August 29, 2007, in Conference Rooms 8–10, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Notice of intent to attend given to the point of contact above will assure adequate seating and more efficient access at security-controlled entrances.

SUPPLEMENTARY INFORMATION:

Text of the Voluntary Tanker Agreement

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Preface

Pursuant to the authority contained in Section 708, Defense Production Act of 1950 as amended (50 App. U.S.C. 2158) the Maritime Administrator, (''the Administrator''), after consultation with the Department of Defense (DoD) and representatives of the tanker industry, has developed this Voluntary Tanker Agreement. The Agreement establishes the terms, conditions and procedures under which Participants agree voluntarily to make tankers available to DoD. The Agreement further affords Participants defenses to civil and criminal actions for violations of antitrust laws when carrying out the Agreement. The Agreement is designed to create a close working relationship among the Administrator, the Commander of U.S. Transportation Command (the DoD-designated representative for purposes of this Agreement) and the Participants through which DoD requirements and the needs of the civil economy can be met through cooperative action. The Agreement affords Participants flexibility to respond to defense requirements and adjust their commercial operations to minimize disruption whenever possible.

The Secretary of Defense (SecDef) has approved this Agreement as an Emergency Preparedness Program (EPP) pursuant to 46 U.S.C. 53107.

This is a replacement for the Agreement as it first appeared in Volume 48 of the **Federal Register** at page 38715 (August 25, 1983). Because this replacement contains new substantive provisions, those wishing to participate in the Agreement should submit new applications.

Voluntary Tanker Agreement

I. Purpose

The Administrator has determined, in accordance with Section 708(c)(1) of the Defense Production Act of 1950 (DPA), that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General that a standby agreement for the utilization of tanker capacity is necessary for the national defense. The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has issued a finding that tanker capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

The purpose of the Agreement is to provide a responsive transition from peace to contingency operations through procedures agreed in advance to provide tanker capacity to support DoD contingency requirements. The Agreement establishes procedures for the commitment of tanker capacity to satisfy such requirements. The Agreement is intended to promote and facilitate DoD's use of existing commercial tanker resources in a manner which minimizes disruption to commercial operations whenever possible.

The Agreement will change from standby to active status upon activation by appropriate authority as described in Section VI.

II. Authorities

A. Maritime Administration (MARAD)

1. Sections 101 and 708, DPA (50 App. U.S.C. 2158); E.O. 12919, 59 FR 29525 (June 7, 1994); E.O. 12148, 3 CFR 1979 Comp., p. 412, as amended; 46 CFR Part 340; DOT Order 1900.9.

2. Section 501 of E.O.12919, as amended, delegated the authority of the President under Section 708 of the DPA to the Secretary of Transportation (SecTrans), among others. SecTrans delegated to the Administrator the authority under which the Voluntary Tanker Agreement is sponsored in DOT Order 1900.9.

B. U.S. Transportation Command (USTRANSCOM)

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating Commander USTRANSCOM to provide air, land, and sea transportation for the DoD.

III. General

A. Participation

1. Tanker operators of vessels greater than 20,000 deadweight tons may become Participants in this Agreement by submitting an executed copy of the form specified in Section VII of this Agreement.

2. Owners and operators of Integrated Tug-Barges (ITBs) and Articulated Tug-Barges (ATBs) greater than 20,000 deadweight tons (DWT) may become Participants in this Agreement.

3. For the purposes of this Agreement, ''Participant'' includes the corporate entity entering into this Agreement and all United States subsidiaries and affiliates of that entity which own or operate ships in the course of their regular business and in which that entity has more than fifty (50) percent control either by stock ownership or otherwise.

4. Vessels of a Participant subject to the provisions of this Agreement shall not be subject to the provisions of any other DoD Sealift Readiness Program (SRP).

5. A list of Participants will be published annually in the **Federal Register**.

B. Effective Date and Duration of Participation

Participation in this Agreement is effective upon execution of the application form by the Participant and the Administrator or their authorized designees and remains in effect until terminated in accordance with 44 CFR 332.4.

C. Withdrawal From the Agreement

Participants may withdraw from this Agreement subject to the fulfillment of obligations incurred under the Agreement prior to the date such withdrawal becomes effective, by giving written notice to the Administrator. Withdrawal from this Agreement will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

D. Rules and Regulations

Participants acknowledge and agree to abide by all provisions of Section 708, DPA, as amended (50 App. U.S.C. 2158), and regulations related thereto which are promulgated by the SecTrans, the Attorney General, and the Chairman of the Federal Trade Commission.

Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR Part 332. The Administrator shall inform Participants of new rules and regulations as they are issued.

E. Amendment of the Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman of the Federal Trade Commission, SecTrans, through her representative MARAD, and SecDef, through his representative, Commander USTRANSCOM. The Administrator, Commander USTRANSCOM and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman of the Federal Trade Commission.

2. A Participant may propose amendments to the Agreement at any time.

F. Administrative Expenses

Administrative and out-of-pocket expenses incurred by Participants shall be borne solely by participants.

G. Record Keeping

1. MARAD and the DoD have primary responsibility for maintaining records in accordance with 44 CFR Part 332.

2. The Director, Office of Emergency Preparedness, MARAD, shall be the official custodian of records related to the carrying out of this Agreement, except records of direct dealings between the DoD and Participants.

3. For direct dealings between the DoD and Participants, the designee of the SecDef shall be the official custodian of the record but the Director of the Office of Emergency Preparedness, MARAD shall have complete access thereto.

4. In accordance with 44 CFR 332.3(d), each Participant shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other Participants or with any other member of the industry, related to the carrying out of this Agreement. Each Participant agrees to make available to the Administrator, the Commander USTRANSCOM, the Attorney General, the Director of the Federal Emergency Management Agency, and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item that this section requires the Participant to maintain. Any record maintained under this subsection shall be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1) and (3) or identified as privileged and confidential information in accordance with Section 705(e) of the DPA, as amended, and 94 CFR Part 332.

H. Requisition of Ships of Non-Participants

The Administrator upon presidential authorization may requisition ships of non-Participants to supplement capacity made available for defense operations under this Agreement and to balance the economic burden of defense support among companies operating in U.S. trade. Non-Participant owners of requisitioned tankers will not participate in the Tanker Requirements Committee and will not enjoy the immunities provided by this Agreement.

I. Jones Act Waivers

In situations where the activation of the Agreement deprives a Participant of all or a portion of its Jones Act tonnage and, at the same time, creates a general shortage of Jones Act tonnage on the market, the Administrator may request that the Assistant Commissioner, Office of Regulations and rulings, U. S. Customs and Border Protection, Department of Homeland Security grant a temporary waiver of the provisions of the Jones Act to permit a Participant to charter or otherwise utilize non-Jones Act tonnage. The tonnage for which such waivers are requested will be approximately equal to the Jones Act tonnage chartered to the DoD and any waiver that may be granted will be effective for the period that the Jones Act tonnage is on charter to the DoD plus a reasonable time for termination of the replacement tonnage charters as determined by the Administrator.

J. Temporary Replacement Vessel

Notwithstanding 10 U.S.C. 2631, 46 U.S.C. 55304 (formerly Public Resolution 17), 46 U.S.C. 55302, 55305, 55312 or 55314 (formerly Sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936), or any other cargo preference law of the United States—

1. A Participant may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated by the SecDef under an Emergency Preparedness Agreement or under a primary DoD-approved SRP; and

2. Such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to 10 U.S.C. 2631, 46 U.S.C. 55304 (formerly Public Resolution 17), and 46 U.S.C. 55302, 55305, 55312 or 55314 (formerly Sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936) to the same extent as the eligibility of the vessel or vessel capacity replaced.

IV. Antitrust Defense

Under the provisions of Subsection 708(j), DPA, as amended (50 App. U.S.C. 2158(j)), each Participant in this Agreement shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws, with respect to any act or omission to act to develop or carry out this Agreement, that such act or omission to act was taken in good faith by the Participant in the course of developing or carrying out this Agreement and that the Participant fully complied with the provisions of the Act, and the rules promulgated thereunder, and acted in accordance with the terms of this Agreement. This defense shall not be available to the Participant for any act or omission occurring after the termination of this Agreement, nor shall it be available, upon the modification of this Agreement, with respect to any subsequent act or omission that is beyond the scope of the modified Agreement, except that no such termination or modification will be accomplished in a way that will deprive Participants of antitrust defense for the fulfillment of obligations incurred. This defense shall be available only if and to the extent that the Participants asserting it demonstrate that the action, which includes a discussion or agreement, was within the scope of the Agreement. The person asserting the defense bears the burden of proof. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

V. Terms and Conditions

A. Agreement by Participants

1. Each Participant agrees to contribute tanker capacity as requested by the Administrator in accordance with Section V. B. below, at such times and in such amounts as the Administrator, as requested by DoD, shall determine to be necessary to meet the essential needs of the DoD for the transportation of DoD MILSPEC petroleum and petroleum products in bulk by sea.

2. Each Participant further agrees to make tankers and tanker capacity available to other Participants when requested by the Administrator, on the advice of the Tanker Requirements Committee, in order to ensure that

contributions to meet DoD requirements are made on a proportionate basis whenever possible or to ensure that no participating tanker operator is disproportionately hampered in meeting the needs of the civil economy in accordance with priorities established by authority of the President.

B. Proportionate Contribution of Capacity

1. Any entity receiving payments under the Maritime Security Program (MSP) pursuant to the Maritime Security Act of 2003 (MSA 2003) (Pub. L. 108–136) shall become a Participant with respect to all tankers enrolled in the MSP at all times until the date the MSP operating agreement would have terminated according to its original terms. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in 46 U.S.C. § 53107.

2. Participants hereto not receiving MSP payments pursuant to MSA 2003 agree to contribute tanker capacity under the Agreement in the proportion that its ''controlled tonnage'' bears to the total ''controlled tonnage'' of all Participants. Because exact proportions may not be feasible, each Participant agrees that variances are permissible at the discretion of the Administrator.

3. Clean tankers and clean tonnage shall mean tankers inspected and approved by DESC Quality Representatives, capable of meeting DoD quality standards, and able to carry refined MILSPEC petroleum products.

a. Chemical tankers and tankers in dirty trade may contribute clean tanker capacity only after being certified as being able to meet DoD quality standards to carry refined MILSPEC petroleum products.

4. ''Controlled tonnage'' shall mean tankers, including ITBs and ATBs of over 20,000 DWT capacity and present military usefulness in the transportation of refined DoD cargoes pursuant to the requirements of associated warplans:

a. In which, as of the effective date of the activation of this Agreement, the Participant or any of its U.S. subsidiaries or affiliates has a controlling interest and which are registered in any of the following countries: The United States, Liberia, Panama, Honduras, the Bahamas, or the Marshall Islands; PLUS

b. Ships which are on charter or under contract to such Participant for a period of six (6) months or more from the effective date of activation of the Agreement, regardless of flag of registry, exclusive of tonnage available to the Participant under contracts of affreightment and consecutive voyage charter; provided that, in the event an owner of a vessel terminates a time charter in accordance with a war clause, the affected tonnage will be excluded from the chartering Participant's controlled tonnage; PLUS

c. Any other non-U.S.-flag tonnage which a Participant may offer to designate as ''controlled tonnage'' and which the Tanker Requirements Committee accepts; MINUS

d. Tankers described in subparagraphs, a. and b. which are chartered out or under contract to others for a remaining period of six (6) months or more from the effective date of activation of this Agreement: MINUS

e. Certain vessels which are fitted with special gear and are on permanent station for the storage of crude oil from a production platform and vessels which may have a dual role of production storage and transportation use to a limited location.

5. This Agreement shall not be deemed to commit any vessel with respect to which the law of the country of registration requires the approval of the government before entering into this Agreement of furnishing such vessel under the terms of this Agreement until such time as the required approval has been obtained.

6. The obligations of Participants to contribute clean capacity under the Agreement shall be calculated on a proportionate basis wherever possible among the Participants by the Tanker Requirements Committee.

7. A vessel on charter to a Participant shall not be subject to a relet to the DoD in the case where the period of the relet would be longer than the term of the Participant's incharter or in the case where the relet would otherwise breach the terms of the incharter, but such tonnage shall be included in the calculation of the Participant's ''controlled tonnage''.

8. The Administrator retains the right under law to requisition ships of Participants. A Participant's ships which are directly requisitioned by the U.S. Government or which are called up pursuant to other U.S. Government voluntary arrangements shall be credited against the Participant's proportionate contribution under this Agreement. Ships on charter to the DoD when this Agreement is activated shall not be so credited.

C. Reports of Controlled Tonnage

Twice annually, or upon request of the Administrator and in such form as may be requested, each Participant shall submit information as to ''controlled tonnage'' necessary for the carrying out of this Agreement. Information which a Participant identifies as privileged and confidential shall be withheld from public disclosure in accordance with Sections 708(h)(3) and 705(e) of the DPA, as amended, and 44 CFR Part 332.

D. Freight Rates Under the Agreement

1. The rate of charter hire applicable to each charter under this Agreement shall be the ''prevailing market rate'' effective at the time of the proposed loading of the vessel. The ''prevailing market rate'' shall be determined by the Military Sealift Command (MSC) Contracting Officer utilizing the price analysis techniques set forth in FAR Part 15.4 to determine that the negotiated rates are fair and reasonable, utilizing market or previous contract prices. Time charter hire rates, for either U.S. or foreign-flag tankers, shall be expressed in terms of a per diem rate(s).

2. The rate of charter hire fixed with respect to each charter shall apply for the entire period of the charter, except that:

a. For a consecutive voyage charter, the rate of charter shall be increased or decreased to reflect increases or decreases in the price of bunker fuel applicable in the area of the vessel's trade;

b. Reimbursement for increased war risk insurance premiums will be made in accordance with section V.E.;

E. War Risk Insurance

1. Increased War risk insurance premiums for time chartered vessels will be paid by DoD or MARAD war risk insurance policies will be implemented.

2. For voyage and consecutive voyage charters, the Participant will be reimbursed for increases in war risk insurance premiums that are applicable to the actual voyage but are announced after the charter rate is established by the broker panel.

3. For any ship chartered under this Agreement, the SecDef may procure from the SecTrans war risk insurance on hull and machinery, war risk protection and indemnity insurance, and Second Seaman's War Risk Insurance, subject to 46 U.S.C. § 53905 (formerly Section 1203 of the Merchant Marine Act, 1936).

VI. Activation of the Agreement

A. Determination of Necessity

This Agreement may be activated at the request of The Commander USTRANSCOM, with the approval of SecDef, to support Contingency operations when there is a tanker capacity emergency. A tanker capacity emergency will be deemed to exist when tanker capacity required to

support operations of U.S. forces outside the continental United States cannot be supplied through the commercial tanker charter market in accordance with applicable laws and regulations or other voluntary arrangements. The Administrator shall notify the Attorney General and the Chairman of the Federal Trade Commission, when such a finding is made.

B. Tanker Requirements Committee

1. There is established a Tanker Requirements Committee (the ''Committee'') to provide USTRANSCOM, MARAD and Participants a forum to:

a. Analyze DoD Contingency tanker requirements.

b. Identify commercial tanker capacity that may be used to meet DoD requirements related to Contingencies and, as requested by USTRANSCOM, exercises, and special movements.

c. Develop and recommend Concepts of Operations (CONOPS) to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

d. Advise the Administrator on the tanker capacity that each Participant controls and is capable of meeting Contingency requirements.

2. The Committee will be co-chaired by MARAD and USTRANSCOM and will convene as jointly determined by the co-chairs.

3. The Committee will not be used for contract negotiations and/or contract discussions between carriers and DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

4. The Committee will consist of designated representatives from MARAD, USTRANSCOM, to include Military Sealift Command, Defense Energy Support Center, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs. Representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants resources. All Participants will be invited to open Committee meetings. For selected Committee meetings, attendance may be limited to designated Participants to meet specific operational requirements.

5. The Committee co-chairs shall:

a. Notify the Attorney General, the Chairman of the Federal Trade Commission, and all Participants of the time, place and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this Agreement:

b. Provide for publication in the **Federal Register** of a notice of the time, place and nature of each meeting. If a meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days of the meeting and will include the reasons why the meeting is closed;

c. Establish the agenda for each meeting and be responsible for adherence to the agenda;

d. Provide for a written summary or other record of each meeting and provide copies of transcripts or other records to the Attorney General, the Chairman of the Federal Trade Commission, and all Participants; and

e. Take necessary actions to protect confidentiality of data discussed with or obtained from Participants.

C. Tanker Charters

MSC, as designated by USTRANSCOM, will deal directly with tanker operators in the making of charter parties and other arrangements to meet the defense requirement, keeping the Administrator informed. To reduce risk to owners and to control cost to the government, all government charters will be time charters, unless specifically designated as voyage charter by the Contracting Officer. If vessels are chartered between Participants, Participants will keep the Administrator informed. The Administrator will keep the Attorney General and the Chairman of the Federal Trade Commission informed of the actions taken under this Agreement.

D. Termination of Charters Under the Agreement

MSC, as the contracting officer, will notify the Administrator as far as possible in advance of the prospective termination of the need for tanker capacity under this Agreement

VII. Application and Agreement

The Administrator has adopted and makes available a form on which tanker operators may apply for and become Participants in this Agreement (''Application and Agreement to Participate in the Voluntary Tanker Agreement''). The form will incorporate by reference the terms of this Agreement.

Application and Agreement To Participate in the Voluntary Tanker Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Tanker Agreement.'' The text of said Agreement is published in __**Federal Register** ___, __, 2007. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158). Regulations governing is Agreement appear at 44 CFR Part 332 and are reflected at 49 CFR Subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Tanker Agreement published in _ **Federal Register** ___, __, 2007, as though said text were physically recited herein.

The applicant, as Participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR Part 332 and as reflected at 49 CFR Subtitle A, and the terms of the Voluntary Tanker Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make vessels or capacity available for use by the Department of Defense and to other Participants for the purpose of meeting national defense requirements.

Attest:

_____
(Applicant—Corporate Name)

_____
(Signature)

_____
(Position Title)

United States of America, Department of Transportation, Maritime Administration

By: _____
Maritime Administrator

By Order of the Maritime Administrator.

Dated: July 19, 2007.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–14534 Filed 7–25–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 20, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 27, 2007 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0007.
Type of Review: Revision.
Title: Brewer's Report of Operations and Brew pub Report of Operations.
Forms: TTB 5130.9, 5130.26.
Description: Brewers periodically file these reports of their operations to account for activity relating to taxable commodities. TTB uses this information primarily for revenue protection, for audit purposes, and to determine whether the activity is in compliance with the requirements of law. We also use this information to publish periodical statistical releases of use and interest to the industry.
Respondents: Business and other for profits.
Estimated Total Burden Hours: 9,840 hours.

OMB Number: 1513–0015.
Type of Review: Revision.
Title: Brewer's Bond and Brewer's Bond Continuation Certificate/Brewer's Collateral Bond and Brewer's Collateral Bond Continuation Certificate.
Form: TTB 5130.22, 5130.23, 5130.25, 5130.27.
Description: The Internal Revenue Code requires brewers to give a bond to protect the revenue and to ensure compliance with the requirements of law and regulations. The Continuation Certificate is used to renew the bond every 4 years after the initial bond is obtained. Bonds and continuation certificates are required by law and are necessary to protect government interests in the excise tax revenues that brewers pay.
Respondents: Business and other for profits.
Estimated Total Burden Hours: 308 hours.

OMB Number: 1513–0095.
Type of Review: Revision.
Title: Application for Registration for Tax-Free Transactions Under 26 U.S.C. 4221.
Form: 5030.28.
Description: Businesses, State and local governments apply for registration to sell or purchase firearms or ammunition tax-free on this form. TTB uses the form to determine if a transaction is qualified for tax-free status.
Respondents: Business and other for profits.
Estimated Total Burden Hours: 951 hours.

Clearance Officer: Frank Foote, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005, (202) 927–9347.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Robert Dahl,
Treasury PRA Clearance Officer.
[FR Doc. E7–14462 Filed 7–25–07; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 20, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 27, 2007 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535–0122.
Type of Review: Extension.
Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.
Forms: Various.
Description: Voluntary Survey to determine customer satisfaction with the services provided by the Bureau of Public Debt.
Respondents: Individuals or Households.
Estimated Total Burden Hours: 876 hours.

OMB Number: 1535–0069.
Type of Review: Extension.
Title: Treasury Direct Forms.
Forms: 5235, 5236, 5261, 5381, 5178, 5179, 5179–1, 5180, 5181, 5182, 5188, 5189, 5191.
Description: Information collected from the public when they wish to purchase and maintain Treasury Bills, Notes and Bonds.

Respondents: Individuals or Households.
Estimated Total Burden Hours: 47,672 hours.

Clearance Officer: Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106, (304) 480–8150.
OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Robert Dahl,
Treasury PRA Clearance Officer.
[FR Doc. E7–14467 Filed 7–25–07; 8:45 am]
BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 20, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.
Dates: Written comments should be received on or before August 27, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2058.
Type of Review: Extension.
Title: U.S. Electronic Large Partnership Declaration for an I.R.S. e-file return.
Form: 8453–B.
Description: If you are filing a 2006 Form 1065–B through an ISP and/or transmitter and you are not using an ERO, you must file Form 8453–B with your electronically filed return. An ERO can use either Form 8453–B or Form 8879–B to obtain authorization to file the partnership's Form 1065–B.
Respondents: Businesses and other for-profits.
Estimated Total Burden Hours: 144 hours.

OMB Number: 1545–1616.
Type of Review: Extension.
Title: REG–115393–98 (Final) Roth IRAs.
Description: The regulations provide guidance on establishing Roth IRAs, contributions to Roth IRAs, converting amounts to Roth IRAs, recharacterizing IRA contributions, Roth IRA distributions, and Roth IRA reporting requirements.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 125,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–14470 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, ''Examination Questionnaire.''

DATES: Comments must be submitted by September 24, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0199, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0199, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend the approval for the following information collection:

Title: Examination Questionnaire.

OMB Control No.: 1557–0199.

Affected Public: Businesses or other for-profit.

Type of Review: Regular review.

Abstract: The OCC has revised its Examination Questionnaire and updated the estimated burden hours to reflect the reduction in the number of national banks. Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs. A questionnaire is provided to each national bank at the conclusion of their supervisory cycle (12 or 18-month period). A banker may now choose to complete this questionnaire on National BankNet, the OCC's extranet site.

Burden Estimates:

Estimated Number of Respondents: 1,800.

Estimated Number of Responses: 1,602.

Frequency of Response: On occasion.

Estimated Annual Burden: 267 hours.

Comments: All comments will be considered in formulating the subsequent submission and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 20, 2007.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 07–3650 Filed 7–25–07; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Thursday, August 16, 2007.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Thursday, August 16, 2007 from 12:30 p.m to 1:30 p.m ET via a telephone conference call. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.* If you would like to have the TAP consider a written statement, please call Ms. Knispel (at the telephone numbers listed

above) or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201.

The agenda will include the following: Various IRS issues.

Dated: July 18, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–14388 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Committee of the Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 21, 2007, at 10 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, August 21, 2007, at 10 a.m., Central Time via a telephone conference call. You can submit written comments to the Panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, PO Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: July 18, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–14390 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Committee of the Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 21, 2007.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Committee of the Taxpayer Advocacy Panel will be held Tuesday, August 21, 2007 from 9 a.m. to 10 a.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1–888–912–1227 or 718–488–2085, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 18, 2007.

John Fay,

Director, Taxpayer Advocacy Panel.

[FR Doc. E7–14393 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Committee of the Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, and West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 15, 2007, at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Committee of the Taxpayer Advocacy Panel will be held Wednesday, August 15, 2007 at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Ms. De Jesus at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: July 19, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–14394 Filed 7–25–07; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 72, No. 143

Thursday, July 26, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2007–OS–0076]

Privacy Act of 1974; Systems of Records

Correction

In notice document 07–3558 appearing on page 40125 in the issue of Monday, July 23, 2007 make the following correction:

In the first column, the heading ''**S600.60**'' should read ''**S600.50**''.

[FR Doc. C7–3558 Filed 7–25–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143601–06]

RIN–1545–BG30

Mortality Tables for Determining Present Value

Correction

In proposed rule document 07–2631 beginning on page 29456 in the issue of Tuesday, May 29, 2007, make the following corrections:

1. On page 29466, in the second table, in the heading for the last column, ''combines''should read ''combined''.

2. On pages 29467 and 29468, in the heading for the last column, ''combines'' should read ''combined''.

[FR Doc. C7–2631 Filed 7–25–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
July 26, 2007

Part II

Environmental Protection Agency

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program; Notices

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8439–5]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html.* The document may be located by date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov.* For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background: The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. Although the part 63 NESHAP and section 111(d) of the Clean and Air Act regulations contain no specific regulatory provision that sources may request applicability determinations, EPA does respond to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

Today's notice comprises a summary of 86 such documents added to the ADI on July 6, 2007. The subject, author, recipient, date and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on July 6, 2007; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. Please note that the table that appeared in the December 4, 2006 notice (71 FR 70383) contained one document whose title was in error. The title for the document assigned control number M060016 was listed in the table as ''Once In/Always In Rule.'' It should have read ''Once In/Always In Policy.''

We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is ''of nationwide scope or effect'' for purposes of section 307(b)(1) of the Clean Air Act. Neither does it purport to make any document that was previously non-binding into a binding document.

ADI DETERMINATIONS UPLOADED ON JULY 6, 2007

Control number	Category	Subparts	Title
600030	NSPS	X	Applicability for Distribution Facilities.
600031	NSPS	Y	Classification of Coal Truck Dump Operations.
600032	NSPS	Y	Applicability to Existing Conveying Equipment.
600033	NSPS	RRR, VV	Biomass Ethanol Production.
600034	NSPS	NNN, RRR	Biomass Ethanol Production.
600035	NSPS	III	Thirty Day Notification Requirement.
600036	NSPS	J	Date of Construction and/or Modification.
600037	NSPS	Kb	Definition of Reconstruction for Oil Storage Tank.
600038	NSPS	GG	Custom Monitoring Schedule: Gas Processing Plant.
600039	NSPS	GG	Custom Monitoring Schedule for Turbine.
600040	NSPS	KK	Reversing Modifications to Avoid Applicability.

ADI DETERMINATIONS UPLOADED ON JULY 6, 2007—Continued

Control number	Category	Subparts	Title
600041	NSPS	J	Waiver of Monitoring Requirements.
600042	NSPS	Db	Requirements when Burning Jet Fuel.
600043	NSPS	F	Use of Clinker Cooler and Kiln Gas as Process Gas.
600045	NSPS	Kb	Storage Vessels for Volatile Organic Liquid (VOL).
600046	NSPS	D, Da	Resource Recovery Plants.
600047	NSPS	J	Sulfur Recovery Unit
600048	NSPS	GG	Part 75 Monitoring as Alternative to Part 60.
600049	NSPS	A	Part 75 Monitoring as Alternative to Part 60.
600050	NSPS	A	Part 75 Monitoring as Alternative to Part 60.
600051	NSPS	GG	Custom Fuel Monitoring Schedules.
600052	NSPS	GG	Parametric Monitoring Plan.
600053	NSPS	Db	Alternative Opacity Monitoring for Boiler.
600054	NSPS	Db	Part 75 Monitoring as Alternative to Part 60.
600055	NSPS	Dc	Alternative Fuel Monitoring Requirements.
600056	NSPS	Dc	Alternate Fuel: Use Monitoring Schedule.
600057	NSPS	A	Part 75 Monitoring as Alternative to Part 60.
600058	NSPS	VVV	Alternative Capture System Monitoring.
600059	NSPS	NNN, RRR	Alternative Monitoring/Performance Test Waiver.
600060	NSPS	Dc	Alternative Fuel Usage Recordkeeping Procedure.
600061	NSPS	AA, AAa	Alternative Monitoring on Baghouses.
600062	NSPS	WWW	Changes to Standard Operating Procedures.
600063	NSPS	WWW	Leachate Collection System Risers.
600064	NSPS	OOO	Performance Testing Waiver.
600065	NSPS	TT	Stack Testing Waiver.
600066	NSPS	Cc, WWW	Definition of Gas Treatment.
600067	NSPS	Da, GG	Testing and Monitoring Alternatives.
600068	NSPS	GG	Part 75 Monitoring as Alternative to Part 60.
600069	NSPS	WWW	Subject to Part 62 Federal Plan and Part 60.
600070	NSPS	A, Db	Alternative Opacity Monitoring—Auxiliary Boiler.
600071	NSPS	OOO	Performance Test Time Extension.
600072	NSPS	Ec	Alternative Operating Parameters for Monitoring.
600074	NSPS	Dc	Reduced Fuel Usage Monitoring Frequency.
600075	NSPS	Db	Alternative Opacity Monitoring.
600076	NSPS	Dc	Reduced Fuel Usage Monitoring Frequency.
600077	NSPS	Dc	Boiler Derate.
600078	NSPS	Dc	Boiler Derate.
600079	NSPS	Db	Predictive Emission Monitoring System.
600080	NSPS	VV	Recordkeeping and Reporting Waiver.
600081	NSPS	WWW	Alternative Landfill Gas Temperature Limit.
600083	NSPS	J	Alternative Monitoring Plan for LPG Flare.
600084	NSPS	O	Interpretation of Percent Oxygen Readings.
600085	NSPS	J	Coke Burn-off and Catalyst Regenerator Flow Rate.
600086	NSPS	GG	Initial Test Waiver for Identical Gas Turbines.
600087	NSPS	J	Alternative Monitoring—Semi-Regenerative Reformer.
600088	NSPS	NNN, PPP	Alternative Method for Determining Glass Pull Rate.
600089	NSPS	Db	Alternative Span Value.
600090	NSPS	OOO	Test Waiver for Baghouse.
600091	NSPS	Dc	Boiler Derate.
600092	NSPS	WWW	Definition—Contiguous for Separate Disposal Areas.
600093	NSPS	Dc	Boiler Derate.
600094	NSPS	XX	Performance Test Waiver.
600095	NSPS	Db	Alternative Opacity Monitoring.
600096	NSPS	WWW	Leachate Collection Risers.
600097	NSPS	A, P	Monitor Pathlength Correction Factor.
600098	NSPS	NNN	Alternative Monitoring for Enclosed Flare.
600099	NSPS	A, J	Alternative Monitoring of Refinery Fuel Gas.
600100	NSPS	Ce, Ec	Alternative Monitoring of Carbon Monoxide.
M060027	MACT	O	Alternative Monitoring Using Gas Detection Sensor.
M060028	MACT	JJJJ, S	Core Manufacturing at Pulp and Paper Mills.
M060029	MACT	JJJJ	Web Coating—Laminating/Ply-bonding Operation.
M060030	MACT	JJJJ	Method 24 Determination of Organic HAP Content.
M060031	MACT	MMMM	Rebuilt Primer Booth.
M060032	MACT	JJ, MMMM	Refinishing of Facility Equipment.
M060033	MACT	MM	Alternative Control Device Operating Parameters.
M060034	MACT	HHHHH, JJJJ	Scenarios for MCM, MON and POWC Applicability.
M060036	MACT	M	Area vs. Major Sources.
M060037	MACT	OOOO	Shoelace Tipping Operations.
M060038	MACT	AAAA	Alternative Deadline for SSM Reports.
M060039	MACT	RRR	Definition of Clean Charge.
M060041	MACT	DDDD	Typical Manufacturing Component Scenarios.
M060042	MACT	F	Benzene Emissions from Heat Exchanger Leaks.

ADI DETERMINATIONS UPLOADED ON JULY 6, 2007—Continued

Control number	Category	Subparts	Title
M060044	MACT	NNNNN	30 Weight Percent Acid.
M060045	MACT	WWWW	Emission Factors vs. Tests to Determine Compliance.
Z060002	NESHAP	T	Cessation of Annual Reports.
Z060004	NESHAP	F	Benzene Emissions from Exchange Leaks.

Abstract for [M060027]

Q: Does EPA approve an alternative monitoring request under 40 CFR part 63, subpart O, to use a gas detection sensor (i.e., CEA Instruments ET–6200R U Series) instead of a gas chromatograph or flame ionization analyzer for the International Sterilization Laboratory (ISL) facility in Groveland, Florida?

A: Yes. EPA finds that a gas detection sensor is an acceptable alternative to a gas chromatograph or flame ionization detector, contingent upon the successful outcome of the required performance specification (PS) 8 testing in 40 CFR part 60, appendix B, for ethylene oxide.

Abstract for [M060028]

Q: Could the EPA clarify to the American Forest & Paper Association whether the manufacturing of cores for rolled towels and tissue is subject to 40 CFR part 63, subpart JJJJ? In manufacturing the cores, two rolls of core stock are unwound with glue continuously applied, then wound together to form a core, and cut to fit the rewinder length.

A: EPA finds that this core manufacturing activity is subject to 40 CFR part 63, subpart JJJJ when it takes place at a major source of hazardous air pollutants. The affected source under subpart JJJJ is the collection of all web coating lines at a facility, with certain exceptions. The core stock is a web because it is a continuous substrate flexible enough to be wound or unwound as rolls. Glue application occurs within a web coating line because the glue is applied to the core stock web substrate between an unwind or feed station and a rewind or cutting station. Glue is an adhesive coating material within the subpart JJJJ definition.

Abstract for [M060029]

Q: Could the EPA clarify to the American Forest & Paper Association whether the laminating/ply-bonding of embossed, multi-layered paper products that occurs at a major source of hazardous air pollutant (HAP) emissions is subject to the requirements of 40 CFR part 63, subpart JJJJ? The process consists of a raised or depressed pattern that is embossed on a paper web by passing the web between two steel rolls or plates, one of which is engraved. In the laminating/ply-bonding operation, adhesive is applied by a roller to bind multiple layers of substrate.

A: EPA finds that the adhesive is applied as a continuous coating layer by the laminating/ply-bonding operation. Based on the web coating line definition and the description of the laminating/ply-bonding operation included with the letter, the laminating/ply-bonding operation takes place on a web coating line, and is therefore subject to the requirements of part 63, subpart JJJJ, provided that it takes place at a major source of HAP emissions.

Abstract for [M060030]

Q: Could the EPA clarify to the American Forest & Paper Association whether facilities may use the results of Method 24, which measures the volatile organic compound (VOC) content of coating materials, instead of the results of Method 311, which measures the organic hazardous air pollutants (HAP) content of the materials, in compliance calculations under 40 CFR part 63, subpart JJJJ?

A: EPA has determined that facilities may substitute Method 24 determinations of VOC content for Method 311 determinations of organic HAP content, provided that the substitution is implemented consistently within an equation and all given set of compliance calculations. Compliance determinations under part 63, subpart JJJJ requires monthly calculation of as-applied organic HAP content using measurements of the organic HAP content of as-purchased material, and of any added material. 40 CFR 63.3360(c)(2) allows substitution of Method 24 determinations of VOC content for Method 311 determinations of organic HAP.

Abstract for [M060031]

Q: Is a replaced primer booth at the CNH America, LLC facility a new source under part 63, subpart MMMM?

A: No. EPA does not find the replaced primer booth to be a new source under 40 CFR part 63, subpart MMMM. If the replacement had involved construction of a completely new miscellaneous metal parts and products surface coating facility, where previously no miscellaneous metal parts and products surface coating facility had existed, then the replaced primer booth would be a new source under 40 CFR part 63, subpart MMMM. The facility will need to provide documentation to the delegated state agency to demonstrate that the replaced booth does not meet the definition of ''reconstruction'' in 40 CFR 63.2, and to document that the facility remains in compliance with a potential to emit limitation.

Abstract for [M060032]

Q1: Could EPA clarify to Vorys, Sater, Seymour and Pease LLP whether the refinishing of metal equipment that is used to manufacture wood furniture and coats metal parts and equipment that are not metal components of wood furniture is subject to 40 CFR part 63, subpart JJ?

A1: EPA finds that the refinishing of metal equipment at the facility falls within the affected source of 40 CFR part 63, subpart MMMM, and would therefore be excluded from 40 CFR part 63, subpart JJ. EPA also finds that this activity falls within facility maintenance activities that are exempt from 40 CFR part 63, subpart MMMM requirements.

Q2: Is the construction and painting of wooden workbenches, shelving, and/or shadow boards, as well as the recoating or refinishing of wooden workbenches subject to 40 CFR part 63, subpart JJ, if the materials are for use within the facility?

A2: Yes. EPA finds that construction and painting activities are subject to 40 CFR part 63, subpart JJ. This rule does not distinguish activities that produce items for sale from activities that produce items for use at the facility. For refinishing and restoration activities, the background information document for subpart JJ clarifies that those activities are not considered part of wood furniture manufacturing and thus are not subject to subpart JJ.

Q3: Is the ink jet printing of letters or numbers on wood substrate subject to 40 CFR part 63, subpart JJ?

A3: Yes. EPA finds that this activity is subject to 40 CFR part 63, subpart JJ because inks are included in the coating

definition and the printing serves as a functional use.

Abstract for [M060033]

Q: Does EPA approve the monitoring of alternative operating parameters for the lime kiln scrubber, under 40 CFR part 63, subpart MM, at MeadWestvaco's pulp mill in Rumford, Maine?

A: Yes. EPA conditionally approves the request to install, calibrate, maintain, and operate a continuous flow monitoring system and supply pressure monitoring system to measure scrubbing liquid re-circulation flow rates and pressure from the wet scrubber used to control emissions from the lime kiln. This system, in conjunction with four conditions specified in the EPA response letter, can be used in lieu of monitoring and recording the differential pressure across the scrubber, as required by 40 CFR part 63, subpart MM.

Abstract for [M060034]

Q1: Could EPA clarify to 3M EHS Operations whether shared ''process equipment'' under the Process Unit Group (PUG) definition in 40 CFR part 63, subpart FFFF, the National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing (MON rule), may include the following scenarios at various 3M facilities: (i) Piping manifold systems and pumps used to deliver raw materials or remove waste or product from process units; (ii) portable equipment, such as filtering systems; and/or (iii) ovens used to warm raw materials in drums or totes prior to introduction into the process vessel?

A1: Yes. EPA finds that while those pieces of equipment may be part of a PUG, they cannot be the sole shared equipment in the PUG.

Q2: Could EPA clarify the applicability criteria under the National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing (MCM rule) at 40 CFR part 63, subpart HHHHH, under the following specific scenarios at 3M facilities: Plant 1 contains Process Vessel (A), which is used to manufacture two types of coatings, i.e., Coating (a) and Coating (b). Process Vessel (A) is not an affected source or part thereof under another MACT standard. The production of Coating (a) does not involve the process, use or production of any hazardous air pollutant (HAP). The production of Coating (b) does involve the process, use or production of a HAP. Both Coating (a) and Coating (b) are sold to commerce. If, in a year, Process Vessel (A) is used more hours to manufacture Coating (a) than Coating (b), is Process Vessel (A) then part of the MCM rule affected source of Plant 1? If, in a year, Process Vessel (A) manufactures more product on a weight basis of Coating (a) than Coating (b), then is Process Vessel (A) part of the MCM rule affected source of Plant 1?

A2: EPA finds that Process Vessel (A) is part of the affected source under the MCM rule at all times that it is manufacturing Coating (b). The MCM rule does not include the concept of ''primary product.'' Therefore, neither the time in use for the production of a product, nor the mass amount of a product affects the applicability of the standard.

Q3: Could EPA clarify the applicability criteria under the following specific scenarios at 3M facilities: Plant 1 is subject to 40 CFR part 63, subpart HHHHH (MCM rule). Process Vessel (A) at Plant 1 is not part of a PUG under 40 CFR part 63, subpart FFFF (MON rule). It is also not an affected source or part thereof under another 40 CFR part 63 standard. Process Vessel (A) is used to manufacture two products, Product (a) and Product (b), neither of which are coatings as defined by the MCM rule. Process Vessel (A), while manufacturing Product (a), meets all of the criteria of a multiple miscellaneous chemical process unit (MCPU) under the MON rule, and does not meet any of the exemptions in the MON rule. Process Vessel (A), while manufacturing Product (b), either does not meet the criteria for an MCPU under the MON rule, or is subject to one of the exemptions in the MON rule. Is Process Vessel (A) subject to the MON rule during the manufacture of both Product (a) and Product (b)?

A3: EPA finds that Process Vessel (A) is subject to the MON standard only during the manufacture of Product (a). This is the only time it meets the applicability of that rule because the product of the process determines rule applicability.

Q4: Could EPA clarify the applicability criteria of the following scenario(s) at 3M facilities: Plant 1 is a major source of HAP emissions. Process Vessel (A) at Plant 1 is not part of a PUG under the MON rule in 40 CFR part 63, subpart FFFF. Process Vessel (A) is used to manufacture Product (b) from several Raw Materials (a), and mixing, blending, etc., in Process Vessel (A) do not involve any chemical reaction or change in basic chemistry of Product (b) from Raw Materials (a). Product (b) is not a coating as defined by the MCM rule in 40 CFR part 63, subpart HHHHH. Process Vessel (A), while manufacturing Product (b), meets all of the criteria for an MCPU and is subject to none of the exemptions of the MON rule. Is process vessel (A) subject to the MON rule?

A4: EPA finds that process Vessel (A) would be subject to the MON rule because it meets all of the criteria for an MCPU in the rule and does not meet any of the exemptions. Whether there is chemical reaction during the manufacturing process is not a factor for determining the applicability of the MON rule. Although chemical reaction is typically associated with the manufacture of organic chemicals, it is not exclusively so.

Q5: Could EPA clarify the applicability criteria of the following scenario(s) at 3M facilities: Plant 1 has operations subject to both 40 CFR part 63, subpart FFFF (MON rule) and the 40 CFR part 63, subpart HHHHH (MCM rule). Process Vessel (A) at plant 1 is not an affected source or part thereof under another MACT standard. Process Vessel (A) is not part of a PUG developed under the MON rule. Process Vessel (A) is used to manufacture two products, Product (a) and Product (b). Product (a) is a coating as defined in the MCM rule and involves the process, use, or production of HAP. Process Vessel (A), while manufacturing Product (b), meets all of the criteria for an MCPU under the MON rule and meets none of the exemptions in the MON rule. Is Process Vessel (A) subject to either the MON rule, the MCM rule, or both?

A5: EPA finds that process Vessel (A) is subject to the MCM rule when manufacturing Product (a). Process Vessel (A) is subject to the MON rule when manufacturing Product (b). Process Vessel (A) cannot be subject to both standards at the same time because both the MON rule and MCM rule contain language that states that the particular affected facility cannot be part of another 40 CFR part 63 affected facility.

Q6: Could EPA clarify the following scenario(s) regarding applicability criteria at 3M facilities: Plant 1 is subject to the 40 CFR part 63, subpart HHHHH (MCM rule), and is not subject to the National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating (POWC rule) at 40 CFR part 63, subpart JJJJ. Plant 2 consists of a Web Coating Line (B) which is part of an affected source under the POWC rule. Process Vessel (A) at Plant 1 is used only to manufacture a coating that is used by the Web Coating Line (B). Plants 1 and 2 are not contiguous and may in fact be located in different states. Does 40 CFR part 63, subpart HHHHH (MCM rule)

apply to Plant 1 for the production of the coating in Process Vessel (A)?

A6: Yes, the MCM rule is applicable to Plant 1 for the production of the coating in Process Vessel (A) because Process Vessel (A) is not located at the POWC affected source and therefore cannot be an affiliated operation of a POWC affected source.

Q7: Plant 1 consists of Process Vessel (A), which is an MCPU under the MON rule (40 CFR part 63, subpart FFFF). Process Vessel (A) is not part of a PUG under the MON rule. Plant 2 consists of both Web Coating Line (C), which is part of an affected source under the POWC rule (40 CFR part 63, subpart JJJJ), and Process Vessel (B), which manufactures coatings for Web Coating Line (C). Process Vessel (A) produces miscellaneous organic chemical Product (b), which is sold to commerce, and miscellaneous organic chemical Product (a) which is used as an ingredient by Plant 2 to manufacture the coating in Process Vessel (B). How do the MON rule and the POWC rule apply to Plant 1 and Plant 2?

A7: EPA finds that Process Vessel (A) in Plant 1 is subject to the MON rule when producing either Product (a) or Product (b) because production of Product (b) meets the applicability of the MON rule and production of Product (a) does not meet the exemption for affiliated operations under 40 CFR 63.2435(c)(3) of the MON rule. The production of the coating in Process Vessel (B) would be an affiliated operation under the POWC rule, because the mixing or dissolving of coatings prior to application as an affiliated operation would include the actual production of the coating when performed at an affected source listed in 40 CFR 63.7985(d)(2).

Q8: Could EPA clarify the applicability criteria of the following scenario(s) at 3M facilities: The Web Coating Line (C) is part of an affected source at Plant 1 under 40 CFR part 63, subpart JJJJ (POWC rule). Equipment (A) at Plant 1, which consists of process vessels with associated agitators, pumps, etc., is used to manufacture HAP-containing coatings for the Web Coating Line (C). A subset of Equipment (A), designated as Equipment (B), is also used at other times to manufacture different coatings which are sold to general commerce as Finished Products (a). Are Equipment (A) and/or Equipment (B) subject to 40 CFR part 63, subpart HHHHH (MCM rule)?

A8: EPA finds that all of the equipment in Equipment (A), including Equipment (B), would not be subject to the MCM rule when they are used to manufacture a coating for Web Coating Line (C). During this time, the process carried out in these equipments would be an affiliated operation under the MCM rule at 40 CFR 63.7985(d)(2). Equipment (B), when making Finished Product (a), would be subject to the MCM rule, as it would not qualify as an affiliated operation of a POWC rule affected source because Finished Product (a) is not applied at the POWC rule affected source.

Q9: Could EPA clarify the applicability criteria of the following scenario(s) at 3M facilities: Web Coating Line (B) at Plant 1 is part of an affected source under 40 CFR part 63, subpart JJJJ (POWC rule). Process Vessel (A) at Plant 1 is used to manufacture HAP-containing Coatings (a) for Web Coating Line (B). Some part of the Coatings (a) are sent to Off-site Locations (C) for quality assurance/quality control, pilot coating lines, and/or research and development. Is Process Vessel (A) an affected source under 40 CFR part 63, subpart HHHHH (MCM rule)?

A9: EPA finds that when Process Vessel (A) is making HAP-containing Coatings (a) for Web Coating Line (B), it is not a MCM rule affected source because it is an affiliated operation of the POWC rule affected source. However, when Process Vessel (A) is making HAP-containing Coatings (a) for use off-site, it no longer meets the definition of affiliated operations for the POWC rule affected source. If the Off-site Locations (C) met the exemptions in the rule, then the production of HAP-containing Coatings (a) for these purposes would be exempt from MCM rule.

Q10: Could EPA clarify the applicability criteria of the following scenario(s) at 3M facilities: Web Coating Line (D) is part of an affected source at Plant 1 under 40 CFR part 63, subpart JJJJ (POWC rule). Web Coating Line (E) is part of an affected source at Plant 2 under the POWC rule. Process Vessel (A) at Plant 1 manufactures (with or without an intended chemical reaction) the HAP-Containing Coating (a) for Web Coating Line (D). Process Vessel (B) at Plant 1 manufactures (with or without a chemical reaction) the HAP-Containing Coating (b) for Web Coating Line (D) and for Web Coating Line (E), and manufactures another HAP-Containing Coating (d) which is sold to commerce. Process Vessel (C) in Plant 2 manufactures a HAP-Containing Coating (c) for Web Coating Line (E). Does 40 CFR part 63, subpart HHHHH (MCM rule) apply to Plant 1 and/or Plant 2?

A10: EPA finds that the MCM rule would apply to Process Vessel (B) in Plant 1 when manufacturing HAP-Containing Coating (d) because it would not be an affiliated operation as the HAP-Containing Coating (d) is not used in a 40 CFR part 63, subpart JJJJ (POWC rule) process. The MCM rule would not apply to Process Vessel (A) in Plant 1 when producing HAP-Containing Coating (a) for use in Web Coating Line (D) because it would be exempt under 40 CFR 63.7985(d)(2) as an affiliated operation located at a POWC rule affected source. Process Vessel (C) in Plant 2, which produces HAP-Containing Coating (c) for use with Web Coating Line (E), would be an affiliated operation of 40 CFR part 63, subpart JJJJ (POWC) Web Coating Line (E) and therefore not subject to the MCM rule per the same exemption. When manufacturing HAP-Containing Coating (b) for Web Coating Line (D), Process Vessel (B) also would be exempt from the MCM rule under 40 CFR 63.7985(d)(2). However, because there is no concept of primary use in either the POWC rule or the MCM rule, Process Vessel (B), would be subject to the MCM rule when producing HAP-Containing Coating (b) for Web Coating Line (E) because it would not be an affiliated operation located at the relevant POWC rule affected source.

Q11: Could EPA clarify the applicability criteria of the following scenario(s) at 3M facilities: Plant 1 produces product coatings and chemical intermediates in several steps. In Step 1a, Process Vessel (A) is used to manufacture Intermediate (a). While manufacturing Intermediate (a), Process Vessel (A) meets all of the criteria for an MCPU under the MON rule (40 CFR part 63, subpart FFFF) and meets none of the exemptions in the MON rule. Process Vessel (A) is not a PUG under the MON rule. It is also not part of an affected source under another subpart of 40 CFR part 63. In Step 1b, one-half of the Intermediate (a) is drained away from Process Vessel (A) into drums for temporary storage. In Step 2a and 2b, other raw materials, some of which contain HAP, are added to the remaining one-half of Intermediate (a) in Process Vessel (A) to manufacture a coating (with or without a chemical reaction). In Step 3, the one-half of Intermediate (a) which was drained into drums is removed from storage and pumped back into the now empty Process Vessel (A) or another process vessel, along with other raw materials (some of which contain HAP) to manufacture a coating (with or without chemical reaction). How do 40 CFR part 63, subpart FFFF (MON) and 40 CFR part 63, subpart HHHHH (MCM) apply to Plant 1?

A11: EPA finds that Steps 1a and 1b would be subject to the MON rule

because it applies to the production of an isolated intermediate at an MCPU. Because a portion of Intermediate (a) is removed from the process in Step 1b into a drum for storage, Intermediate (a) is an isolated intermediate. Steps 2a, 2b, and Step 3 would all be subject to the MCM rule because the final product of these processes is a coating, and they appear to meet the applicability requirements of the MCM rule (e.g., use of HAPs).

Abstract for [M060036]

Q: Is the Battisons of Avon, Connecticut, (Battisons) facility a major source or an area source of hazardous air pollutants (HAP) emissions subject to 40 CFR, part 63, subpart M, if it replaces its old dry cleaning systems and installs all new dry-to-dry dry cleaning systems before the compliance date?

A: EPA finds that Battisons is an area source of HAP emissions subject to 40 CFR part 63, subpart M because it has maintained its perchloroethylene consumption below the 2,100 gallons threshold limit since before the compliance date. The applicability provision at 40 CFR 63.320(g) states that, ''In lieu of measuring a facility's potential to emit perchloroethylene emissions or determining a facility's potential to emit perchloroethylene emissions, a dry cleaning facility is a major source if: (1) It includes only dry-to-dry machine(s) and has a total yearly perchloroethylene consumption greater than 8,000 liters (2,100 gallons) as determined according to 63.323(d). * * *'' However, if Battisons exceeds the yearly perchloroethylene consumption of 2,100 gallons when it starts up the new systems, it will become a major source of HAP emissions, according to 40 CFR 63.320(i), and all its dry cleaning systems will have to comply with the appropriate requirements within 180 calendar days from the date it exceeded that threshold value.

Abstract for [M060037]

Q: Is the Rhode Island Textile Company, Inc. (RIT) facility, located in Pawtucket, Rhode Island, that manufactures shoelaces and submits the shoelaces to tipping operations subject to 40 CFR part 63, subpart OOOO?

A: No. EPA has determined that because the company is not coating, printing, slashing, finishing or dyeing the product, it is not subject to 40 CFR part 63, subpart OOOO.

Abstract for [M060038]

Q: Is it acceptable under 40 CFR part 63, subpart V, for the North Shelby Landfill facility to submit startup, shutdown, and malfunction (SSM) reports within 60 days after the end of each semiannual reporting period?

A: Yes. EPA approves the North Shelby Landfill facility request of extending the submittal of SSM reports until 60 days after the end of each semiannual reporting period, which corresponds with the existing deadline for submitting semiannual reports under the Title V permitting program. Under 40 CFR 63.9(i), an owner or operator of a facility subject to this reporting requirement can request an alternative schedule. Under the new deadline, the SSM reports and semiannual Title V reports can be submitted at the same time to simplify the owner/operator reporting requirements.

Abstract for [M060039]

Q: Could EPA clarify to Briggs & Stratton Corporation whether aluminum sows, ingots, and T-bars that have painted markings considered ''clean charge'' in the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum at 40 CFR part 63, subpart RRR?

A: EPA finds that as a result of the typographical errors in the definition of ''clean charge,'' aluminum T-bars, sows, ingots, billets, and pigs which have painted markings are not defined as ''clean charge.'' It is the Agency's intent that aluminum T-bar, sow, ingot, billet, and pig be considered ''clean charge,'' and that the phrase ''entirely free of paints, coatings, and lubricants'' not apply to these materials. EPA believes these materials, notwithstanding ink, grease or paint markings, should be treated as clean charge. EPA intends to amend 40 CFR part 63, subpart RRR to clarify this point.

Abstract for [M060040]

Q: What is EPA's guidance to regulators on how an owner or operator of a secondary aluminum production facility can know that the scrap processed at its facility is ''entirely free of paints, coatings, and lubricants'' under 40 CFR part 63, subpart RRR?

A: EPA believes that an owner or operator of a secondary aluminum production facility may know whether the scrap material being processed at the facility is ''entirely free of paints, coatings, and lubricants'' in one of two ways. The first way to ensure a ''clean charge'' would be to maintain direct control of the scrap material being processed by processing scrap generated within the facility or from other facilities within the same company that the owner or operator knows has not been subjected to paints, coatings and lubricants, or where the owner or operator knows that paints, coatings and lubricants have been removed consistent with the definition of ''clean charge.'' Similarly, the owner or operator also may process scrap from outside entities where they are familiar with the history of the scrap and, therefore, know that the scrap meets the definition of ''clean charge.''

Abstract for [M060041]

Q: Could EPA clarify to the American Home Furnishing Alliance's (AHFA) the applicability criteria under 40 CFR part 63, subpart DDDD, for nine general manufacturing scenarios in the home furnishing industry involving manufacturing components from plywood and engineered lumber?

A: The Agency has determined that most of the furniture components described in the scenarios, except for processes involving cold pressing of solid wood pieces, would meet the definition of ''plywood'' under 40 CFR part 63, subpart DDDD and, therefore, be subject to applicable requirements in that rule, as described in EPA's response letter. EPA interprets the term ''panel product'' in the definition of plywood to include flat as well as curved furniture panels. It should be noted that most of the manufacturing equipment used by the industry, such as hot presses, would not be subject to emission limits but only to notification requirements under 40 CFR part 63, subpart DDDD.

Abstract for [M060043]

Q: What is EPA's guidance to regulators on the implementation and compliance monitoring of the capture, collection, and ventilation requirements in the Secondary Aluminum NESHAP under 40 CFR part 63, subpart RRR?

A: EPA finds that the Secondary Aluminum NESHAP incorporates by reference chapters 3 and 5 of Industrial Ventilation: A Manual of Recommended Practice, 23rd edition, published by the American Conference of Governmental Industrial Hygienists (ACGIH). As required by 40 CFR 63.1506(c) of NESHAP subpart RRR, owners or operators of affected sources or emissions units with add-on air pollution control devices must design and install a system for the capture and collection of emissions to meet the engineering standards for minimum exhaust rates as published in the ACGIH manual. In addition, 40 CFR 63.1515(b)(5) requires facilities to provide design information and analysis, with supporting documentation, demonstrating conformance with these capture/collection system requirements. The

memorandum provides further specifics on what steps and documentation are required to demonstrate compliance with these requirements.

Abstract for [M060044]

Q1: Could EPA clarify to Kean Miller whether an HCl unit at a facility that stops producing 30 weight percent acid for commercial sale after the compliance date is subject to 40 CFR part 63, subpart NNNNN?

A1: 40 CFR part 63, subpart NNNNN does not only apply to the production for commercial sale of 30 weight percent or greater HCl acid. Consequently, the production of HCl acid with a concentration of 30 weight percent or greater for internal use, as well as for commercial sale, may be subject to 40 CFR part 63, subpart NNNNN.

Q2: If a facility infrequently produces HCl at a 30 weight percent strength, and its monthly or weekly average is below 30 weight percent, is the facility subject to 40 CFR part 63, subpart NNNNN?

A2: No. EPA finds that a facility would not be subject to 40 CFR part 63, subpart NNNN if its production of HCl acid with a concentration of 30 weight percent or greater is infrequent, irregular, or not consistent with the facility's normal operations. In determining whether the production of 30 weight percent HCl acid is occasional or part of a facility's normal operations, EPA will make a case-by-case determination based on the frequency and regularity of HCl acid production of 30 weight percent or greater.

Q3: Does 40 CFR part 63, subpart NNNNN apply to a facility that produces liquid HCl at concentrations exceeding 30 weight percent only on an occasional basis, when requested by a customer?

A3: If a facility infrequently produces HCl with a concentration of 30 weight percent or greater and this production is not a routine part of normal operations, the facility would not be subject to 40 CFR part 63, subpart NNNNN.

Abstract for [M060045]

Q1: Could EPA clarify to Lasco Bathware Incorporated what measures are being taken by the Agency to ensure that any composite operation utilizing the ''non-atomized mechanical application'' emission factors for gelcoats or filled resins, is in compliance with the requirements specified in the National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production under 40 CFR part 63, subpart WWWW?

A1: Since affected sources must comply with monitoring, recordkeeping, and reporting requirements under the Reinforced Composites Production rule (40 CFR part 63, subpart WWWW) to ensure continuous compliance, the regulatory agency is able to know when a source first becomes subject to the rule and whether it is complying with the rule. A regulatory agency could also elect, as part of its compliance and enforcement program, to inspect a source to evaluate its compliance with the 40 CFR part 63, subpart WWWW requirements and take any actions, as appropriate.

Q2: What tests are required to ensure that organic hazardous air pollutant (HAP) emissions are no greater than the organic HAP emissions predicted by the applicable non-atomized application equation(s) in Table 1 of 40 CFR part 63, subpart WWWW?

A2: No tests are required. 40 CFR part 63, subpart WWWW allows sources to use the equations in Table 1 to calculate HAP emission factors that are then used to estimate sources' emissions instead of conducting actual testing. Table 1 emission factors were used to calculate the emission limits for the MACT floor for this rule. Accordingly, the rule allows a source to use Table 1 emission factors to calculate its emissions and demonstrate compliance with the emission standard.

Q3: Could EPA clarify how it will address the known discrepancy between the emissions estimated using the published Table 1 and/or emission factors for unfilled resin, under 40 CFR part 63, subpart WWWW, and the actual emissions from tub/shower facilities, which can be verified by means of EPA emissions testing methods 18 and 25A?

A3: EPA does not yet have the industry data to do an evaluation of the current emission factors for 40 CFR part 63, subpart WWWW. After the data is received and evaluated, a determination will be made as to whether changes should be made to the rule.

Abstract for [Z060002]

Q: Is the Aerovox Division Parallax Power Components facility subject to reporting requirements under 40 CFR part 63, subpart T, if all machines at the facility subject to the rule have been removed or converted to non-regulated solvents?

A: No. EPA finds that the facility is no longer subject to 40 CFR part 63, subpart T and therefore is no longer required to submit reports under the subpart, unless the facility once again uses solvents regulated under this rule.

Abstract for [Z060004]

Q: Should benzene emissions that occur from heat exchanger leaks at the BAKER BOTTS L.L.P., Texas facility be included in the calculation of the Total Annual Benzene (TAB) quantity from facility waste water under the NESHAP for Benzene Waste Operations, 40 CFR part 61, subpart FF?

A: Yes. EPA finds that neither benzene emissions occurring from non-contact heat exchanger leaks into cooling tower water nor benzene quantities from ''contact heat exchangers ''qualify for the exemption or exclusion from the required TAB calculation under the NESHAP for Benzene Waste Operations, 40 CFR part 61, subpart FF. The benzene emissions are directly generated by these processes and are not the result of either leakage or process offgas. Therefore, waste in the form of gases or vapors that is emitted during these processes from the process fluids is required to be part of the calculation of the total annual benzene quantity in facility waste generation.

Abstract for [0600030]

Q: Could EPA clarify to the Florida Department of Environmental Protection whether the Agrico's Big Bend Terminal in Hillsborough County, Florida, is subject to 40 CFR part 60, subpart X, if it contends that it is a distribution and not a storage of granular triple superphosphate (GTSP) manufacturing facility?

A: Yes. EPA finds that the Big Bend Terminal facility is subject to NSPS subpart X since it was constructed, reconstructed, or modified after October 25, 1974. In addition, the definition of GTSP storage facility in 40 CFR 60.241 does not restrict applicability to storage facilities at manufacturing sites.

Abstract for [0600031]

Q: Are coal truck dump operations at the ARCO Coal Company, Colorado facility ''affected facilities'' subject to 40 CFR part 60, subpart Y?

A: Coal truck dump operations are not affected facilities for purposes of NSPS subpart Y. However, EPA finds that these operations are part of the coal preparation plant if they are located at the site of the plant, as defined in 40 CFR 60.251(a) of NSPS subpart Y. Therefore, quantifiable fugitive particulate emissions from coal dump operations must be included in a total source emissions inventory to determine whether the stationary source is to be considered a major source of hazardous air pollutant emissions.

Abstract for [0600032]

Q: Are conveyors 1 and 2 at the Arizona Electric Power Cooperative (AEPCO) part of the affected facility

subject to 40 CFR part 60, subpart Y? Conveyor numbers 1 and 2 were built prior to the AEPCO screening and crushing facility.

A: Yes. EPA finds that AEPCO conveyor numbers 1 and 2 are part of the affected facility subject to NSPS subpart Y because these are used to convey coal or coal refuse from the machinery and the exemption in 40 CFR 60.14(c) would therefore, not apply. 40 CFR 60.14(c) exempts existing facilities from becoming affected facilities by the addition of a new affected facility. However, this case involves changes to an existing affected facility.

Abstract for [0600033]

Q: Could EPA clarify the applicability of 40 CFR part 60, subparts NNN, RRR, and VV to the production of ethyl alcohol through biological fermentation processes?

A: These regulations and their background documents state that these subparts apply only to specific processes involving synthesis of organic chemicals using petroleum-based feedstocks (in this case ethylene to ethanol) and not biological fermentation processes where emissions characteristics and industry economics differ. EPA clarified that these regulations do not apply to chemicals extracted from natural sources or totally produced by biological process in the following **Federal Register** notices: the notice proposing the NSPS for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations (40 CFR part 60, subpart NNN) (48 FR 57541); the notice promulgating the NSPS for equipment leaks of VOC in SOCMI (40 CFR part 60, subpart VV) (48 FR 48335); and the notice promulgating the NSPS for VOC emissions from SOCMI reactor processes (40 CFR part 60, subpart RRR) (58 FR 45962).

Abstract for [0600034]

Q: Could EPA clarify the applicability of 40 CFR part 60, subparts NNN, RRR, and III to biomass ethanol production?

A: EPA finds that NSPS subparts NNN, RRR, and III do not contain a blanket exemption for biomass ethanol production facilities from applicability of these subparts. Inherent difficulties in determining emissions characteristics and processes make it necessary to provide exemptions on a case-by-case basis, beyond those provided for explicitly in the rule. This case-by case applicability exemption determination is consistent with the approaches used in implementing other rules, such as the Hazardous Organic NESHAP (HON) rule, and this memorandum further clarifies an earlier EPA response dated October 7, 1996, regarding the applicability of these standards to biomass ethanol production.

Abstract for [0600035]

Q: Could EPA clarify the 30-day reporting requirement for sources which were constructed or reconstructed between proposal and promulgation, under 40 CFR part 60, subpart III?

A: Although 40 CFR part 60, subpart III does not specifically address the issue of notification deadlines for sources for which the 30-day deadline has already or nearly passed, EPA believes that it is only reasonable under NSPS subpart III to allow owners and operators the full 30 days after promulgation to provide the necessary notifications.

Abstract for [0600036]

Q: Could EPA clarify whether heaters F–501 and F–510 at the Chevron USA refinery in Perth Amboy, New Jersey, are subject to 40 CFR part 60, subpart J either because their construction commenced after June 11, 1973, or because the heaters were modified in 1982?

A: EPA finds that heaters F–501 and F–510 are subject to NSPS subpart J because they commenced construction after the applicability date of June 11, 1973. The terms ''commenced'' and ''construction'' are defined in 40 CFR 60.2. The terms were also discussed in EPA's earlier response to Chevron on May 2, 1976 (see ADI Control Number CO08). Based on these definitions, EPA finds that the construction of heaters F–501 and F–510 commenced on January 31, 1974, the date the contract for the construction of heaters F–501 and F–510 was signed and became legally binding. Because the construction of these heaters commenced after the applicability date of June 11, 1973, these heaters are subject to NSPS subpart J.

Abstract for [0600037]

Q: Is a fuel oil storage tank (Tank 19) at the Chevron Products Company, New Jersey facility subject to 40 CFR part 60, subpart Kb, if the tank is converted to an internal floating roof tank with a mechanical shoe seal for storing crude oil?

A: Yes. EPA finds that the storage tank is subject to NSPS subpart Kb because the conversions constitute ''reconstruction'' as defined in 40 CFR 60.14 and 40 CFR 60.15. The fixed capital costs of the new components exceed 50 percent of the initial fixed capital cost, which subjects the storage tank to NSPS subpart Kb requirements. The cost of the new foundation for the storage tank, or other costs not directly related in containerization cannot be included in calculating the fixed capital cost of the new components.

Abstract for [0600038]

Q1: Does EPA approve a custom fuel monitoring schedule for sulfur for a gas turbine, under 40 CFR part 60, subpart GG, at Conoco's Acadia Gas Processing Plant?

A1: Yes. Given that the sulfur levels continue to be low and consistent as demonstrated, EPA approves a custom schedule for sulfur, with a one week composite for each of the first six months and a one week composite for each of the following quarters. Conoco must re-evaluate the fuel composition if there is a change in the feedstock.

Q2: Does EPA approve a custom fuel monitoring schedule for nitrogen for a gas turbine, under 40 CFR part 60, subpart GG, at Conoco's Acadia Gas Processing Plant?

A2: No. EPA does not approve a custom schedule for nitrogen for a gas turbine at this facility. If Conoco would like to reapply for a custom schedule, it should provide sufficient data to demonstrate the consistency of the fuel quality on a daily basis, rather than on an average basis.

Abstract for [0600039]

Q1: Does EPA approve an alternative monitoring schedule for analyzing fuel sulfur content, under 40 CFR part 60, subpart GG, which would allow the use of weekly instead of daily composites to determine sulfur content, for the combined cycle gas turbines at Dow Chemical USA (Dow)? In addition, Dow would like these weekly composites to be conducted on a quarterly basis and believes that this alternative schedule is consistent with 40 CFR 60.334(b)(2).

A1: Yes. EPA approves the use of a weekly composite for analyzing fuel sulfur content. However, EPA does not approve the proposed quarterly sampling at this time. Weekly composites should be analyzed and checked for accuracy and consistency for six months. If after the first six months the sulfur levels remain consistent with the data provided in this review, quarterly monitoring may be requested.

Q2: Does EPA approve the microcoulometric titration technique for determining the sulfur content of fuel under 40 CFR part 60, subpart GG?

A2: No. EPA does not approve Dow's microcoulometric titration technique for determining sulfur content. The method is not a previously approved equivalent method under NSPS subpart GG, and

lacks supporting data demonstrating its equivalency to proven testing methods.

Abstract for [0600040]

Q1: Could EPA clarify the applicability of 40 CFR part 60, subpart KK for the Excide Corporation (Excide) lead acid battery manufacturing plant in Greer, South Carolina?

A1: Excide's four facilities located at this plant are subject to NSPS subpart KK if they were constructed or modified after January 14, 1980, and are part of any plant that produces or has the design capacity to produce in one day (24 hours) batteries containing an amount equal to or greater than 6.5 tons of lead. Excide produces batteries containing an amount of lead greater than 6.5 tons. Also, since January 14, 1980, Excide has installed additional equipment on all four facilities, which constituted modifications to these facilities. Therefore, the plant is subject to NSPS subpart KK. Removal of all equipment added after January 14, 1980, would not by itself terminate the applicability of NSPS subpart KK to the Exide facilities. To terminate the applicability of NSPS subpart KK, Exide would have to either dismantle the affected facilities or permanently decrease (physically restrict) the plant's capacity so that the plant no longer had the capacity to produce in 1 day (24 hours) batteries containing more than 6.5 tons of lead (down from the present amount of lead).

Q2: Would Excide have a period of time to remove the additional equipment which constituted the modification in order to avoid being subject to 40 CFR part 60, subpart KK regulations?

A2: No. The applicability determination is made based on whether and when modification occurred. Subsequent restoration of the facilities to the previous physical and operational configuration would not change the finding that the facilities were modified and therefore would not relieve the company from having to comply with NSPS subpart KK.

Q3: Could EPA distinguish between a boiler derate and removing additional equipment in relation to the applicability of 40 CFR part 60, subpart KK to this facility?

A3: A boiler derate involves a permanent restriction of the boiler production capacity and could alter the entire regulated entity in such a way that it no longer meets the definition of ''affected facility.'' In contrast, once an existing facility has been modified by installing additional equipment, it is considered an affected facility under NSPS subpart KK in the same way as a newly-constructed affected facility would be. The subsequent removal of the added equipment leaves behind a plant that still contains affected facilities since its production rate remains well above the NSPS subpart KK applicability threshold. The entire affected facility is subject to the standards of performance, not just the portion of the affected facility which is responsible for the increase in emissions.

Abstract for [0600041]

Q: Does EPA waive the monitoring requirements, under 40 CFR part 60, subpart J, for the Hunt Refining Company?

A: No. EPA does not have the authority to waive NSPS subpart J monitoring requirements. However, the facility emits the regulated pollutants in low quantities and may qualify for a monitoring frequency reduction. The facility remains subject to continuous monitoring requirements until an alternative is approved.

Abstract for [0600042]

Q: Are two boilers, which burn only Jet A fuel, subject to 40 CFR part 60, subpart Db?

A: No. The boilers are designed to burn natural gas, and are therefore subject to NSPS subpart Db. However, these boilers are not subject to any emission standards or monitoring requirements when solely burning Jet A fuel. EPA has determined that Jet A fuel is classified as ''other fuel'' as referenced in NSPS subpart Db, rather than as residual or distillate oil. Jet A fuel is covered in ASTM D1655–95, which also covers diesel and gas turbine fuels.

Abstract for [0600043]

Q: Could EPA clarify the particulate matter and opacity limits applicable to the kiln, clinker cooler, and raw mill operations, under 40 CFR part 60, subpart F, at the Roanoke Cement Company in Cloverdale, Virginia?

A: All of the gas exiting the clinker cooler goes to the kiln as process gas and is therefore not subject to the opacity or particulate matter limits for clinker cooler gas in NSPS subpart F. Instead, this process gas, as well as all of the other gas exiting the kiln (that is not diverted to raw mill operations as a process gas) is subject to the kiln gas standards. The raw mill uses some kiln gas as process gas. This process gas and all other gas exiting the raw mill operations is subject to the 10 percent opacity limit applicable to raw mill gas (no particulate matter limit applies).

Abstract for [0600045]

Q1: Could EPA clarify to Woodward-Clyde Consultants whether a change in volatile organic liquid (VOL) or an increase in throughput makes an existing storage vessel subject to 40 CFR part 60, subpart Kb?

A1: Based on 40 CFR 60.14(e), switching to a higher vapor pressure VOL will not by itself be considered a modification if the existing storage vessel was designed to accommodate the higher vapor pressure VOL prior to July 23, 1984. Similarly, under 40 CFR 60.14(e), an increase in throughput will not be considered a modification if the original design of the storage vessel could accommodate the increased throughput.

Q2: Could EPA clarify the applicability of 40 CFR part 60, subpart Kb to a storage vessel that is covered by a state permit, which does not specify what VOL can be stored, and where the VOL is changed to a level that is within the emission limits established by the state permit?

A2: If an existing source undergoes reconstruction or modification after July 23, 1984, then the storage vessel will become subject to NSPS subpart Kb because state permits do not provide shielding from the NSPS. Therefore, 40 CFR part 60, subpart Kb requirements applies to the storage vessel even when the state permit fails to include such requirements.

Q3: Is acetone considered a VOL with respect to 40 CFR part 60, subparts A and Kb?

A3: No. EPA finds that acetone is not a VOL under NSPS subparts A and Kb.

Q4: Are blending tanks with a capacity of at least 40 cubic meters subject to 40 CFR part 60, subpart Kb?

A4: Yes. EPA finds that the blending tank is considered a storage tank subject to NSPS subpart Kb because 40 CFR 60.110(b) does not differentiate between storage vessels based on usage.

Q5: Is the presence or absence of a mechanical agitator in the blending tank relevant to the applicability of 40 CFR part 60, subpart Kb?

A5: EPA finds that the presence of a mechanical agitator is only relevant when one considers the question of ''modification.'' For example, if a product change requires blending, the installation of a mechanical agitator in the tank constitutes ''physical change.'' Providing that there are emission increases associated with the product storage change, the tank will become subject to 40 CFR part 60, subpart Kb because the tank is not considered capable of accommodating the alternative product without the installation of an agitator.

Q6: Will 40 CFR part 60, subpart Kb apply if the storage tank has a usable capacity greater than or equal to 151 m3 without an internal floating roof, but the usable capacity drops below 151 m3 after the installation of an internal floating roof? Which capacity should be considered the design capacity for applicability purposes?

A6: EPA finds that the capacity of the tank prior to the installation of the internal floating roof is the design capacity for purposes of determining applicability of 40 CFR part 60, subpart Kb. The designed capacity is the nominal figure or nominal rating given to the storage vessel by the tank manufacturer. 40 CFR 60.110(a–c) identify ''design capacity,'' not ''usable'' capacity of the storage vessel to be the key parameter for considering applicability. In addition, the volume occupied by the internal floating roof cannot be subtracted to bring the tank below the threshold of NSPS subpart Kb.

Abstract for [0600046]

Q: Are three proposed 316.9 million Btu/hr resource recovery boilers, located at the Portsmouth Naval Shipyard, Norfolk, Virginia facility, which will burn a combination of coal and refuse derived fuel (RDF), subject to 40 CFR part 60, subparts D and/or Da? The steam and electricity generated by these boilers will be used exclusively to furnish the Portsmouth Naval Shipyard.

A: The boilers will not be subject to NSPS subpart Da because the boilers will not provide electricity for sale. The boilers will, however, be subject to NSPS subpart D because the boilers would have the capability to fire in excess of 250 million Btu/hr of fossil fuel. The boilers will be required to meet all emission limits for the portion of the heat input which is attributable to the fossil fuel.

Abstract for [0600047]

Q: Is the sulfur recovery plant (SRP) at the Navajo Refining Company's (Navajo's) Artesia, New Mexico, refinery subject to 40 CFR part 60, subpart J?

A: Yes. The 20 long tons per day (LTD) exception criterion in 40 CFR 60.100(a) for the production or processing capacity for the Navajo SRP does not apply. The SRU allows for the processing of more than 20 long tons per day (LTD) of sulfur based on the design basis of the unit. Although applicability of NSPS subpart J should be determined before construction begins, Navajo has not provided information sufficient to establish that the design capacity of the SRP to process input sulfur was 20 LTD or less. In addition, the sulfur production from this unit routinely exceeds 20 LTD, and Navajo has failed to demonstrate the design capacity was 20 LTD or less.

Abstract for [0600048]

Q: In lieu of the standard daily fuel nitrogen and sulfur monitoring under 40 CFR part 60, subpart GG, may the Algonquin Power co-generation facility in Windsor Locks, Connecticut (Algonquin Power) facility use the procedures in 40 CFR part 75, Appendix D, 2.3.1.4 and 2.3.2.4, to show that the gas used in a turbine meets sulfur-content specifications for pipeline-quality natural gas?

A: Yes. Pursuant to 40 CFR 60.334(b)(2), EPA approves that Algonquin Power use the procedures in 40 CFR part 75, Appendix D, 2.3.1.4 and 2.3.2.4, to show that the gas meets sulfur-content specifications for pipeline-quality natural gas. Under this approach, the daily fuel nitrogen and sulfur monitoring requirements of NSPS subpart GG would not apply as long as the part 75 monitoring demonstrated that the fuel met pipeline-quality specifications.

Abstract for [0600049] and [0600050]

Q: Does EPA approve changing the frequency of Relative Accuracy Test Audits (RATAs) and Cylinder Gas Audits (CGAs) under 40 CFR part 60, Appendix F, at the ANP Bellingham Energy Company facilities in Bellingham and Blackstone, Massachusetts, so that the frequency is consistent with similar requirements under 40 CFR part 75?

A: Yes. Pursuant to 40 CFR 60.13(i)(2), EPA approves changing the annual RATA due date to once every four operating quarters instead of once every four calendar quarters, and approves a NO_X, CO and O2 CGA every operating quarter. An operating quarter is defined as one in which the unit operates 168 hours or more. Regardless of operation, the facility must conduct a CGA for NO_X, CO and O2 at least once every four calendar quarters, and must conduct a RATA at least once every eight calendar quarters. This EPA approval allows ANP to follow the grace period provisions of 40 CFR part 75, Appendix B, Section 2.2.4 (for CGAs) and Section 2.3.3 (for RATAs).

Abstract for [0600051]

Q1: Does EPA approve a waiver from the nitrogen-monitoring requirement in 40 CFR 60.334(b) of NSPS subpart GG, for a natural gas fuel combustion turbine at the Bridgewater Correctional Complex in Bridgewater, Massachusetts?

A1: Yes. EPA approves waiving the requirement under 40 CFR 60.334(b) of NSPS subpart GG to monitor the nitrogen content of pipeline quality natural gas given that the natural gas does not contain fuel-bound nitrogen, and any free nitrogen in the gas would not contribute appreciably to the formation of nitrogen oxide emissions.

Q2: Does EPA approve a custom monitoring schedule to monitor the sulfur content at each renewal of the Title V Operating Permit, under 40 CFR part 60, subpart GG, for a natural gas fueled combustion turbine at the Bridgewater Correctional Complex in Bridgewater, Massachusetts (Bridgewater)?

A2: No. EPA does not approve this custom monitoring schedule. Bridgewater may use the two custom monitoring schedules set forth in 40 CFR 60.334(i)(3)(i)(A) through (D), without prior approval. Otherwise, Bridgewater must continue to follow 40 CFR 60.334(i)(2) for the monitoring frequency of the fuel's sulfur content.

Abstract for [0600052]

Q: Does EPA approve a parametric monitoring plan that includes monitoring the fuel input rate, the electric load, and the combustor temperature during the initial stack performance test, under 40 CFR part 60, subpart GG, at the Bridgewater Correctional Complex in Bridgewater, Massachusetts?

A: Yes. EPA approves the parametric monitoring plan with certain modifications and additional conditions, as specified in the EPA response letter. This parametric approach will be correlated with emissions to ensure proper operation of the control system and to ensure the facility stays within permitted limits.

Abstract for [0600053]

Q: Does EPA approve a revision to the November 22, 2002 alternative opacity monitoring procedure for boiler Number 15, under 40 CFR part 60, subpart Db, at the Fraser Papers facility in Berlin, New Hampshire (Fraser)? The November 22, 2002 approval allowed Fraser to continuously monitor and record the voltage across the electrostatic precipitator (ESP) and to continuously monitor and record the scrubber liquid flow rate to the spray tower (wet scrubber) in lieu of installing, calibrating, maintaining and operating a continuous opacity monitoring system (COMS).

A: Yes. EPA conditionally approves the revision to the 2002 alternative opacity monitoring procedure to meet NSPS subpart Db. Fraser will use

secondary voltage-to-fuel oil firing rate or average performance test secondary voltage as an alternative to opacity monitoring under all load conditions. The facility must set the appropriate parameter values based on performance tests at low and high load rates.

Abstract for [0600054]

Q: Does EPA approve the use of the extended testing timelines outlined in 40 CFR part 75 instead of the timelines outlined in 40 CFR part 60, subpart Db (by referenced 40 CFR part 60, appendix F) for conducting a Relative Accuracy Test Audit (RATA) for a continuous emission monitoring system at the General Electric facility in Lynn, Massachusetts?

A: Yes. EPA approves the use of the part 75 timeline instead of NSPS subpart Db timeline. This alternative will ensure that the facility does not need to start up the boiler for the sole purpose of conducting the RATA test within the annual (four calendar quarter) deadline established in 40 CFR part 60, Appendix F, Section 5, given that the boiler is used only between 10 to 50 percent of the year.

Abstract for [0600055]

Q: Does EPA approve an alternative schedule to monitor fuels combusted on a monthly basis, under 40 CFR part 60, subpart Dc, for the Goodrich Fuel and Utility System facility in Vergennes, Vermont (Goodrich)?

A: Yes. EPA approves this alternative monitoring schedule request under 40 CFR part 60, subpart Dc, provided that Goodrich meets specific recordkeeping requirements. This alternative fuel consumption monitoring option is not an exemption from compliance with any of the fuel certification requirements in NSPS subpart Dc.

Abstract for [0600056]

Q: Does EPA approve an alternative monitoring schedule, under 40 CFR part 60, subpart Dc, for gas-fired boilers at the MassMutual Center facility in Springfield, Massachusetts? Under the proposed alternative, fuel records would be maintained on a monthly instead of daily basis.

A: Yes. EPA approves this alternative monitoring schedule as long as the boilers continue to burn exclusively natural gas. If the boilers burn any fuel other than natural gas, all provisions of NSPS subpart Dc will apply as written, including daily tracking of all fuel use from that day forward.

Abstract for [0600057]

Q: Does EPA approve changing the frequency of Relative Accuracy Test Audits (RATAs) and Cylinder Gas Audits (CGAs) under 40 CFR part 60, Appendix F, for auditing continuous emission monitors (CEMs) at the Stony Brook Energy Center facility in Ludlow, Massachusetts, so that the frequency is consistent with similar requirements under 40 CFR part 75? The Massachusetts Municipal Wholesale Electric Company (MMWEC) operates three combustion turbines at this facility, units 1A, 1B and 1C with CEMs for nitrogen oxides, carbon monoxide and carbon dioxide as required by 40 CFR part 60, NSPS subpart Db, and 40 CFR part 75.

A: Yes. EPA approves changing the annual RATA due date to once every four operating quarters, and approves omitting a CGA for the required monitoring systems except during an operating quarter. An operating quarter is defined as one in which the unit operates 168 hours or more. Regardless of operation, the facility must conduct a CGA for each monitoring system at least once every four calendar quarters and must conduct a RATA at least once every eight calendar quarters.

Abstract for [0600058]

Q: Does EPA approve VRI's request to demonstrate that its enclosure meets the permanent total enclosure (PTE) definition in 40 CFR part 51, Appendix M, Method 204, as an alternative to the monitoring requirements in 40 CFR part 60, subpart VVV, for a capture system serving one or more coating lines at the Von Roll Isola USA facility (VRI) in New Haven, Connecticut? The capture system is unlikely to comply with the requirement to stay within five percent of the monitor readings during the performance test established in 40 CFR part 60, subpart VVV due to various factors.

A: Yes. EPA conditionally approves VRI's alternative monitoring request to demonstrate that its enclosure meets the PTE definition in Method 204, provided that VRI adheres to conditions specified in EPA's response letter involving monitoring, recordkeeping, and reporting.

Abstract for [0600059]

Q1: Does EPA approve the use of certain monitoring, recordkeeping, and reporting provisions under 40 CFR part 60, subpart RRR, as alternative monitoring requirements to those under 40 CFR part 60, subpart NNN, for the Flint Hills Resources West Refinery in Corpus Christi, Texas?

A1: Yes. EPA approves the use of the provisions in NSPS subpart RRR as an alternative means of demonstrating compliance under NSPS subpart NNN for the specified distillation unit. As conditions of approval, the facility must comply with the recordkeeping and reporting requirements for flow indicators in NSPS subpart RRR, and must maintain a schematic diagram for all related affected vent streams, collection system(s), fuel systems, control devices, and bypass systems as stated in 40 CFR 60.705(s).

Q2: Will EPA approve a waiver of initial performance tests for certain boilers and heaters at the same facility?

A2: Yes. Pursuant to 40 CFR 60.8(b)(4), EPA conditionally approves the performance test waiver for the boilers and process heaters which are fired with fuel gas containing a vent stream from the Number 2 Isomerization Units and the Number 2 Parex Units. This waiver is applicable for boilers and process heaters which meet the definitions of a boiler or process heater in 40 CFR 60.701 under NSPS subpart RRR. Both the alternative monitoring and the waiver of performance testing are contingent upon the vent streams being vented to a fuel gas system and introduced into the flame zone with the primary fuel.

Abstract for [0600060]

Q: For three natural gas-fired boilers at the Edgefield Correctional Complex (ECC) in Edgefield, South Carolina, subject to 40 CFR part 60, subpart Dc, will EPA allow the facility to maintain records of the total amount of gas used in the powerhouse instead of keeping records on the amount of fuel burned in each of the boilers separately?

A: No. EPA cannot waive the requirement under NSPS subpart Dc to keep separate fuel usage records for each boiler. However, the South Carolina Department of Health and Environmental Control can approve an alternative approach under which the total gas usage in the powerhouse would be measured and apportioned between the three boilers in question, as established in a March 7, 2002, EPA Region 4 guidance letter.

Abstract for [0600061]

Q: Does EPA approve conducting visible emission (VEs) observations on a daily basis as an alternative to installing a continuous opacity monitoring (COM) system, under 40 CFR part 60, subparts AA and AAa, if it uses negative pressure baghouses, each with a single stack, to control emissions from the two electric arc furnaces (EAFs) and an argon-oxygen decarburization (AOD) vessel at the Alloys Resources plant in Albertville, Alabama?

A: Yes. EPA finds that the company's alternative monitoring proposal for the

three affected facilities would be acceptable provided that it follows the procedures outlined in 40 CFR 60.273(c) and 40 CFR 60.273a(c). The EAFs and AOD are much smaller than those typically used in the secondary steel production industry, therefore, the cost of COMS would be relatively high compared to the size and the potential particulate emission rate from the furnaces at Alloys Resources which is a reasonable justification for allowing the use of daily VEs as an alternative to COMS, as described in the preamble to the **Federal Register** notice for the promulgation of NSPS subpart AAa.

Abstract for [0600062]

Q: May the Orange County Solid Waste Management facility change its standard operating procedures for landfill gas extraction wells, under 40 CFR part 60, subpart WWW, and shut down, as an alternative to decommissioning, the wells where gas flows are so low that applying even minimal vacuum results in air infiltration that causes exceedances of the applicable oxygen concentration limit?

A: Yes. EPA approves the alternative operating procedure provided that that the facility diagrams are updated to indicate which wells have been shutdown because landfill gas production rates are too low to permit continuous extraction. EPA finds that shutting down nonproductive wells, rather than decommissioning them, has the potential to lower overall non-methane organic compounds emissions by making it easier to resume gas collection in nonproductive areas of the landfill that subsequently experience an improvement in gas quality.

Abstract for [0600063]

Q: Does EPA find that leachate risers connected to the landfill gas collection system at the Pecan Grove Sanitary Landfill (PGSL) in Harrison County, Mississippi are subject to the operational and monitoring requirements for gas collection wells under 40 CFR part 60, subpart WWW?

A: Yes. EPA finds for purposes of NSPS subpart WWW that the risers, which function as interior wells, must be connected to the gas collection and control system if PGSL is extracting gas from active areas where waste has been in place for five years or more, or from closed areas or areas at final grade where waste has been in place for two years or more.

Abstract for [0600064]

Q: Does EPA waive a performance test, under 40 CFR part 60, subpart OOO, for particulate emission testing at the outlet of a baghouse that controls emissions from conveying equipment and two storage silos at the Henry Brick Company (HBC) plant in Selma, Alabama?

A: Yes. EPA approves a waiver for the performance test requirement under NSPS subpart OOO because the silos and sand conveying equipment at the plant operate for only short periods of time on an intermittent basis. Alternatively, the HBC facility will demonstrate compliance by conducting visible emission observations during one complete loading cycle to demonstrate compliance.

Abstract for [0600065]

Q: Does EPA waive the stack testing requirements, under 40 CFR part 60, subpart TT, for a new coil coating line at the Termalex plant in Montgomery, Alabama?

A: EPA finds that the requested test waiver is unnecessary. Volatile organic compound (VOC) emissions from the line in question are controlled with a carbon adsorption system, and under NSPS subpart TT, compliance for facilities using this control approach is determined by comparing the amount of solvent recovered to the amount consumed. This allows compliance to be assessed without a stack test; thus, the requested testing waiver is unnecessary.

Abstract for [0600066]

Q: Does the gas processing conducted at the Central Sanitary Landfill in Pompano Beach, Florida constitutes treatment under 40 CFR part 60, subpart Cc?

A: Yes. EPA finds that the landfill gas processing operation includes the three activities (filtrating to 10 microns or less, compression, and de-watering) that EPA has previously identified as necessary steps in landfill gas processing to constitute treatment under NSPS subpart WWW. The same definition would apply under NSPS subpart Cc.

Abstract for [0600067]

Q1: Does EPA accept the nitrogen monitoring waiver and the sulfur custom fuel monitoring plan proposed by Reliant Energy Choctaw County LLC (Reliant Energy), under 40 CFR part 60, subpart GG, for three natural gas-fired combined cycle electric utility generating units located in Choctaw County, Mississippi?

A1: Yes. EPA finds that these proposals are acceptable because they are consistent with previous EPA guidance regarding fuel quality monitoring options under NSPS subpart GG.

Q2: Do the procedures from 40 CFR part 75, Appendix D satisfy the fuel sulfur content monitoring provisions under NSPS subpart GG for determining the sulfur content of natural gas burned in these same units?

A2: Yes. EPA finds that, provided the units are fired with pipeline quality gas, the procedures from 40 CFR part 75, Appendix D may satisfy the fuel sulfur content monitoring provisions under NSPS, subpart GG for determining the sulfur content of natural gas burned in these units.

Q3: Does EPA waive the requirement, under 40 CFR part 60, subpart GG, to correct NO_X emission rates to International Standard Organization (ISO) standard day conditions for these three units?

A3: EPA finds that the requirement can be waived for the initial testing if the units are in compliance with the NO_X limits in their Prevention of Significant Deterioration (PSD) permit. Following the initial test, Reliant Energy will not need to correct results to an ISO standard basis continuously. However, the company must maintain records of the information used in making the correction so that results could be calculated in terms of the applicable NSPS subpart GG limit when there are exceedances of the PSD permit limit.

Q4: For these same three units, may Reliant Energy, under 40 CFR part 60, subpart GG conduct a single load test instead of a four-load test, use reference method results from NO_X continuous emission monitoring system (CEMS) relative accuracy test audit (RATA) for the initial compliance demonstration, and conduct the test downstream of the duct burners and selective catalytic reduction (SCR)?

A4: EPA finds that the Mississippi Office of Pollution Control can approve the proposals to conduct a single load test instead of a four-load test and to use reference method results from NO_X continuous emission monitoring system (CEMS) relative accuracy test audit (RATA) for the initial compliance demonstration. EPA also finds that it is acceptable to conduct the test downstream of the duct burners and SCR system because the proposed sampling location is downstream of the combined cycle unit's control system.

Q5: May data from CEMS installed on the exhaust stack of each of these Reliant Energy units be used for reporting gas turbine excess emissions under 40 CFR part 60, subpart GG?

A5: Yes. EPA finds that although Reliant Energy proposed reporting excess emissions under NSPS subpart

GG only while operating in the combined cycle mode, the company must also monitor and report excess emissions when the turbines are operating in the simple cycle mode.

Q6: Does EPA waive the requirement to test and monitor NO_X emissions separately for the natural gas-fired turbines and duct burners in the combined cycle systems, under 40 CFR part 60, subpart GG?

A6: EPA finds that the requested waiver is unnecessary because NSPS subpart Da includes an option that allows owners and operators of combined cycle systems to determine/monitor duct burner NO_X compliance using results from a CEMS located downstream of the duct burner.

Q7: Does demonstrating compliance with the particulate emission limit in the PSD permit for these units constitute an adequate demonstration of compliance for the duct burner's particulate limit under 40 CFR part 60, subpart Da?

A7: Yes. EPA finds that particulate testing conducted after the duct burners while the combined cycle units are operating at no less than 95 percent of capacity is acceptable. Since the applicable PSD limit for particulate emissions from the Reliant Energy's combined cycle systems is one-third of the corresponding subpart Da for the Reliant Energy's duct burners, demonstrating compliance with the PSD limit would provide adequate assurance of compliance with NSPS subpart Da and would justify a waiver of the requirement to conduct particulate testing at both the inlet and outlet of the duct burners.

Q8: Does EPA waive the requirement to conduct testing for determining compliance with the sulfur dioxide limit under 40 CFR part 60, subpart Da at these units? May Reliant Energy use the sulfur dioxide reporting and recordkeeping provisions from 40 CFR part 75, Appendix D in lieu of those in subpart Da?

A8: EPA finds that if Reliant Energy verifies that the fuel used in the duct burners is pipeline quality natural gas, then no testing will be required because the emissions from pipeline natural gas will be orders of magnitude below the NSPS subpart Da limit. For reporting, the same results can be used to quantify emissions under both part 75 and NSPS subpart Da. Because reporting sulfur dioxide excess emissions under NSPS subpart Da will provide EPA with useful information and is not overly burdensome, the request to waive the NSPS subpart Da reporting requirements is not approved.

Q9: Does EPA waive the applicable NO_X emission limit, under 40 CFR part 60, subpart Da, of 1.6 pounds per megawatt—hour for the duct burners in these units?

A9: No. Since Reliant Energy compliance proposal for NO_X blends aspects of the two compliance options for duct burners subject to the 1.6 lb/Mwh limit in 40 CFR 60.44a(d), the EPA cannot waive the performance testing requirements under either of these options at this time.

Q10: Does EPA find that there are acceptable alternative procedures proposed for demonstrating compliance with 40 CFR part 60, subpart Da, NO_X limits for duct burners at these units?

A10: No. EPA finds that there are two NO_X compliance demonstration options for duct burners under NSPS subpart Da, and EPA cannot approve an alternative approach until Reliant Energy clarifies which of the two compliance options is covered by the company's request.

Abstract for [0600068]

Q: Does EPA allow Berkshire Power's facility in Agawam, Massachusetts to conduct nitrogen oxides (NO_X) and oxygen (O^2) daily continuous emissions monitoring system (CEMS) calibrations using 40 CFR part 75 procedures, instead of the procedures specified in 40 CFR part 60, subpart GG?

A: Yes. EPA finds that under 40 CFR 60.13(i)(2), it has the authority to approve alternate methods and procedures. Accordingly, EPA approves the request to show compliance with NSPS subpart GG daily calibration requirements by conducting NO_X and O^2 daily calibrations according to the provisions of 40 CFR part 75, Appendix B, Section 2.1, subject to specific conditions. Note that this alternative calibration option is not an exemption from compliance with NSPS subpart GG.

Abstract for [0600069]

Q1: Could EPA clarify the ''Day 0'' compliance dates for 40 CFR part 60, subpart GGG, and 40 CFR part 60, subpart WWW, at Brown Ferris Industries of North America's (BFI) Little Dixie Sanitary Landfill in Ridgeland, Mississippi?

A1: EPA finds that based upon the effective date of NSPS subpart GGG, the ''Day 0'' compliance date would be April 6, 2000. ''Day 0'' for NSPS subpart WWW compliance would be the day that BFI commenced the vertical expansion approved in a permit issued to the Mississippi Office of Pollution Control on October 14, 2003.

Q2: Could EPA clarify how earlier compliance activities performed under 40 CFR part 60, subpart GGG affect compliance schedules and requirements under 40 CFR part 60, subpart WWW at this landfill?

A2: EPA finds that the impact under these overlapping rules would depend upon whether the non-methane organic compound (NMOC) emission rate from the landfill exceeded 50 megagrams prior to the applicability of NSPS subpart WWW. Triggering this threshold prior to the applicability of NSPS subpart WWW would not change the applicable compliance deadlines under NSPS subpart GGG. If the 50 megagram threshold is not exceeded prior to the applicability of NSPS subpart WWW, prior Tier 2 or Tier 3 test results can be used for calculating NMOC emission rates, provided that the five-year deadline for retesting is based upon the original test date instead of the NSPS subpart WWW applicability date.

Abstract for [0600070]

Q: Does EPA approve the request for an alternative opacity monitoring method for an oil-fired auxiliary steam generating unit that has a design heat input capacity of 652.58 mmBtu/hr, under 40 CFR part 60, subpart Db, at the Cardinal Power Plant (Cardinal) in Brilliant, Ohio, owned by the American Electric Power (''AEP'') and Buckeye Power Inc.?

A: Yes. EPA approves the alternative opacity monitoring requests, under NSPS subpart Db, provided that the annual capacity factor is limited to 10 percent, and that the company collect opacity data and report exceedances of the opacity standard in 40 CFR 60.43b(f), as discussed in the EPA response.

Abstract for [0600071]

Q: Does EPA approve a performance test time extension under 40 CFR part 60, subpart OOO, to combine the testing into a single test program upon completion of the proposed modifications at the P.J. Keating Company facility in Acushnet, Massachusetts (Keating)?

A: No. The request involves Keating's primary crusher, and the test is required to demonstrate compliance pursuant to NSPS subpart OOO. Based on the information provided, there are no grounds for an extension under NSPS subpart OOO or 40 CFR 60.8.

Abstract for [0600072]

Q: Does EPA approve alternative operating parameter monitoring and recording requirements under 40 CFR part 60, subpart Ec, for a medical

infectious waste incinerator (HMIWI) located at the Wilkes-Barre General Hospital in Wilkes-Barre, Pennsylvania?

A: Yes. EPA approves monitoring and recording the tertiary chamber temperature instead of the secondary chamber temperature and recording the minimum flow rate of 50 percent NaOH to the Evaporative Cooler/Scrubber as a site-specific operating parameter under NSPS subpart Ec. EPA also relieves the hospital from monitoring the minimum pressure drop across the wet scrubber or the minimum horsepower or amperage to the wet scrubber. EPA agrees that, given site-specific considerations, neither of these monitoring parameters is appropriate as the removal efficiency of the acid gases in the spray tower is not dependent upon pressure drop, minimum horsepower, or amperage. Instead, EPA agrees that establishing and monitoring the flow rate of both the 50 percent NaOH (liquid) and the flow rate of the lime injected into the system are appropriate operating parameters for this system.

Abstract for [0600074]

Q: Does EPA approve an alternative monitoring and recordkeeping frequency for boiler fuel usage from daily to monthly monitoring and recordkeeping, under 40 CFR part 60, subpart Dc, at ISG's Steelton, Pennsylvania steelmaking facility?

A: Yes. EPA approves the change to monthly recordkeeping and monitoring of the boiler fuel usage under NSPS subpart Dc, as this is a very small boiler that combusts only natural gas fuel.

Abstract for [0600075]

Q: Does EPA approve an alternative monitoring method for opacity, under 40 CFR part 60, subpart Db, for the Koppers Monessen, Pennsylvania coke plant boiler?

A: Yes. EPA finds that this boiler only combusts cleaned coke oven gas as fuel. Therefore, EPA approves the use of Method 22 on a daily basis followed by Method 9 opacity readings by a certified opacity evaluator, if any emissions are witnessed via Method 22.

Abstract for [0600076]

Q: Does EPA approve an alternative fuel usage recordkeeping frequency, under 40 CFR part 60, subpart Dc, for Nylstar's two Kewanee boilers at its Ridgeway, Virginia plant?

A: Yes. EPA approves the change from daily recordkeeping to monthly recordkeeping of fuel usage under NSPS subpart Dc because only very clean fuels are permitted to be combusted in these boilers.

Abstract for [0600077]

Q: Does EPA approve a boiler capacity deration due to a burner change, under 40 CFR part 60, subpart Dc, at the Sunsweet Growers facility in Fleetwood, Pennsylvania?

A: Yes. EPA approves of the boiler deration due to the burner change under NSPS subpart Dc. This project will meet the requirements of EPA's deration policy and will be a permanent physical change to the boiler operation that will limit the heat input capacity on a permanent basis.

Abstract for [0600078]

Q: Does EPA approve a heat input capacity derate procedure, under 40 CFR part 60, subpart Dc, for a boiler, located at Temple University in Pennsylvania, that involves mechanical and electronic changes to limit the heat input to less than 30 million BTUs per hour?

A: No. EPA does not approve of the derate procedure under NSPS subpart Dc because it does not represent a permanent physical change to limit the heat input capacity of the boiler in accordance with established EPA policy.

Abstract for [0600079]

Q: Can a nitrogen oxides predictive emission monitoring system (PEMS) installed and tested on a 40 CFR part 60, subpart Db boiler at the BP Chemical Company plant in Decatur, Alabama, be used for both the initial performance test and the ongoing compliance monitoring required for the unit?

A: Yes. EPA finds that based on the results of relative accuracy test audits conducted on the PEMS and the large margin of compliance with respect to the applicable emission standard, the PEMS is an acceptable alternative to a continuous emission monitoring system for conducting both the initial performance test and the ongoing compliance monitoring for the boiler under NSPS subpart Db.

Abstract for [0600080]

Q: Will EPA waive the requirement in 40 CFR 60.486(e)(1) to record a list of identification numbers for certain equipment subject to 40 CFR part 60, subpart VV, for the Solutia facility in Pensacola, Florida?

A: Yes. Pursuant to 40 CFR 60.13(i), EPA finds that a waiver for equipment following the first reaction step in the company's adipic acid process unit is appropriate because NSPS subpart VV, indicates no subsequent requirements which would make use of a detailed record of the equipment which follows the first reaction step. All equipment after the first reaction step will comply with 40 CFR 60.482–8(a)(2) and will be in heavy liquid service. EPA's response also includes a clarification of the recordkeeping and reporting requirements for the equipment in heavy liquid service complying with 40 CFR 60.482–8(a)(2).

Abstract for [0600081]

Q: Does EPA approve of alternative temperature limits proposed for seven gas collection wells, under 40 CFR part 60, subpart WWW, at the Broadhurst Environmental Landfill located in Screven, Georgia?

A: Yes. EPA finds that the proposed alternative temperature limits are acceptable under NSPS subpart WWW because the criteria for approval of a higher wellhead temperature limit under the provisions in 40 CFR 60.753(c) is met. Specifically, the data indicates that the elevated temperatures in these wells have not caused landfill fires or significantly inhibited anaerobic decomposition at the site.

Abstract for [0600083]

Q: Does EPA approve an alternative monitoring plan for the purge gas stream to a flare, under 40 CFR part 60, subpart J, at the Valero's Wilmington Refinery?

A: Yes. EPA finds that an alternative monitoring plan is appropriate under NSPS subpart J, provided the purge gas stream is stable and low in H_2S concentration.

Abstract for [0600084]

Q: Could EPA clarify the interpretation of the term ''3 percent,'' under 40 CFR part 60, subpart O, when recording the average oxygen content measured in the exhaust gas of a sewage sludge incinerator? Specifically, could EPA clarify whether ''3 percent'' means an oxygen percentage reading plus 3 percent, or 3 percent of the oxygen percentage?

A: 40 CFR 60.155(a)(2) requires that excess oxygen levels be reported. Reportable readings are those readings, when interpreted as a percentage of oxygen in the exhaust gases, that are more than 3 percent oxygen in excess of the percentage measured during the most recent performance test.

Abstract for [0600085]

Q1: Is a proposal to use an alternative equation for calculating the coke burn-off rate for a fluid catalytic cracking (FCC) unit at the Chevron Products refinery in Pascagoula, Mississippi, acceptable under 40 CFR part 60, subpart J?

A1: Yes. EPA finds that there are typographical errors in the coke burn-off

calculation in the current version of NSPS subpart J, and the proposed alternative calculation taken from 40 CFR part 63, subpart UUU is acceptable because it does not contain any typographical errors since it includes a term to account for enriched air introduced into the FCC regenerator.

Q2: Is an alternative method that the Chevron Products proposed to use for determining the catalyst regenerator exhaust gas flow rate acceptable under 40 CFR part 60, subpart J?

A2: Yes. EPA finds that because the equation that Chevron proposes to use for calculating the exhaust gas flow rate comes from 40 CFR part 63, subpart UUU, using the same equation for flow rate calculations under 40 CFR part 60, subpart J is acceptable.

Abstract for [0600086]

Q1: Is the proposal to use information regarding the fuel consumption rate, flue gas oxygen concentration, and F-factors to calculate the exhaust gas flow rate for two stationary gas turbines at Mississippi State University in Starkville, Mississippi acceptable under 40 CFR part 60, subpart GG?

A1: Yes. EPA finds that the proposed approach for determining the turbines' exhaust gas flow rate is acceptable, provided that the accuracy of the meters used to determine fuel usage rates is comparable to that of EPA Method 2.

Q2: Does EPA find that emission test results from one of the two identical stationary gas turbines can be used to verify compliance for both units under 40 CFR part 60, subpart GG?

A2: Yes. EPA finds that the requested waiver under NSPS subpart GG will be acceptable, provided that the emission rate for the unit that is tested does not exceed 50 percent of the applicable emission standard.

Abstract for [0600087]

Q: Does EPA approve an alternate monitoring plan for the semi-regenerative reformer regeneration gas streams routed to a reformer heater subject to 40 CFR part 60, subpart J, at ExxonMobil's Torrance, California refinery?

A: Yes. EPA finds that an alternative monitoring plan is allowed under NSPS subpart J, provided these gas streams are stable and low in H_2S concentration.

Abstract for [0600088]

Q: Does EPA approve an alternative monitoring approach for determining glass pull rates at the Knauf Insulation GmbH plant in Alabama to comply with 40 CFR part 60, subpart PPP? Knauf Insulation proposes to use flow cameras, that the company has installed in order to comply with a monitoring requirement contained in 40 CFR Part 63, Subpart NNN, as an alternative to calculating the glass pull rate using the equation in 40 CFR 60.685(b)(3).

A: Yes. EPA finds that determining pull rates using the monitoring system required under 40 CFR part 63, subpart NNN, is acceptable because the results obtained using properly calibrated flow cameras should be more accurate than those determined using the equations in NSPS subpart PPP.

Abstract for [0600089]

Q: Does EPA approve an alternative nitrogen oxides (NO_X) continuous emission monitor system (CEMS) span value for a 40 CFR part 60, subpart Db boiler located at the Indiantown, Florida power plant?

A: Yes. EPA finds that the alternative span value proposed by the company (300 ppm) will improve the resolution of the CEMS, and therefore, it is acceptable.

Abstract for [0600090]

Q: Can the requirement to conduct an initial performance test on the baghouse used to control particulate emissions from the Product Rework Bin facility at the Harborlite Corporation in Youngsville, North Carolina, be waived under 40 CFR part 60, subpart OOO?

A: The performance test waiver requested by the company is unnecessary because the baghouse in question is not subject to a particulate concentration limit under 40 CFR part 60, subpart OOO. The baghouse controls emissions from the Product Rework Bin facility, and not from other parts of the plant. Because of this configuration, the Product Rework Bin facility is subject to an emission standard in 40 CFR 60.672(f) that includes an opacity limit of seven percent but not to the particulate concentration limit that applies to other types of facilities with stack emissions.

Abstract for [0600091]

Q: Biogen Idec in Research Triangle Park, North Carolina (Biogen), proposes to derate two boilers by replacing the forced draft fans with smaller fans and motors, and reducing the fuel flow capacity. Is this derate proposal acceptable under 40 CFR part 60, subpart Dc?

A: Yes. EPA approves the derate proposal under NSPS subpart Dc since it will permanently reduce the capacity of the boilers, provided Biogen follows the procedures established in EPA's response. If the facility wants to increase the capacity of the boiler after it has been derated, a notification of the proposed modifications must be submitted to the EPA.

Abstract for [0600092]

Q: Are two separate disposal areas located in Statesville, North Carolina and operated by Iredell County contiguous under 40 CFR part 60, subpart WWW?

A: Yes. EPA finds that although a golf course is located between the closed and active disposal areas, these areas are contiguous because Iredell County owned both of them and two other adjoining properties on the date NSPS subpart WWW was promulgated.

Abstract for [0600093]

Q: Premium Standard Farms in Clinton, North Carolina, proposes to derate two boilers by replacing the forced draft fans with smaller fans and motors and reducing the fuel flow capacity. Is this derate proposal acceptable under 40 CFR part 60, subpart Dc?

A: Yes. EPA approves the derate proposal under NSPS subpart Dc, since it will permanently reduce the capacity of the boilers, provided Premium Standard Farms follows the procedures established in EPA's response. If the facility wants to increase the capacity of the boiler after it has been derated, a notification of the proposed modifications must be submitted to the EPA.

Abstract for [0600094]

Q: The Apex Oil Company bulk gasoline terminal in Greensboro, North Carolina, has been modified, and the company requests a waiver from the requirement under 40 CFR 60.8(a) to conduct an initial performance test to demonstrate compliance under 40 CFR part 60, subpart XX. Will EPA grant a waiver from the requirement for an initial performance test based on the results of a test conducted ten years ago?

A: No. An initial performance test will be needed to document compliance under NSPS subpart XX following the modification of the facility.

Abstract for [0600095]

Q: Is the opacity monitoring alternative that the ABC Coke Company proposes for a natural gas and coke oven gas-fired boiler at its Birmingham, Alabama, coke plant acceptable under 40 CFR part 60, subpart Db?

A: Yes. EPA finds that conducting visible emission observations would be an acceptable alternative to a continuous opacity monitoring system for ABC Coke, provided specific conditions listed in the EPA response letter are met.

Abstract for [0600096]

Q: Are the monitoring requirements for landfill gas wells applicable to leachate collection risers connected to the active gas collection system, under 40 CFR part 60, subpart WWW, at the Carter Valley Landfill in Church Hill, Tennessee?

A: EPA finds that the applicability of the monitoring requirements in question depends upon the age of the waste where the risers are located. Any risers collecting gas from active areas where waste has been in place for five years or more or where waste has been in place for two years or more in either closed areas or areas that are at final grade would be subject to the monitoring requirements in NSPS subpart WWW.

Abstract for [0600097]

Q: Could EPA clarify what is the correct monitor path length value to use for the outer section of a stack at the Asarco copper smelter in Hayden, Arizona (Asarco), under 40 CFR part 60, subparts A and P? The copper smelter discharges emissions to the atmosphere from a 1000 feet tall stack that incorporates physically separate inner and outer sections.

A: EPA finds that for purposes of NSPS subparts A and P, Asarco may use the outer diameter minus the inner diameter of the tall stack for the monitor pathlength of the continuous opacity monitoring system operated in the outer, or annular, section of the tall stack.

Abstract for [0600098]

Q: Does EPA approve Eastman Chemical Company's, Kingsport, Tennessee plant (Eastman) proposal to monitor for the presence of a pilot flame, in order to verify the performance under 40 CFR part 60, subpart NNN of an enclosed flare at its Kingsport, Tennessee plant?

A: No. Verifying the presence of a pilot flame alone is not sufficient. To provide adequate assurance of compliance under NSPS subpart NNN, Eastman must conduct testing to identify the flare temperature needed to achieve the required level of volatile organic compound destruction.

Abstract for [0600099]

Q: Does EPA approve alternative monitoring plans for 22 separate refinery fuel gas streams at the Chevron's Richmond, California (Chevron) refinery under 40 CFR part 60, subpart J?

A: Yes. Chevron's submittal meets the requirements of EPA's refinery fuel gas guidance titled Alternative Monitoring Plan for NSPS Subpart J Refinery Fuel Gas, and is approved in accordance with the specific technical elements specified in attachments to EPA's approval letter.

Abstract for [0600100]

Q1: Will EPA approve a request to deviate from the assumption that a violation of the carbon monoxide (CO) emission limit occurs if the facility operates their hospital medical infectious waste incinerator (HMIWI) above the maximum charge rate and below the minimum secondary combustion chamber temperature simultaneously as stated in 40 CFR part 60, subpart Ec, 40 CFR 60.56c(e)(1), if the facility has actual CO emissions data on a real-time basis from a CO continuous emissions monitoring system (CEMS)?

A1: Yes. EPA agrees that direct measurement of CO emissions using an EPA compliant continuous CO emissions monitor, which shows that CO emissions are within the allowable limit of 40 parts per million by volume adjusted to 7 percent oxygen measured on a dry basis at standard conditions, is superior to using surrogate parameters. As a matter of policy, the first and foremost option considered by the EPA is to require the use of CEMS to demonstrate continuous compliance with specific emission limits. Other options are considered only when CEMS are not available or when the impacts of including such requirements are considered unreasonable. In addition, a CEMS for oxygen must be installed, calibrated, maintained, and operated to monitor the oxygen concentration at each location where you monitor CO. EPA describes requirements applicable to CEMS in the response.

Q2: Will EPA approve a request to eliminate the operating parameter monitoring requirements for maximum charge rate as specified in 40 CFR 60.57c(a) and in Table 3 of 40 CFR part 60, subpart Ec?

A2: No. EPA will not grant approval to eliminate monitoring the maximum charge rate as an operating parameter as it is linked to all emission limits, and not only to CO emissions. According to the definition for maximum charge rate for a continuous and intermittent hospital medical infectious waste incinerator (HMIWI) given in 40 CFR 60.51c, the maximum charge rate is linked to compliance with all applicable emission limits, which includes particulate matter (PM), CO, dioxins/furans, hydrogen chloride (HCl), lead (Pb), cadmium (Cd), mercury (Hg), sulfur dioxide (SO_2), nitrogen oxides (NO_X), and opacity.

Q3: Will EPA approve a request to eliminate the operating parameter monitoring requirements for minimum secondary chamber temperature as specified in 40 CFR 60.57c(a) and Table 3 of 40 CFR part 60, subpart Ec?

A3: Yes. EPA approves eliminating monitoring of the minimum secondary chamber temperature as an operating parameter when the CO emissions are measured using an EPA compliant continuous CO monitor, as described in the response letter, and the emissions are within the CO emission limits. EPA views CO emissions level as a function of combustion efficiency and agrees that the use of an EPA compliant continuous CO monitor will provide the information on combustion efficiency that the surrogate parameter of secondary chamber temperature was intended to provide.

Q4: Will EPA approve a request to eliminate the record keeping requirements for HMIWI charge dates, times, and weights and hourly charge rates as specified in 40 CFR 60.58c(b)(2)(iii) in 40 CFR part 60, subpart Ec?

A4: No. As previously stated in A2, above, the maximum charge rate parameters are linked to other emission limits besides CO emission limits.

Q5: Will EPA approve a request to eliminate the record keeping requirements for the HMIWI secondary chamber temperatures for each minute of operation as specified in 40 CFR part 60, subpart Ec?

A5: Yes. EPA agrees that actual data from an EPA compliant continuous CO monitor will provide the information on combustion efficiency that the surrogate parameter of secondary chamber temperature was intended to provide.

Dated: July 12, 2007.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. E7–13894 Filed 7–25–07; 8:45 am]

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July 26, 2007

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 31, 54 and 602

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 54, and 602

[TD 9340]

RIN 1545–BB64

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document promulgates final regulations under section 403(b) of the Internal Revenue Code and under related provisions of sections 402(b), 402(g), 402A, and 414(c). The regulations provide updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations will affect sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

DATES: Effective Date: July 26, 2007.

Applicability Date: These regulations generally apply for taxable years beginning after December 31, 2008. However, see the ''Applicability date'' section in this preamble for additional information regarding the applicability of these regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, John Tolleris, (202) 622–6060; concerning the regulations as applied to church-related entities, Robert Architect (202) 283–9634 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in § 1.403(b)–10(b)(2)(i)(C) of these final regulations has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2068. Responses to this collection of information are required in order to provide certain benefits.

The estimated burden per respondent varies among the plan administrator/payor/recordkeeper, depending upon individual respondents' circumstances, with an estimated average of 4.1 hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

The collection of information in § 1.403(b)–10(b)(2)(i)(C) of these final regulations was not contained in the prior notice of proposed rulemaking. For this reason, this additional collection of information has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2068. Comments concerning this additional collection of information should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments on the collection of information should be received by September 24, 2007. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see above);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

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

The estimated burden per respondent varies among the plan administrator/payor/recordkeeper, depending upon individual respondents' circumstances, with an estimated average of 4.1 hours.

Books or records relating to a collection of information must be retained as long as their contents might 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

Regulations (TD 6783) under section 403(b) of the Internal Revenue Code (Code) were originally published in the **Federal Register** (29 FR 18356) on December 24, 1964 (1965–1 CB 180). Those regulations provided guidance for complying with section 403(b), which had been enacted in 1958 in section 23(a) of the Technical Amendments Act of 1958, Public Law 85–866 (1958), relating to tax-sheltered annuity arrangements established for employees by public schools and tax-exempt organizations described in section 501(c)(3). Since 1964, additional regulations were issued under section 403(b) to reflect rules relating to certain eligible rollover distributions [1] and required minimum distributions under section 401(a)(9).[2] See § 601.601(d)(2) relating to objectives and standards for publishing regulations, revenue rulings and revenue procedures in the Internal Revenue Bulletin.

On November 16, 2004, a notice of proposed rulemaking (REG–155608–02) was published in the **Federal Register** (69 FR 67075) that proposed a comprehensive update of the regulations under section 403(b) (2004 proposed regulations), including: amending the 1964 and subsequent regulations to conform them to the numerous amendments made to section 403(b) by subsequent legislation, including section 1022(e) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829), Public Law 93–406; section 251 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 324, 529), Public Law 97–248; section 1120 of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2085, 2463), Public Law 99–514; section 1450(a) of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1755, 1814), Public Law 104–188; and sections 632, 646, and 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 38, 113, 126, 127), Public Law 107–16. The 2004 proposed regulations also included controlled group rules under section 414(c) for entities that are tax-exempt under section 501(a).

Following publication of the 2004 proposed regulations, comments were received and a public hearing was held on February 15, 2005. After consideration of the comments received, the 2004 proposed regulations are adopted by this Treasury decision,

[1] *See* TD 8619, September 22, 1995 (60 FR 49199).

[2] *See* TD 8987, April 17, 2002 (67 FR 18987).

subject to a number of changes, some of which are summarized below in this preamble.

Section 403(b) was also amended by sections 811, 821, 822, 824, 826, and 829 of the Pension Protection Act of 2006 (PPA '06) (120 Stat. 780), Public Law 109–280. These final regulations reflect these amendments.

Sections 403(b) and 414(c) Statutory Provisions

Section 403(b) provides an exclusion from gross income for certain contributions made by specific types of employers for their employees and by certain ministers to specified types of funding arrangements. The employers are limited to public schools and section 501(c)(3) organizations. There are three categories of funding arrangements to which section 403(b) applies: (1) Annuity contracts (as defined in section 401(g)) issued by an insurance company; (2) custodial accounts that are invested solely in mutual funds; and (3) retirement income accounts, which are only permitted for church employees and certain ministers. Except as otherwise indicated, an annuity contract, for purposes of these final regulations, includes a custodial account that is invested solely in mutual funds.

The exclusion applies to employer nonelective contributions (including matching contributions) and elective deferrals (other than designated Roth contributions) within the meaning of section 402(g)(3)(C) (which applies to section 403(b) contributions made pursuant to a salary reduction agreement). The exclusion applies only if certain requirements relating to availability, nondiscrimination, and distribution are satisfied. Section 403(b) arrangements may also include after-tax employee contributions.

Section 403(b)(1)(C) requires that the contract be nonforfeitable (except for the failure to pay future premiums), regardless of the type of contribution used to purchase the contract. Section 403(b)(1)(E) requires a section 403(b) contract purchased under a salary reduction agreement to satisfy the requirements of section 401(a)(30) relating to limitations on elective deferrals under section 402(g)(1). In addition, all contributions to a section 403(b) arrangement, when expressed as annual additions under section 415(c)(2), must not exceed the applicable limit of section 415.

Section 403(b)(5) provides that all section 403(b) contracts purchased for an individual by an employer are treated as purchased under a single contract for purposes of the requirements of section 403(b). Other aggregation rules apply both on an individual and aggregate basis. For example, the section 402(g) limitations on elective deferrals apply to all elective deferrals during the year with respect to an individual and the limitations of section 401(a)(30) apply to all elective deferrals made by an employer to that employer's plans with respect to an individual during the year. The contribution limitations of section 415 generally apply on an employer-by-employer basis.

Section 403(b)(12) requires a section 403(b) contract that provides for elective deferrals to make elective deferrals available to all employees (the universal availability rule) and requires other contributions to satisfy the general nondiscrimination requirements applicable to qualified plans. These rules are discussed further in this preamble under the heading ''Section 403(b) Nondiscrimination and Universal Availability Rules.''

A section 403(b) contract is also required to provide that it will satisfy the required minimum distribution requirements of section 401(a)(9), the incidental benefit requirements of section 401(a), and the rollover distribution rules of section 402(c).

Many section 403(b) arrangements of employers that are section 501(c)(3) organizations are subject to the Employee Retirement Income Security Act of 1974 (ERISA), which includes rules substantially identical to the rules for qualified plans, including rules parallel to the section 414(l) transfer rules, the section 401(a)(11) qualified joint and survivor annuity (QJSA) transferee plan rules, and the anti-cutback rules of section 411(d)(6) (which apply to transfers). See sections 204(g), 205, and 208 of ERISA. However, as discussed in this preamble under the heading ''Interaction Between Title I of ERISA and Section 403(b) of the Code,'' Title I of ERISA does not apply to governmental plans, certain church plans, or a tax-exempt employer's section 403(b) program that is not considered to constitute the establishment or maintenance of an ''employee pension benefit plan'' under Title I of ERISA.

Section 414(c) authorizes the Secretary of the Treasury to issue regulations treating all employees of trades or businesses which are under common control as employed by a single employer.

Explanation of Provisions

Overview

Like the 2004 proposed regulations, these final regulations are a comprehensive update of the current regulations under section 403(b). These regulations replace the existing final regulations that were adopted in 1964 and reflect the numerous legal changes that have been made in section 403(b) since then and many of the positions that have been taken in interpretive guidance that has been issued under section 403(b).

As was noted in the preamble to the 2004 proposed regulations, the effect of the various amendments made to section 403(b) within the past 40 years has been to diminish the extent to which the rules governing section 403(b) plans differ from the rules governing other tax-favored employer-based retirement plans, including arrangements that include salary reduction contributions, such as section 401(k) plans and section 457(b) plans for state and local governmental entities. However, there remain significant differences between section 403(b) plans and section 401(a) and governmental section 457(b) plans. For example, section 403(b) is limited to certain specific employers and employees (namely, employees of a public school, employees of a section 501(c)(3) organization, and certain ministers) and to certain funding arrangements (namely, an insurance annuity contract, a custodial account that is limited to mutual fund shares, or a church retirement income account). Also, section 403(b) contains the universal availability requirement for section 403(b) elective deferrals and provides consequences for failing to satisfy certain of the section 403(b) rules (described in this preamble under the heading ''Effect of a Failure to Satisfy Section 403(b)'')[3] that differ in significant respects from the consequences applicable to qualified plans.

The final regulations, as did the 2004 proposed regulations, require the section 403(b) contract to satisfy both in form and operation the applicable requirements for exclusion. The final regulations also require that the contract

[3] Other differences between the rules applicable to section 403(b) plans and qualified plans include the following: the definition of compensation (including the five-year rule) in section 403(b)(3); the special section 403(b) catch-up elective deferral in section 402(g)(7); and the section 415 aggregation rules. An additional difference relates to when a severance from employment occurs for purposes of section 403(b) plans maintained by State and local government employers. See § 1.403(b)–6(h) of these regulations.

be maintained pursuant to a written plan as described in the next section.

The final regulations, like the proposed regulations, provide rules under which tax-exempt entities are aggregated and treated as a single employer under section 414(c). These rules apply to plans referenced in section 414(b), (c), (m), (o), and (t), such as plans qualified under section 401(a) or 403(a), as well as section 403(b) plans.

Comments on the 2004 proposed regulations raised a number of questions and concerns about:

- The requirement in the 2004 proposed regulations under which a section 403(b) contract would be required to be maintained pursuant to a written plan;
- The elimination of certain non-statutory exclusions that a section 403(b) plan was permitted to have under Notice 89–23 (1989–1 CB 654) for purposes of the universal availability rule;
- The elimination of Rev. Rul. 90–24 (1990–1 CB 97), which allowed a section 403(b) contract to be exchanged for another contract; and
- The controlled group rules under section 414(c) for entities that are tax-exempt under section 501(a).

These final regulations include a number of revisions to reflect the comments received, as described further in this preamble.

Written Plan Requirement

These regulations retain the requirement from the 2004 proposed regulations that a section 403(b) contract be issued pursuant to a written plan which, in both form and operation, satisfies the requirements of section 403(b) and these regulations. This requirement implements the statutory requirements of section 403(b)(1)(D), which provides that the contract must be purchased ''under a plan'' that satisfies the nondiscrimination requirements delineated in section 403(b)(12).

The existence of a written plan facilitates the allocation of plan responsibilities among the employer, the issuer of the contract, and any other parties involved in implementing the plan. Without such a central document for a comprehensive summary of responsibilities, there is a risk that many of the important responsibilities required under the statute and final regulations may not be allocated to any party. While a section 403(b) contract issued to an employee can provide for the issuer to perform many of these functions by itself, the contract cannot satisfy the function of setting forth the eligibility criteria for other employees, nor can the issuer by itself coordinate those Code requirements that depend on other contracts, such as the loan limitations under section 72(p). The issuer must rely on information or representations provided by either the employer or the employee for employment-based information that is essential for compliance with section 403(b) provisions, such as the limitations on elective deferrals in section 402(g) and the requirements of section 72(p)(2) for a plan loan that is not a taxable deemed distribution. In addition to providing a central locus to coordinate those functions, the maintenance of a written plan also benefits participants by providing a central document setting forth their rights and enables government agencies to determine whether the arrangements satisfy applicable law and, in particular, for determining which employees are eligible to participate in the plan.

The 2004 proposed regulations would have required that the section 403(b) plan include all of the material provisions regarding eligibility, benefits, applicable limitations, the contracts available under the plan, and the time and form under which benefit distributions would be made. The proposed regulations would not have required that there be a single plan document. However, under the proposed regulations, the written plan requirement would be satisfied by complying with the plan document rules applicable to qualified plans.

Some comments raised concerns that the written plan requirement would impose additional administrative burdens. In response, the final regulations make a number of clarifications, including that the plan is permitted to allocate to the employer or another person the responsibility for performing functions to administer the plan, including functions to comply with section 403(b). Any such allocation must identify who is responsible for compliance with the requirements of the Code that apply based on the aggregated contracts issued to a participant, including loans under section 72(p) and the requirements for obtaining a hardship withdrawal under § 1.403(b)–6 of these regulations.

Additional comments recommended that certain responsibilities be permitted to be allocated to employees. The IRS and Treasury Department have concluded that it is generally inappropriate to allocate these responsibilities to employees for a number of reasons. First, employees often lack the expertise to systematically meet these responsibilities and may not recognize the importance of performing these actions (including not fully appreciating the tax consequences of failing to perform the responsibility). Second, an individual employee may have a self-interest in a particular transaction. In addition, while there are various factors that will often cause an employer or issuer to have an interest in procedures that ensure that the requirements of section 403(b) are satisfied (including income tax withholding requirements), an employee generally bears the income tax exposure and other risks of failing to comply with rules set forth in the plan. The IRS and Treasury Department believe it is important to prevent failures in advance so as to minimize the cases in which the adverse effects of a failure fall on the employee. See the discussion in this preamble under the heading ''Contract Exchanges.''

In response to comments, the final regulations clarify the requirement that the plan include all of the material provisions by permitting the plan to incorporate by reference other documents, including the insurance policy or custodial account, which as a result of such reference would become part of the plan. As a result, a plan may include a wide variety of documents, but it is important for the employer that adopts the plan to ensure that there is no conflict with other documents that are incorporated by reference. If a plan does incorporate other documents by reference, then, in the event of a conflict with another document, except in rare and unusual cases, the plan would govern. In the case of a plan that is funded through multiple issuers, it is expected that an employer would adopt a single plan document to coordinate administration among the issuers, rather than having a separate document for each issuer.

Finally, comments also indicated that, while section 403(b) contracts that are subject to ERISA are maintained pursuant to written plans, there may be a potential cost associated with satisfying the written plan requirement for those employers that do not have existing plan documents, such as public schools. To address this concern, the IRS and Treasury Department expect to publish guidance which includes model plan provisions that may be used by public school employers for this purpose. Because the requirement for a written plan will not go into effect until 2009 (see the discussion under the heading ''Applicability date''), employers would be expected to adopt a written plan (including applicable amendments) no later than the applicability date of these regulations.

Contract Exchanges, Plan-to-Plan Transfers, and Purchases of Permissive Service Credit

The final regulations, like the 2004 proposed regulations, provide for three specific kinds of non-taxable exchanges or transfers of amounts in section 403(b) contracts. Specifically, under the final regulations, a non-taxable exchange or transfer is permitted for a section 403(b) contract if either: (1) It is a mere change of investment within the same plan (contract exchange); (2) it constitutes a plan-to-plan transfer, so that there is another employer plan receiving the exchange; or (3) it is a transfer to purchase permissive service credit (or a repayment to a defined benefit governmental plan). If an exchange or transfer does not constitute a change of investment within the plan, a plan-to-plan transfer, or a purchase of permissive service credit, the exchange or transfer would be treated as a taxable distribution of benefits in the form of property if the exchange occurs after a distributable event (assuming the distribution is not rolled over to an eligible retirement plan) or as a taxable conversion to a section 403(c) nonqualified annuity contract if a distributable event has not occurred. See the ''Effect of a Failure to Satisfy Section 403(b)'' section in this preamble for discussion of section 403(c) nonqualified annuity contracts. In any case in which a distributable event has occurred, a participant in a section 403(b) plan can always change the investment through a distribution and non-taxable rollover from a section 403(b) contract to an IRA annuity, as long as the distribution is an eligible rollover distribution. Note, however, that an IRA annuity cannot include provisions permitting participant loans. See section 408(e)(3) and (4) and §§ 1.408–1(c)(5) and 1.408–3(c).

Any contract exchange, plan-to-plan transfer, or purchase of permissive service credit that is permitted under the final regulations is not treated as a distribution for purposes of the section 403(b) distribution restrictions (so that such an exchange or transfer may be made before severance from employment or another distribution event).

Contract Exchanges

Rev. Rul. 73–124 (1973–1 CB 200) and Rev. Rul. 90–24 (1990–1 CB 97) dealt with contract exchanges. Rev. Rul. 73–124 had allowed section 403(b) contracts to be exchanged, without income inclusion, if, pursuant to an agreement with the employer, the employee cashed in the first contract and immediately transmitted the cash proceeds for contribution to the successor contract to which all subsequent employer contributions would be made. This ruling was replaced by Rev. Rul. 90–24 which does not provide for the first contract to be cashed in but allows section 403(b) contracts to be exchanged, without income inclusion, so long as the successor contract includes distribution restrictions that are the same or more stringent than the distribution restrictions in the contract that is being exchanged.

The 2004 proposed regulations would have imposed additional restrictions on contract exchanges by limiting tax-free contract exchanges to situations in which the new contract is provided under the plan. The proposal was intended to improve compliance with the Code requirements that apply on an aggregated basis because, without coordination, it is difficult, if not impossible, for a plan to comply with those tax requirements. These requirements include certain distribution restrictions, including the rule that requires the suspension of deferrals for a plan that uses the hardship withdrawal suspension safe harbor rules for elective deferrals, and the section 72(p) rules for loans. In addition, these changes make it easier for employers to respond to an IRS inquiry or audit. For example, where assets have been transferred to an insurance carrier or mutual fund that has no subsequent connection to the plan or the employer, IRS audits and related investigations have revealed that employers encounter substantial difficulty in demonstrating compliance with hardship withdrawal and loan rules. These problems are particularly acute when an individual's benefits are held by numerous carriers. Such multiple contract issuers are commonly associated with plans in which Rev. Rul. 90–24 exchanges have occurred.

Commentators generally objected to the proposal to limit exchanges allowed under Rev. Rul. 90–24. They argued that such exchanges enable participants to change funding arrangements and claimed that these exchanges have generally been responsible for improved efficiency and lower cost in the section 403(b) market. Comments often included specific suggestions, such as limiting any restrictions on exchanges to active employees and effectuating compliance with loan restrictions by alternative methods, such as having the issuer report loans on, for example, a Form 1099–R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts), or notify the employer about loans. Other comments included a recommendation that the employer be involved to ensure that the exchange is within the plan. Comments also suggested that a grandfather may be necessary for exchanges made before the applicability date of the restrictions imposed by the final regulations.

These final regulations include a number of changes to reflect these comments. The regulations allow contract exchanges with certain characteristics associated with Rev. Rul. 90–24, but under rules that are generally similar to those applicable to qualified plans.

Unlike the 2004 proposed regulations, these regulations permit an exchange of one contract for another to constitute a mere change of investment within the same plan, but only if certain conditions are satisfied in order to facilitate compliance with tax requirements. Specifically, the other contract must include distribution restrictions that are not less stringent than those imposed on the contract being exchanged and the employer must enter into an agreement with the issuer of the other contract under which the employer and the issuer will from time to time in the future provide each other with certain information. This includes information concerning the participant's employment and information that takes into account other section 403(b) contracts or qualified employer plans, such as whether a severance from employment has occurred for purposes of the distribution restrictions and whether the hardship withdrawal rules in the regulations are satisfied. Additional information that is required is information necessary for the resulting contract or any other contract to which contributions have been made by the employer to satisfy other tax requirements, such as whether a plan loan constitutes a deemed distribution under section 72(p).

These regulations also authorize the IRS to issue guidance of general applicability allowing exchanges in other cases. This authority is limited to cases in which the resulting contract has procedures that the IRS determines are reasonably designed to ensure compliance with those requirements of section 403(b) or other tax provisions that depend on either information concerning the participant's employment or information that takes into account other section 403(b) contracts or qualified employer plans. For example, the procedures must be reasonably designed to determine whether a severance from employment has occurred for purposes of the

distribution restrictions, whether the hardship withdrawal rules are satisfied, and whether a plan loan constitutes a deemed distribution under section 72(p). By contrast, procedures that rely on an employee certification, such as whether a severance from employment has occurred or whether the participant has other outstanding loans, would generally not be adequate to meet this standard, because such a certification is not disinterested, and also because of the lack of employer oversight in the certification process to ensure accuracy.

Plan-to-Plan Transfers

The final regulations expand the rules in the 2004 proposed regulations under which plan-to-plan transfers would have been permitted only if the participant was an employee of the employer maintaining the receiving plan. Under the final regulations, plan-to-plan transfers are permitted if the participant whose assets are being transferred is an employee or former employee of the employer (or business of the employer) that maintains the receiving plan and certain additional requirements are met. However, the final regulations retain the rules that were in the 2004 proposed regulations prohibiting a plan-to-plan transfer to a qualified plan, an eligible plan under section 457(b), or any other type of plan that is not a section 403(b) plan, except as described in the next paragraph. Similarly, a section 403(b) plan is not permitted to accept a transfer from a qualified plan, an eligible plan under section 457(b), or any other type of plan that is not a section 403(b) plan.

Purchases of Permissive Service Credit and Certain Repayments

The final regulations, like the 2004 proposed regulations, include an exception permitting a section 403(b) plan to provide for the transfer of its assets to a qualified plan under section 401(a) to purchase permissive service credit under a defined benefit governmental plan or to make a repayment to a defined benefit governmental plan.

Limitations on Contributions

The final regulations, like the 2004 proposed regulations, provide that the section 403(b) exclusion applies only to the extent that all amounts contributed by the employer for the purchase of an annuity contract for the participant do not exceed the applicable limits under section 415. The final regulations retain the rule in the 2004 proposed regulations that if an excess annual addition is made to a contract that otherwise satisfies the requirements of section 403(b), then the portion of the contract that includes the excess will fail to be a section 403(b) contract (and instead will be a contract to which section 403(c), relating to nonqualified annuity contracts, applies) and the remaining portion of the contract that includes the contribution that is not in excess of the section 415 limitations is a section 403(b) contract. This rule under which only the excess annual addition is subject to section 403(c) does not apply unless, for the year of the excess and each year thereafter, the issuer of the contract maintains separate accounts for the portion that includes the excess and for the section 403(b) portion (which is the portion that includes the amount that is not in excess of the section 415 limitations).

With respect to section 403(b) elective deferrals, section 403(b) applies only if the contract is purchased under a plan that includes the elective deferral limits under section 402(g), including aggregation of all plans, contracts, or arrangements of the employer that are subject to the limits of section 402(g). As in the 2004 proposed regulations, the final regulations require a section 403(b) contract to include this limit on section 403(b) elective deferrals, as imposed under sections 401(a)(30) and 402(g). For purposes of the final regulations, the term ''elective deferral'' includes a designated Roth contribution as well as a pre-tax elective contribution. These rules are generally the same as the rules for qualified cash or deferred arrangements (CODAs) under section 401(k).

Any contribution made for a participant to a section 403(b) contract for a taxable year that exceeds either the section 415 maximum annual contribution limits or the section 402(g) elective deferral limit constitutes an excess contribution that is included in gross income for that taxable year (or, if later, the taxable year in which the contract becomes nonforfeitable). The final regulations, like the 2004 proposed regulations, provide that the section 403(b) plan (including contracts under the plan) may provide that any excess deferral as a result of a failure to comply with the section 402(g) elective deferral limit for the taxable year with respect to any section 403(b) elective deferral made for a participant by the employer will be distributed to the participant, with allocable net income, no later than April 15 or otherwise in accordance with section 402(g).

Catch-Up Contributions

A section 403(b) plan may provide for additional catch-up contributions for a participant who is age 50 by the end of the year, provided that those age 50 catch-up contributions do not exceed the catch-up limit under section 414(v) for the taxable year ($5,000 for 2007). In addition, a section 403(b) plan may provide that an employee of a qualified organization who has at least 15 years of service (disregarding any period during which an individual is not an employee of the eligible employer) is entitled to a special section 403(b) catch-up limit. Under the special section 403(b) catch-up limit, the section 402(g) limit is increased by the lowest of the following three amounts: (i) $3,000; (ii) the excess of $15,000 over the amount not included in gross income for prior taxable years by reason of the special section 403(b) catch-up rules, plus elective deferrals that are designated Roth contributions;[4] or (iii) the excess of (A) $5,000 multiplied by the number of years of service of the employee with the qualified organization, over (B) the total elective deferrals made for the employee by the qualified organization for prior taxable years. For this purpose, a qualified organization is an eligible employer that is a school, hospital, health and welfare service agency (including a home health service agency), or a church-related organization.

The 2004 proposed regulations defined a health and welfare service agency as either an organization whose primary activity is to provide medical care as defined in section 213(d)(1) (such as a hospice), or a section 501(c)(3) organization whose primary activity is the prevention of cruelty to individuals or animals or which provides substantial personal services to the needy as part of its primary activity (such as a section 501(c)(3) organization that provides meals to needy individuals). In response to several commentators' requests, the final regulations expand this definition to include an adoption agency and an agency that provides either home health services or assistance to individuals with substance abuse problems or that provides help to the disabled.

Like the 2004 proposed regulations, the final regulations provide that any

[4] A technical correction was made to section 402(g)(7)(A)(ii) by section 407(a) the Gulf Opportunity Zone Act of 2005 (119 Stat. 2577), Pub. L 109–135, to clarify that the aggregate $15,000 limit on such contributions was reduced not only by pre-tax elective deferrals made pursuant to the special section 403(b) catch-up rules, but also by designated Roth contributions. Treasury has recommended that this language be further changed to reflect the intent that the reduction for designated Roth contributions at section 402(g)(7)(A)(ii)(II) be limited to designated Roth contributions that have been made pursuant to the special section 403(b) catch-up rules.

catch-up contribution for an employee who is eligible for both an age 50 catch-up and the special section 403(b) catch-up is treated first as a special section 403(b) catch-up to the extent a special section 403(b) catch-up is permitted, and then as an amount contributed as an age 50 catch-up (to the extent the age 50 catch-up amount exceeds the maximum special section 403(b) catch-up).

Timing of Distributions and Benefits

The final regulations, like the 2004 proposed regulations, contain provisions reflecting the statutory rules regarding when distributions can be made from a section 403(b) plan. Distributions of amounts attributable to section 403(b) elective deferrals may not be paid to a participant earlier than when the participant has a severance from employment, has a hardship, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½. Hardship is generally defined under regulations issued under section 401(k). In addition, amounts held in a custodial account attributable to employer contributions (that are not section 403(b) elective deferrals) may not be paid to a participant before the participant has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½. This rule also applies to amounts transferred out of a custodial account to an annuity contract or retirement income account, including earnings thereon.

The final regulations, as did the 2004 proposed regulations, include a number of exceptions to the timing restrictions. For example, the rule for elective deferrals does not apply to distributions of section 403(b) elective deferrals (not including earnings thereon) that were contributed before January 1, 1989.

The final regulations, as did the 2004 proposed regulations, reflect the direct rollover rules of section 401(a)(31) and the related requirements of section 402(f) concerning the written explanation requirement for distributions that qualify as eligible rollover distributions, including conforming the timing rule to the rule for qualified plans.

In addition to the restrictions described in this preamble, the final regulations generally retain, with certain modifications, the additional rules from the 2004 proposed regulations relating to when distributions are permitted to be made from a section 403(b) plan, including the restrictions described in this preamble imposed by section 403(b)(7)(A)(ii) and (11) on distribution of amounts held in custodial accounts and elective deferrals, and the tax treatment of distributions from section 403(b) plans. Comments raised no objections to the various rules that were proposed in 2004, other than concerning the general rule requiring the occurrence of a stated event. The 2004 proposed regulations generally would have required the occurrence of a stated event in order to commence distributions of amounts attributable to employer contributions to section 403(b) plans other than elective deferrals or distributions from custodial accounts. The stated event rule is substantially the same as the rule applicable to qualified defined contribution plans that are not money purchase pension plans (under § 1.401–1(b)(1)(ii)), so that a plan is permitted to provide for a distribution upon completion of a fixed number of years (such as five years of participation), the attainment of a stated age, or upon the occurrence of some other identified event (such as the occurrence of a financial need,[5] including a need to buy a home).

However, the final regulations make a number of changes relating to distributions. First, the final regulations clarify that after-tax employee contributions are not subject to any in-service distribution restrictions. Second, the regulations address comments that were made regarding certain disability arrangements by clarifying that, if an insurance contract includes provisions under which contributions will be continued in the event a participant becomes disabled, then that benefit is treated as an incidental benefit that must satisfy the incidental benefit requirement applicable to qualified plans (at § 1.401–1(b)(1)(ii)). Third, changes were made to reflect elective deferrals that are designated Roth contributions, discussed further later in this preamble under the heading, ''Requirement of Certain Separate Accounts Under Section 403(b).'' Fourth, § 1.403(b)–7(b)(5) has been added referencing the automatic rollover rules of section 401(a)(31), in accordance with section 403(b)(10). See Notice 2005–5, 2005–1 CB 337, for rules interpreting this requirement. Fifth, a cross-reference to certain employment tax rules was added, discussed under the heading ''Employment Taxes.'' Sixth, in response to comments, the final regulations provide that the general rule requiring the occurrence of a stated event in order for distributions to commence does not apply to insurance contracts issued before January 1, 2009, and a special rule has been added allowing conforming amendments to be adopted by plans that are subject to ERISA. Section 1.403(b)–10(c) has been clarified to indicate that in order to be treated as a distribution under this section, the distribution must be pursuant to a QDRO as described in section 206(d)(3) of ERISA and the Department of Labor's guidance.

Severance From Employment

The final regulations, like the 2004 proposed regulations, define severance from employment in a manner that is generally the same as the regulations under section 401(k) (see § 1.401(k)–1(d)(2)), but provide that, for purposes of distributions from a section 403(b) plan, a severance from employment occurs on any date on which the employee ceases to be employed by an eligible employer that maintains the section 403(b) plan. Thus, a severance from employment would occur when an employee ceases to be employed by an eligible employer, even though the employee may continue to be employed by an entity that is part of the same controlled group but that is not an eligible employer, or on any date on which the employee works in a capacity that is not employment with an eligible employer. Examples of the situations that constitute a severance from employment include: an employee transferring from a section 501(c)(3) organization to a for-profit subsidiary of the section 501(c)(3) organization; an employee ceasing to work for a public school, but continuing to be employed by the same State; and an individual employed as a minister for an entity that is neither a State nor a section 501(c)(3) organization ceasing to perform services as a minister, but continuing to be employed by the same entity.

Section 401(a)(9)

The final regulations, like the 2004 proposed regulations, require section 403(b) plans to comply with rules similar to those in the existing regulations relating to the required minimum distribution requirements of section 401(a)(9), but with some minor changes (for example, omitting the special rules for 5-percent owners). Thus, section 403(b) contracts must satisfy the incidental benefit rules. Guidance concerning the application of the incidental benefit requirements to permissible nonretirement benefits such as life, accident, or health benefits is contained in revenue rulings.[6]

[5] See, for example, Rev. Rul. 56–693 (1956–2 CB 282).

[6] See, for example, Rev. Rul. 61–121 (1961–2 CB 65); Rev. Rul. 68–304 (1968–1 CB 179); Rev. Rul. 72–240 (1972–1 CB 108); Rev. Rul. 72–241 (1972–1 CB 108); Rev. Rul. 73–239 (1973–1 CB 201); and Rev. Rul. 74–115 (1974–1 CB 100).

Loans

The final regulations adopt the provisions in the 2004 proposed regulations relating to loans to participants from a section 403(b) contract.

QDROs

The final regulations also adopt the 2004 proposed regulations'' limited rules relating to QDROs under section 414(p). Section 414(p)(9) provides that the QDRO rules only apply to plans that are subject to the anti-alienation provisions of section 401(a)(13), except that section 414(p)(9) also provides that the section 414(p) QDRO rules apply to a section 403(b) contract. The final regulations, like the proposed regulations, clarify that the QDRO rules under section 414(p) apply to section 403(b) plans. The Secretary of Labor has authority to interpret the QDRO provisions, section 206(d)(3), and its parallel provision at section 414(p) of the Code, and to issue QDRO regulations in consultation with the Secretary of the Treasury. 29 U.S.C. 1056(d)(3)(N). Under section 401(n) of the Internal Revenue Code, the Secretary of the Treasury has authority to issue rules and regulations necessary to coordinate the requirements of section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of Chapter I of Subtitle A of the Code.

Taxation of Distributions and Benefits From a Section 403(b) Contract

The final regulations, like the 2004 proposed regulations, reflect the statutory provisions regarding the taxation of distributions and benefits from section 403(b) contracts, including the provision that generally only amounts actually distributed from a section 403(b) contract are includible in the gross income of the recipient under section 72 for the year in which distributed. The final regulations also reflect the rule that any payment that constitutes an eligible rollover distribution is not taxed in the year distributed to the extent the payment is rolled over to an eligible retirement plan. The payor must withhold 20 percent Federal income tax, however, if an eligible rollover distribution is not rolled over in a direct rollover. Another provision requires the payor to give proper written notice to the section 403(b) participant or beneficiary concerning the eligible rollover distribution provision.

Section 403(b) Nondiscrimination and Universal Availability Rules

Nondiscrimination

Section 403(b)(12)(A)(i) requires that employer contributions, other than elective deferrals, and after-tax employee contributions made under a section 403(b) contract satisfy a specified series of requirements (the nondiscrimination requirements) in the same manner as a qualified plan under section 401(a). These nondiscrimination requirements include rules relating to nondiscrimination in contributions, benefits, and coverage (sections 401(a)(4) and 410(b)), a limitation on the amount of compensation that can be taken into account (section 401(a)(17)), and the average contribution percentage rules of section 401(m) (relating to matching and after-tax employee contributions).

Notice 89–23 discusses these requirements and provides a good faith reasonable standard for satisfying these requirements. The 2004 proposed regulations would have eliminated the good faith reasonable standard for satisfying the nondiscrimination requirements of section 403(b)(12)(A)(i) for non-governmental plans. Comments acknowledged the need for and the IRS's authority to make this change. Accordingly, these final regulations do not include the Notice 89–23 good faith reasonable standard.

However, as discussed in this preamble under the heading ''Treatment of Controlled Groups that Include Certain Entities,'' the Notice 89–23 good faith reasonable standard will continue to apply to State and local public schools (and certain church entities) for determining the controlled group. Although the general nondiscrimination requirements do not apply to governmental plans (within the meaning of section 414(d)), these plans are required to limit the amount of compensation to the amount permitted under section 401(a)(17) for all purposes under the plan, including, for example the amount of compensation taken into account for employer contributions, and are required to satisfy the universal availability rule (described in this preamble under the heading ''Universal Availability for Elective Deferrals''). A non-governmental section 403(b) plan that provides for nonelective employer contributions must satisfy the coverage requirements of section 410(b) and the nondiscrimination requirements of section 401(a)(4) with respect to such contributions.

These final regulations, like the 2004 proposed regulations, require a section 403(b) plan to comply with the nondiscrimination requirements for matching contributions in the same manner as a qualified plan. Thus, a non-governmental section 403(b) plan that provides for matching contribution must satisfy the nondiscrimination requirements of section 401(m). The nondiscrimination requirements are generally tested using compensation as defined in section 414(s) and are applied on an aggregated basis taking into account all plans of the employer. See the discussion under the heading ''Treatment of Controlled Groups that Include Certain Entities.''

The nondiscrimination requirements do not apply to section 403(b) elective deferrals. Instead, a universal availability requirement, discussed further in the next section, applies to all section 403(b) elective deferrals (including elective deferrals made under a governmental section 403(b) plan).

Universal Availability for Elective Deferrals

The universal availability requirement of section 403(b)(12)(A)(ii) provides that all employees of the eligible employer must be permitted to elect to have section 403(b) elective deferrals contributed on their behalf if any employee of the eligible employer may elect to have the organization make section 403(b) elective deferrals. Under the 2004 proposed regulations, the universal availability requirement would not have been satisfied unless the contributions were made pursuant to a section 403(b) plan and the plan permitted all employees of an employer an opportunity to make elective deferrals if any employee of that employer has the right to make elective deferrals.

The rules in the final regulations relating to the universal availability requirement are substantially similar to those in the 2004 proposed regulations. The final regulations clarify that the employee's right to make elective deferrals also includes the right to designate section 403(b) elective deferrals as designated Roth contributions (if any employee of the eligible employer may elect to have the organization make section 403(b) elective deferrals as designated Roth contributions).

The preamble to the 2004 proposed regulations requested comments regarding certain exclusions that have been permitted under transitional guidance issued in 1989. Specifically, Notice 89–23 had allowed, pending issuance of regulatory guidance, the exclusion of the following classes of employees for purposes of the universal availability rule: Employees who are

covered by a collective bargaining agreement; employees who make a one-time election to participate in a governmental plan described in section 414(d), instead of a section 403(b) plan; professors who are providing services on a temporary basis to another public school for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original public school; and employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement.

The comments submitted in response to the request generally requested to have these exclusions continue to be allowed. However, after consideration of the comments received, the IRS and Treasury Department have concluded that these exclusions are inconsistent with the statute and, accordingly, they are not permitted under these regulations. Nonetheless, as described further in the following paragraphs, other rules may provide relief with respect to individuals who are under a vow of poverty and to certain university professors affected.

Rev. Rul. 68–123 (1968–1 CB 35), as clarified by Rev. Rul. 83–127 (1983–2 CB 25), generally excludes from gross income, and from wage withholding, income of an individual working under a vow of poverty for an employer controlled by a church and the individual is treated as working as an agent of the church, not as an employee. While these regulations do not provide an exclusion from the universal availability requirement for individuals working under a vow of poverty, individuals who work for an institution that is controlled by the church organization and whose compensation from the employer is not treated as wages for purposes of income tax withholding under Rev. Rul. 68–123 may be excluded from the section 403(b) plan without violating the universal availability requirement because they are not treated as employees of the entity maintaining the section 403(b) plan.

With respect to an exclusion relating to visiting professors, if an individual is rendering services to a university as a visiting professor, but continues to receive his or her compensation from his or her home university and elective deferrals on his or her behalf are made under the home university's section 403(b) plan, the final regulations do not, for purposes of section 403(b) and in any case in which such treatment is appropriate, preclude the plan maintained by the home university from treating the visiting professor as an eligible employee of the home university.

The discussion in this preamble under the heading ''Applicability date'' describes transition relief for any existing plan that excludes, in accordance with Notice 89–23, collective bargaining employees, visiting professors, government employees who make a one-time election, or employees who work under a vow of poverty.

Rules Relating to Funding Arrangements

These regulations retain, with certain modifications, the rules in the 2004 proposed regulations relating to the permitted investments for a section 403(b) contract. In general, a section 403(b) plan must be funded either by an annuity contract issued by an insurance company qualified to issue annuities in a State or a custodial account held by a bank (or a person who satisfies the conditions in section 401(f)(2)) where all of the amounts in the account are held for the exclusive benefit of plan participants or their beneficiaries in regulated investment companies (mutual funds) and certain other conditions are satisfied (including restrictions on distributions). Additional rules apply with respect to retirement income accounts for plans of a church or a convention or association of churches as discussed in the next section.

Special Rules for Church Plans' Retirement Income Accounts

The final regulations, like the 2004 proposed regulations, include a number of special rules for church plans. Under section 403(b)(9), a retirement income account for employees of a church-related organization is treated as an annuity contract for purposes of section 403(b). Under these regulations, the rules for a retirement income account are based largely on the provisions of section 403(b)(9) and the legislative history of TEFRA. The regulations define a retirement income account as a defined contribution program established or maintained by a church-related organization under which (i) there is separate accounting for the retirement income account's interest in the underlying assets (namely, it must be possible at all times to determine the retirement income account's interest in the underlying assets and to distinguish that interest from any interest that is not part of the retirement income account), (ii) investment performance is based on gains and losses on those assets, and (iii) the assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries. For this purpose, assets are treated as diverted to the employer if the employer borrows assets from the account. A retirement income account must be maintained pursuant to a program which is a plan and the plan document must state (or otherwise evidence in a similarly clear manner) the intent to constitute a retirement income account.

If any asset of a retirement income account is owned or used by a participant or beneficiary, then that ownership or use is treated as a distribution to that participant or beneficiary. The regulations also provide that a retirement income account that is treated as an annuity contract is not a custodial account (even if it is invested in stock of a regulated investment company).

A life annuity can generally only be provided from an individual account by the purchase of an insurance annuity contract. However, in light of the special rules applicable to church retirement income accounts, the final regulations, like the 2004 proposed regulations, permit a life annuity to be paid from such an account if certain conditions are satisfied. The conditions are that the distribution from the account has an actuarial present value, at the annuity starting date, that is equal to the participant's or beneficiary's accumulated benefit, based on reasonable actuarial assumptions, including assumptions regarding interest and mortality, and that the plan sponsor guarantee benefits in the event that a payment is due that exceeds the participant's or beneficiary's accumulated benefit.

Termination of a Section 403(b) Plan

The final regulations adopt the provisions of the 2004 proposed regulations permitting an employer to amend its section 403(b) plan to eliminate future contributions for existing participants, and allowing plan provisions that permit plan termination and a resulting distribution of accumulated benefits, with the associated right to roll over eligible rollover distributions to an eligible retirement plan, such as an individual retirement account or annuity (IRA). Comments on the rules in the 2004 proposed regulations regarding plan termination were favorable. In general, the distribution of accumulated benefits is permitted under these regulations only if the employer (taking into account all entities that are treated as a

single employer under section 414 on the date of the termination) does not make contributions to any section 403(b) contract that is not part of the plan during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. However, if at all times during the period beginning 12 months before the termination and ending 12 months after distribution of all assets from the terminated plan, fewer than 2 percent of the employees who were eligible under the section 403(b) plan as of the date of plan termination are eligible under the alternative section 403(b) contract, the other section 403(b) contract is disregarded. In order for a section 403(b) plan to be considered terminated, all accumulated benefits under the plan must be distributed to all participants and beneficiaries as soon as administratively practicable after termination of the plan. A distribution for this purpose includes delivery of a fully paid individual insurance annuity contract.

Effect of a Failure To Satisfy Section 403(b)

These regulations include revisions to the 2004 proposed regulations that address the effects of a failure to satisfy section 403(b). Section 403(b)(5) provides for all of the contracts purchased for an employee by an employer to be treated as a single contract for purposes of section 403(b). Thus, if a contract fails to satisfy any of the section 403(b) requirements, then not only that contract but also any other contract purchased for that individual by that employer would fail to be a contract that qualifies for tax-deferral under section 403(b).

Under these regulations, as under the 2004 proposed regulations, if a contract includes any amount that fails to satisfy the requirements of these regulations, then, except for special rules relating to vesting conditions and excess contributions (under section 415 or section 402(g)), that contract and any other contract purchased for that individual by that employer does not constitute a section 403(b) contract. In addition, if a contract is not established pursuant to a written plan, then the contract does not satisfy section 403(b). Thus, if an employer fails to have a written plan, any contract purchased by that employer would not be a section 403(b) contract. Similarly, if an employer is not an eligible employer for purposes of section 403(b), none of the contracts purchased by that employer is a section 403(b) contract. If a plan fails to satisfy the nondiscrimination rules (including a failure to operate the plan in accordance with its coverage provisions or a failure to operate the plan in a manner that satisfies the nondiscrimination rules), none of the contracts issued under the plan would be section 403(b) contracts.

However, under these regulations, any operational failure, other than those described in the preceding paragraph, that is solely within a specific contract generally will not adversely affect the contracts issued to other employees that qualify in form and operation with section 403(b). Thus, for example, if an employee's elective deferrals under a contract, when aggregated with any other contract, plan, or arrangement of the employer for that employee during a calendar year, exceed the maximum deferral amount permitted under section 402(g)(1)(A) (as made applicable by section 403(b)(1)(E)), the failure would adversely affect the contracts issued to the employee by that employer, but would not adversely affect any other employee's contracts.

Requirement of Certain Separate Accounts Under Section 403(b)

The final regulations, like the 2004 proposed regulations, include technical provisions addressing certain situations in which a separate account [7] is necessary under section 403(b). For example, a separate bookkeeping account is required for any contract in which only a portion of the employee's interest is vested because, in such a case, separate accounting for each type of contribution (and earnings thereon) that is subject to a different vesting schedule is necessary to determine which vested contributions, including earnings thereon, are treated as held under a section 403(b) contract. In addition, the final regulations also clarify that if the section 403(b) plan fails to establish a separate account for contributions in excess of the section 415(c) limitation under section 403(c) (relating to nonqualified annuity contracts whose present values are generally subject to current taxation), so that such excess contributions are commingled in a single insurance contract with contributions intended to qualify under section 403(b) without maintaining a separate account for each amount, then none of the amounts held under the insurance contract qualify for tax deferral under section 403(b). Any such separate account must be established by the time the excess contribution is made to the plan. The separate account for excess contributions under section 415(c) is necessary to effectuate differences in the tax treatment of distributions (for example, because of the need to properly allocate basis under section 72 and separately identify amounts that can be rolled over). Similarly, a separate account is required for elective deferrals to be treated as held in a designated Roth account, as described in the following paragraph.

Designated Roth Accounts

These regulations also include final regulations relating to elective deferrals that are designated Roth contributions under a section 403(b) plan. These regulations, however, do not address the taxation of a distribution of designated Roth contributions from a section 403(b) plan. See § 1.402A–1 for those rules. The final regulations relating to elective deferrals under a section 403(b) plan that are designated Roth contributions are substantially unchanged from the proposed regulations that were issued in January of 2006 regarding designated Roth accounts under a section 403(b) plan.[8]

Interaction Between Title I of ERISA and Section 403(b) of the Code

The Treasury Department and the IRS consulted with the Department of Labor in connection with both the 2004 proposed regulations and these final regulations concerning the interaction between Title I of ERISA and section 403(b) of the Internal Revenue Code. In particular, the consultation focused on whether the requirements imposed on employers in these regulations would exceed the scope of the Department of Labor's safe harbor regulation at 29 CFR 2510.3–2(f) and result in all section 403(b) programs sponsored by tax-exempt employers (other than governmental plans and certain church plans) falling under the purview of ERISA.

According to the Department of Labor, Title I of ERISA generally applies to ''any plan, fund, or program * * * established or maintained by an employer or by an employee organization, or by both, to the extent that * * * such plan, fund, or program * * * provides retirement income to employees, or * * * results in a deferral of income by employees for periods extending to the termination of covered employment or beyond.'' ERISA section 3(2)(A). However, governmental plans and church plans are generally excluded from coverage under Title I of ERISA. ERISA section 4(b)(1) and (2). Therefore,

[7] These rules are not related to segregated asset accounts under section 817(h).

[8] REG–146459–05, published in the **Federal Register** (71 FR 4320) on January 26, 2006.

contracts purchased or provided under a program that is either a ''governmental plan'' under section 3(32) of ERISA or a ''church plan'' under section 3(33) of ERISA are not generally covered under Title I. However, section 403(b) of the Internal Revenue Code is also available with respect to contracts purchased or provided by employers for employees of a section 501(c)(3) organization, and many programs for the purchase of section 403(b) contracts offered by such employers are covered under Title I of ERISA as part of an ''employee pension benefit plan'' within the meaning of section 3(2)(A) of ERISA. The Department of Labor promulgated a regulation in 1975, 29 CFR 2510.3–2(f), describing circumstances under which an employer's program for the purchase of section 403(b) contracts for its employees, which is not otherwise excluded from coverage under Title I, will not be considered to constitute the establishment or maintenance of an ''employee pension benefit plan'' under Title I of ERISA.

As described in the preamble to the 2004 proposed regulations, the Department of Labor advised the Treasury Department and the IRS that the proposed regulations did not appear to require, but left open the possibility that an employer may undertake, responsibilities in connection with a section 403(b) program that would exceed the limits in the safe harbor and constitute establishing and maintaining an ERISA-covered plan. Comments submitted on the proposal supported the continued availability of non-Title I section 403(b) programs to employees of tax-exempt employers and asked for additional guidance for employers who offer their employees access to such programs.

According to the Department of Labor, review of the final section 403(b) regulations has not led the Department of Labor to change its view on the principles that apply in determining whether any given section 403(b) program is covered by Title I of ERISA. Even though the differences between the tax rules for section 403(b) programs and those governing other ERISA-covered pension plans may have diminished as a result of the final section 403(b) regulations, the Department of Labor continues to be of the view that tax-exempt employers can comply with the requirements in the section 403(b) regulations and remain within the Department of Labor's safe harbor for tax-sheltered annuity programs funded solely by salary deferrals. The Department of Labor notes, however, that the new section 403(b) regulations offer employers considerable flexibility in shaping the extent and nature of their involvement. The question of whether any particular employer, in complying with the section 403(b) regulations, has established or maintained a plan covered under Title I of ERISA must be analyzed on a case-by-case basis applying the criteria set forth in 29 CFR § 2510.3–2(f) and section 3(2) of ERISA. To assist employers interested in offering their employees access to a tax sheltered annuity program that would not be an ERISA-covered plan, the Department of Labor is issuing, in conjunction with the final publication of this regulation, a Field Assistance Bulletin to provide additional guidance on the interaction of the safe harbor and the requirements in these final regulations. The Field Assistance Bulletin can be found at *http://www.dol.gov/ebsa*.

Treatment of Controlled Groups That Include Tax-Exempt Entities

The final regulations retain the basic rules in the 2004 proposed regulations regarding controlled groups for entities that are tax-exempt under section 501(a), but with a number of modifications to reflect the comments that were made. As in the 2004 proposed regulations, these rules are not limited to section 403(b) plans, but apply more broadly for purposes of determining when tax-exempt entities are treated as a single employer under section 414(b), (c), (m), and (o). Thus, for example, these rules apply for purposes of plans maintained by a tax-exempt entity that are intended to be qualified under section 401(a). These rules can apply to treat two section 501(c) organizations as a single employer, or a section 501(c) organization and a non-section 501(c) organization as a single employer, if the organizations are under common control. For a section 501(c)(3) organization that makes contributions to a section 403(b) plan, these rules would be generally relevant for purposes of the nondiscrimination requirements, as well as for the section 415 contribution limitations, the special section 403(b) catch-up contributions, and the section 401(a)(9) minimum distribution rules.

Under the rules in the 2004 proposed regulations, the employer for a plan maintained by a section 501(c) organization would include not only the organization whose employees participate in the plan, but also any other organization that is under common control with the tax-exempt organization. Under the 2004 proposed regulations, the existence of control would be determined based on the facts and circumstances. For this purpose, common control would exist between a tax-exempt organization and another organization if at least 80 percent of the directors or trustees of one organization were either representatives of, or directly or indirectly controlled by, the other organization.[9] The 2004 proposed regulations permitted tax-exempt organizations to choose to be aggregated (permissive aggregation) if they maintained a single plan covering one or more employees from each organization and the organizations regularly coordinated their day-to-day exempt activities. These rules were subject to an overall anti-abuse rule. The final regulations retain the basic rules in the 2004 proposed regulations and the anti-abuse rule, and add an example to illustrate when the anti-abuse rule might apply.

Comments on the 2004 proposed regulations generally approved of the proposed controlled group rules, but some comments argued for expanding the category of entities that can use the permissive aggregation rules. These comments typically did not recommend an overall standard for when permissive aggregation should be permitted, but identified certain specific practices which would be facilitated by permissive aggregation. In response, these regulations authorize the IRS to issue published guidance permitting other types of combinations of entities that include tax-exempt entities to elect to be treated as under common control for one or more specified purposes. This authority is limited to situations in which there are substantial business reasons for maintaining each entity in a separate trust, corporation, or other form, and under which common control treatment would be consistent with the anti-abuse standards in the regulations. It is expected that this authority would not be exercised unless the IRS determines that the organizations are so integrated in their operations as to effectively constitute a single coordinated employer for purposes of sections 414(b), (c), (m), and (o), including common employee benefit plans.

A comment was also received stating that a legally required trusteeship for a labor union that has been imposed in order to correct corruption or financial malpractice[10] should not constitute control. In response, a change was made to the regulations to reflect the intent

[9] Treas. Reg. § 1.512(b)–1(1)(4)(i)(*b*) uses a similar test to determine control of a non-stock organization. Note that those regulations do not reflect amendments that were made in section 512(b)(13) by section 1041(a) of the Taxpayer Relief Act of 1997 (111 Stat. 788).

[10] See 29 U.S.C. 462.

that whether a person has the power to appoint and replace a trustee or director is based on facts and circumstances. For example, that power would generally not exist if that power was extremely limited due to the application of other laws, such as where a labor union was put under trusteeship pursuant to a court order, the trusteeship is for the sole purpose of correcting corruption, financial malpractice, or similar circumstances, and the replacement trustees were permitted to serve only for the time necessary for that purpose.

These controlled group rules for tax-exempt entities generally do not apply to certain church entities under section 3121(w)(3). These rules also do not apply to a State or local government or a federal government entity. Until further guidance is issued, church entities under section 3121(w)(3)(A) and (B) and State or local government public schools that sponsor section 403(b) plans can continue to rely on the rules in Notice 89–23 for determining the controlled group.

Employment Taxes

These regulations include several new cross-references to certain rules concerning the application of employment taxes. For example, the definition of an elective deferral at § 1.403(b)–2(a)(7) of these regulations refers to § 1.402(g)(3)–1 of these regulations, which in turn refers to section 3121(a)(5)(D). See § 31.3121(a)(5)–2T of the temporary regulations for additional guidance on section 3121(a)(5)(D) (defining salary reduction agreement for purposes of the Federal Insurance Contributions Act (FICA)).

As another example, § 1.403(b)–7(f) of these regulations generally references the special income tax withholding rules under section 3405 for purposes of income tax withholding on distributions from section 403(b) contracts and also references the special rules at § 1.72(p)–l, Q&A–15, and § 35.3405(c)–1, Q&A–11, relating to income tax withholding for loans deemed distributed from qualified employer plans, including section 403(b) contracts. However, the general income tax withholding rules apply for purposes of income tax withholding for annuity contracts or custodial accounts that are not section 403(b) contracts, as well as for cases in which an annuity contract or custodial account ceases to qualify as a section 403(b) contract. See section 3401 and §§ 1.83–8(a) and 35.3405–1T, Q&A–18.

Effect of These Regulations on Other Guidance

Since the existing regulations were issued in 1964, a number of revenue rulings and other items of guidance under section 403(b) have become outdated as a result of changes in law. In addition, as a result of the inclusion in these regulations of much of the guidance that the IRS has issued regarding section 403(b), these regulations effectively supersede or substantially modify a number of revenue rulings and notices that have been issued under section 403(b). Thus, as indicated in the preamble to the 2004 proposed regulations, the IRS anticipates taking action in the future to obsolete many revenue rulings, notices, and other guidance under section 403(b).[11]

However, the positions taken in certain rulings and other outstanding guidance are expected to be retained. For example, it is intended that the existing rules [12] for determining when employees are performing services for a public school will continue to apply. Further, as discussed above in the preamble under the heading, ''Treatment of Controlled Groups that Include Tax-Exempt Entities,'' church entities under section 3121(w)(3)(A) and (B) and public schools that sponsor section 403(b) plans can continue to rely on the rules in Notice 89–23 for determining the controlled group. In addition, certain positions taken in prior guidance are expected to be reevaluated in light of these regulations, such as Rev. Rul. 2004–67 (2004–28 IRB 28), which revised the group trust rules of Rev. Rul. 81–100 (1981–1 CB 326). With the issuance of these regulations, a number of conforming changes will be considered for the compliance programs maintained by the IRS, as most recently published in Rev. Proc. 2006–27 (2006–22 IRB 945) (EPCRS), including, for example, to reflect the written plan requirement and the positions described above in this preamble under the heading, ''Effect of a Failure to Satisfy Section 403(b).''

The prior regulations under section 403(b) had included certain rules for determining the amount of the contributions made for an employee under a defined benefit plan, based on the employee's pension under the plan. These rules are generally no longer applicable for section 403(b) because the limitations on contributions to a section 403(b) contract under section 415(c) are no longer coordinated with accruals under a defined benefit plan.[13] However, the rules for determining the amount of contributions made for an employee under a defined benefit plan in the prior regulations under section 403(b) had also been used for purposes of section 402(b) (relating to nonqualified plans funded through trusts). These regulations replace those rules with regulations under section 402(b) that provide for the same rules (those in the section 403(b) regulations that were in effect prior to these regulations) to continue to apply for purposes of section 402(b). However, these section 402(b) regulations also authorize the Commissioner to issue guidance for determining the amount of the contributions made for an employee under a defined benefit plan under section 402(b).

Applicability Date

These regulations are generally applicable for taxable years beginning after December 31, 2008. Thus, because individuals will almost uniformly be on a calendar taxable year, these regulations will generally apply on January 1, 2009. However, these regulations include a number of explicit transition rules.

For a section 403(b) plan maintained pursuant to one or more collective bargaining agreements that have been ratified and are in effect on July 26, 2007, the regulations do not apply until the earlier of: (1) The date on which the last of such collective bargaining agreements terminates (determined

[11] When these regulations go into effect, the following guidance will be outdated or superseded by these regulations and it is expected that guidance will be issued in the future to formally supersede these items: Rev. Rul. 64–333 (1964–2 CB 114); Rev. Rul. 65–200 (1965–2 CB 141); Rev. Rul. 66–254 (1966–2 CB. 125); Rev. Rul. 66–312 (1966–2 CB 127); Rev. Rul. 67–78 (1967–1 CB 94); Rev. Rul. 67–69 (1967–1 CB 93); Rev. Rul. 67–361 (1967–2 CB 153); Rev. Rul. 67–387 (1967–2 CB 153); Rev. Rul. 67–388 (1967–2 CB 153); Rev. Rul. 68–179 (1968–1 CB 179); Rev. Rul. 68–482 (1968–2 CB 186); Rev. Rul. 68–487 (1968–2 CB 187); Rev. Rul. 68–488 (1968–2 CB 188); Rev. Rul. 69–629 (1969–2 CB 101)_; Rev. Rul. 70–243 (1970–1 CB 107); Rev. Rul. 87–114 (1987–2 CB 116); Rev. Rul. 90–24 (1990–1 CB 97); Notice 90–73 (1990–2 CB 353); Notice 92–36 (1992–2 CB 364); and Announcement 95–48 (1995–23 IRB 13). In addition, Notice 89–23 (1989–1 CB 654) is likewise superseded as a result of these regulations, except to the extent described above under the heading ''Treatment of Controlled Groups that Include Tax-Exempt Entities.'' It is expected that the following guidance will not be superseded when these regulations are issued in final form: Rev. Rul. 66–254 (1966–2 CB 125); Rev. Rul. 68–33 (1968–1 CB 175); Rev. Rul 68–58 (1968–1 CB 176); Rev. Rul. 68–116 (1968–1 CB 177); Rev. Rul. 68–648 (1968–2 CB 49); Rev. Rul. 68–488 (1968–2 CB 188); and Rev. Rul. 69–146 (1969–1 CB 132).

[12] Rev. Rul. 73–607 (1973–2 CB 145) and Rev. Rul. 80–139 (1980–1 CB 88).

[13] However, see § 1.403(b)–10(f)(2) of these regulations for a special rule applicable to certain church defined benefit plans that were in effect on September 3, 1982.

without regard to any extension thereof after July 26, 2007); or (2) July 26, 2010. For a section 403(b) plan maintained by a church-related organization for which the authority to amend the plan is held by a church convention (within the meaning of section 414(e)), the regulations do not apply before the beginning of the first plan year following December 31, 2009.

There are also special applicability dates for several of the specific provisions in these regulations. First, special rules apply to plans which may have included one or more of the exclusions that Notice 89–23 permitted for the universal availability rule, but which are no longer permitted under these regulations. Specifically, a special rule applies if a plan has eligibility conditions for elective deferrals relating to employees who make a one-time election to participate in a governmental plan described in section 414(d) instead of a section 403(b) plan, professors who are providing services on a temporary basis to another school for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original school, or employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement. If, as permitted by Notice 89–23, a plan excludes any of these three classes of employees from eligibility to make elective deferrals on July 26, 2007, the plan is permitted to continue that exclusion until taxable years beginning on or after January 1, 2010. In addition, if a plan excludes employees covered by a collective bargaining agreement from eligibility to make elective deferrals on July 26, 2007, the plan is permitted to continue that exclusion until the later of (i) the first day of the first taxable year that begins after December 31, 2008, or (ii) the earlier of (I) the date that such agreement terminates (determined without regard to any extension thereof after July 26, 2007) or (II) July 26, 2010. In the case of a governmental plan (as defined in section 414(d)) for which the authority to amend the plan is held by a legislative body that meets in legislative session, the plan is permitted to continue the exclusion until the earlier of: (i) The close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after January 1, 2009; or (ii) January 1, 2011.

These regulations (at § 1.403(b)–6(b)) also provide that a section 403(b) contract is permitted to distribute retirement benefits to the participant no earlier than the earliest of the participant's severance from employment or upon the prior occurrence of some event, subject to a number of exceptions (relating to distributions from custodial accounts, distributions attributable to section 403(b) elective deferrals, correction of excess deferrals, distributions at plan termination, and payment of after-tax employee contributions). This rule does not apply for contracts issued before January 1, 2009. In addition, in order to permit plans to comply with the rules relating to in-service distributions for contracts issued before January 1, 2009, the regulations provide that an amendment adopted before January 1, 2009, to comply with these rules does not violate the anti-cutback rules of section 204(g) of ERISA.

These regulations (at § 1.403(b)–8(c)(2)) also do not permit a life insurance contract, an endowment contract, a health or accident insurance contract, or a property, casualty, or liability insurance contract to constitute an annuity contract for purposes of section 403(b). This rule does not apply for contracts issued before September 24, 2007.

These regulations also include specific rules relating to contract exchanges that were permitted under Rev. Rul. 90–24. These new rules do not apply to contracts received in an exchange that occurred on or before September 24, 2007, assuming that the exchange (including the contract received in the exchange) satisfies applicable pre-existing legal requirements (including Rev. Rul. 90–24).

Finally, these regulations include special applicability date rules to coordinate with recently issued regulations under sections 402A and 415.

For periods following July 26, 2007 and before the applicable date, taxpayers can rely on these regulations, except that (1) such reliance must be on a consistent and reasonable basis and (2) the special rule at § 1.403(b)–10(a) of these regulations permitting accumulated benefits to be distributed on plan termination can be relied upon only if all of the contracts issued under the plan at that time satisfy all of the applicable requirements of these regulations (other than the requirement at § 1.403(b)–3(b)(3)(i) of these regulations that there be a written plan).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) 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 upon the determination that respondents will need to spend minimal time (an average of 4.1 hours per year) complying with the contract exchange requirements in these regulations, and small entities are generally expected to spend much less time. Thus, the cost of complying with this statutory requirement is small, even for small entities. Therefore, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 31, 54, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for § 1.403(b)–3 and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.403(b)–6 also issued under 26 U.S.C. 403(b)(10). * * *

Section 1.414(c)–5 also issued under 26 U.S.C. 414(b), (c), and (o). * * *

■ **Par. 2.** Section 1.402(b)–1 is amended by revising paragraphs (a)(2) and (b)(2)(ii) to read as follows:

§ 1.402(b)–1 Treatment of beneficiary of a trust not exempt under section 501(a).

(a) * * *

(2) *Determination of amount of employer contributions.* If, for an employee, the actual amount of employer contributions referred to in paragraph (a)(1) of this section for any taxable year of the employee is not determinable or for any other reason is not known, then, except as set forth in rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), such amount shall be either—

(i) The excess of—

(A) The amount determined as of the end of such taxable year in accordance with the formula described in § 1.403(b)–1(d)(4), as it appeared in the April 1, 2006, edition of 26 CFR Part 1; over

(B) The amount determined as of the end of the prior taxable year in accordance with the formula described in paragraph (a)(2)(i)(A) of this section; or

(ii) The amount determined under any other method utilizing recognized actuarial principles that are consistent with the provisions of the plan under which such contributions are made and the method adopted by the employer for funding the benefits under the plan.

(b) * * *

(2) * * *

(ii) If a separate account in a trust for the benefit of two or more employees is not maintained for each employee, the value of the employee's interest in such trust is determined in accordance with rules prescribed by the Commissioner under the authority in paragraph (a)(2) of this section.

* * * * *

■ **Par. 3.** Section 1.402(g)(3)–1 is added to read as follows:

§ 1.402(g)(3)–1 Employer contributions to purchase a section 403(b) contract under a salary reduction agreement.

(a) *General rule.* With respect to an annuity contract under section 403(b), except as provided in paragraph (b) of this section, an elective deferral means an employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement within the meaning of section 3121(a)(5)(D).

(b) *Special rule.* Notwithstanding paragraph (a) of this section, for purposes of section 403(b), an elective deferral only includes a contribution that is made pursuant to a cash or deferred election (as defined at § 1.401(k)–1(a)(3)). Thus, for purposes of section 402(g)(3)(C), an elective deferral does not include a contribution that is made pursuant to an employee's one-time irrevocable election made on or before the employee's first becoming eligible to participate under the employer's plans or a contribution made as a condition of employment that reduces the employee's compensation.

(c) *Applicable date.* This section is applicable for taxable years beginning after December 31, 2008.

■ **Par. 4.** Section 1.402A–1, A–1 is revised to read as follows:

§ 1.402A–1 Designated Roth Accounts.

* * * * *

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 and that satisfies the requirements of § 1.401(k)–1(f) (in the case of a section 401(a) plan) or § 1.403(b)–3(c) (in the case of a section 403(b) plan).

* * * * *

■ **Par. 5.** Section 1.403(b)–0 is added to read as follows:

§ 1.403(b)–0 Taxability under an annuity purchased by a section 501(c)(3) organization or a public school.

This section lists the headings that appear in §§ 1.403(b)–1 through 1.403(b)–11.

§ 1.403(b)–1 General overview of taxability under an annuity contract purchased by a section 501(c)(3) organization or a public school.

§ 1.403(b)–2 Definitions.

(a) Application of definitions.
(b) Definitions.

§ 1.403(b)–3 Exclusion for contributions to purchase section 403(b) contracts.

(a) Exclusion for section 403(b) contracts.
(b) Application of requirements.
(c) Special rules for designated Roth section 403(b) contributions.
(d) Effect of failure.

§ 1.403(b)–4 Contribution limitations.

(a) Treatment of contributions in excess of limitations.
(b) Maximum annual contribution.
(c) Section 403(b) elective deferrals.
(d) Employer contributions for former employees.
(e) Special rules for determining years of service.
(f) Excess contributions of deferrals.

§ 1.403(b)–5 Nondiscrimination rules.

(a) Nondiscrimination rules for contributions other than section 403(b) elective deferrals.
(b) Universal availability required for section 403(b) elective deferrals.
(c) Plan required.
(d) Church plans exception.
(e) Other rules.

§ 1.403(b)–6 Timing of distributions and benefits.

(a) Distributions generally.
(b) Distributions from contracts other than custodial accounts or amounts attributable to section 403(b) elective deferrals.
(c) Distributions from custodial accounts that are not attributable to section 403(b) elective deferrals.
(d) Distribution of section 403(b) elective deferrals.
(e) Minimum required distributions for eligible plans.
(f) Loans.
(g) Death benefits and other incidental benefits.
(h) Special rule regarding severance from employment.

§ 1.403(b)–7 Taxation of distributions and benefits.

(a) General rules for when amounts are included in gross income.
(b) Rollovers to individual retirement arrangements and other eligible retirement plans.
(c) Special rules for certain corrective distributions.
(d) Amounts taxable under section 72(p)(1).
(e) Special rules relating to distributions from a designated Roth account.
(f) Certain rules relating to employment taxes.

§ 1.403(b)–8 Funding.

(a) Investments.
(b) Contributions to the plan.
(c) Annuity contracts.
(d) Custodial accounts.
(e) Retirement income accounts.
(f) Combining assets.

§ 1.403(b)–9 Special rules for church plans.

(a) Retirement income accounts.
(b) Retirement income account defined.
(c) Special deduction rule for self-employed ministers.

§ 1.403(b)–10 Miscellaneous provisions.

(a) Plan terminations and frozen plans.
(b) Contract exchanges and plan-to-plan transfers.
(c) Qualified domestic relations orders.
(d) Rollovers to a section 403(b) contract.
(e) Deemed IRAs.
(f) Defined benefit plans.
(g) Other rules relating to section 501(c)(3) organizations.

§ 1.403(b)–11 Applicable date.

(a) General rule.
(b) Collective bargaining agreements.
(c) Church conventions.
(d) Special rules for plans that exclude certain types of employees from elective deferrals.
(e) Special rules for plans that permit in-service distributions.
(f) Special rule for life insurance contracts.
(g) Special rule for contracts received in an exchange.

■ **Par. 6.** Sections 1.403(b)–1, 1.403(b)–2, and 1.403(b)–3 are revised to read as follows:

§ 1.403(b)–1 General overview of taxability under an annuity contract purchased by a section 501(c)(3) organization or a public school.

Section 403(b) and §§ 1.403(b)–2 through 1.403(b)–10 provide rules for the Federal income tax treatment of an annuity purchased for an employee by an employer that is either a tax-exempt entity under section 501(c)(3) (relating to certain religious, charitable, scientific, or other types of organizations) or a public school, or for a minister described in section 414(e)(5)(A). See section 403(a) (relating to qualified annuities) for rules regarding the taxation of an annuity purchased under a qualified annuity plan that meets the requirements of section 404(a)(2), and see section 403(c) (relating to nonqualified annuities) for rules regarding the taxation of other types of annuities.

§ 1.403(b)–2 Definitions.

(a) *Application of definitions.* The definitions set forth in this section are applicable for purposes of § 1.403(b)–1, this section and §§ 1.403(b)–3 through 1.403(b)–11.

(b) *Definitions*—(1) *Accumulated benefit* means the total benefit to which a participant or beneficiary is entitled under a section 403(b) contract, including all contributions made to the contract and all earnings thereon.

(2) *Annuity contract* means a contract that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity. See § 1.401(f)–1(d)(2) and (e) for the definition of an annuity, and see § 1.403(b)–8(c)(3) for a special rule for certain State plans. See also §§ 1.403(b)–8(d) and 1.403(b)–9(a) for additional rules regarding the treatment of custodial accounts and retirement income accounts as annuity contracts.

(3) *Beneficiary* means a person who is entitled to benefits in respect of a participant following the participant's death or an alternate payee pursuant to a qualified domestic relations order, as described in § 1.403(b)–10(c).

(4) *Catch-up* amount or *catch-up* limitation for a participant for a taxable year means a section 403(b) elective deferral permitted under section 414(v) (as described in § 1.403(b)–4(c)(2)) or section 402(g)(7) (as described in § 1.403(b)–4(c)(3)).

(5) *Church* means a church as defined in section 3121(w)(3)(A) and a qualified church-controlled organization as defined in section 3121(w)(3)(B).

(6) *Church-related organization* means a church or a convention or association of churches, including an organization described in section 414(e)(3)(A).

(7) *Elective deferral* means an elective deferral under § 1.402(g)–1 (with respect to an employer contribution to a section 403(b) contract) and any other amount that constitutes an elective deferral under section 402(g)(3).

(8) (i) *Eligible employer* means—

(A) A State, but only with respect to an employee of the state performing services for a public school;

(B) A section 501(c)(3) organization with respect to any employee of the section 501(c)(3) organization;

(C) Any employer of a minister described in section 414(e)(5)(A), but only with respect to the minister; or

(D) A minister described in section 414(e)(5)(A), but only with respect to a retirement income account established for the minister.

(ii) An entity is not an eligible employer under paragraph (a)(8)(i)(A) of this section if it treats itself as not being a State for any other purpose of the Internal Revenue Code, and a subsidiary or other affiliate of an eligible employer is not an eligible employer under paragraph (a)(8)(i) of this section if the subsidiary or other affiliate is not an entity described in paragraph (a)(8)(i) of this section.

(9) *Employee* means a common-law employee performing services for the employer, and does not include a former employee or an independent contractor. Subject to any rules in § 1.403(b)–1, this section and §§ 1.403(b)–3 through 1.403(b)–11 that are specifically applicable to ministers, an employee also includes a minister described in section 414(e)(5)(A) when performing services in the exercise of his or her ministry.

(10) *Employee performing services for a public school* means an employee performing services as an employee for a public school of a State. This definition is not applicable unless the employee's compensation for performing services for a public school is paid by the State. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. The term *public office* includes any elective or appointive office of a State.

(11) *Includible compensation* means the employee's compensation received from an eligible employer that is includible in the participant's gross income for Federal income tax purposes (computed without regard to section 911) for the most recent period that is a year of service. Includible compensation for a minister who is self-employed means the minister's earned income as defined in section 401(c)(2) (computed without regard to section 911) for the most recent period that is a year of service. Includible compensation does not include any compensation received during a period when the employer is not an eligible employer. Includible compensation also includes any elective deferral or other amount contributed or deferred by the eligible employer at the election of the employee that would be includible in the gross income of the employee but for the rules of section 125, 132(f)(4), 402(e)(2), 402(h)(1)(B), 402(k), or 457(b). The amount of includible compensation is determined without regard to any community property laws. See section 415(c)(3)(A) through (D) for additional rules, and see § 1.403(b)–4(d) for a special rule regarding former employees.

(12) *Participant* means an employee for whom a section 403(b) contract is currently being purchased, or an employee or former employee for whom a section 403(b) contract has previously been purchased and who has not received a distribution of his or her entire accumulated benefit under the contract.

(13) *Plan* means a plan as described in § 1.403(b)–3(b)(3).

(14) *Public school* means a State-sponsored educational organization described in section 170(b)(1)(A)(ii) (relating to educational organizations that normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where educational activities are regularly carried on).

(15) *Retirement income account* means a defined contribution program established or maintained by a church-related organization to provide benefits under section 403(b) for its employees or their beneficiaries as described in § 1.403(b)–9.

(16) *Section 403(b) contract; section 403(b) plan*—(i) *Section 403(b) contract* means a contract that satisfies the requirements of § 1.403(b)–3. If for any taxable year an employer contributes to more than one section 403(b) contract for a participant or beneficiary, then, under section 403(b)(5), all such contracts are treated as one contract for purposes of section 403(b) and § 1.403(b)–1, this section, and §§ 1.403(b)–3 through 1.403(b)–11. See also § 1.403(b)–3(b)(1).

(ii) *Section 403(b) plan* means the plan of the employer under which the section 403(b) contracts for its employees are maintained.

(17) *Section 403(b) elective deferral; designated Roth contribution*—(i) *Section 403(b) elective deferral* means an elective deferral that is an employer contribution to a section 403(b) plan for an employee. See § 1.403(b)–5(b) for additional rules with respect to a section 403(b) elective deferral.

(ii) *Designated Roth contribution* under a section 403(b) plan means a section 403(b) elective deferral that satisfies § 1.403(b)–3(c).

(18) *Section 501(c)(3) organization* means an organization that is described in section 501(c)(3) (relating to certain religious, charitable, scientific, or other types of organizations) and exempt from tax under section 501(a).

(19) *Severance from employment* means that the employee ceases to be employed by the employer maintaining the plan. See § 1.401(k)–1(d) for additional guidance concerning severance from employment. See also § 1.403(b)–6(h) for a special rule under which severance from employment is determined by reference to employment with the eligible employer.

(20) *State* means a State, a political subdivision of a State, or any agency or instrumentality of a State. For this purpose, the District of Columbia is treated as a State. In addition, for purposes of determining whether an individual is an employee performing services for a public school, an Indian tribal government is treated as a State, as provided under section 7871(a)(6)(B). See also section 1450(b) of the Small Business Job Protection Act of 1996 (110 Stat. 1755, 1814) for special rules treating certain contracts purchased in a plan year beginning before January 1, 1995, that include contributions by an Indian tribal government as section 403(b) contracts, whether or not those contributions are for employees performing services for a public school.

(21) *Year of service* means each full year during which an individual is a full-time employee of an eligible employer, plus fractional credit for each part of a year during which the individual is either a full-time employee of an eligible employer for a part of the year or a part-time employee of an eligible employer. See § 1.403(b)–4(e) for rules for determining years of service.

§ 1.403(b)–3 Exclusion for contributions to purchase section 403(b) contracts.

(a) *Exclusion for section 403(b) contracts.* Amounts contributed by an eligible employer for the purchase of an annuity contract for an employee are excluded from the gross income of the employee under section 403(b) only if each of the requirements in paragraphs (a)(1) through (9) of this section is satisfied. In addition, amounts contributed by an eligible employer for the purchase of an annuity contract for an employee pursuant to a cash or deferred election (as defined at § 1.401(k)–1(a)(3)) are not includible in an employee's gross income at the time the cash would have been includible in the employee's gross income (but for the cash or deferred election) if each of the requirements in paragraphs (a)(1) through (9) of this section is satisfied. However, the preceding two sentences generally do not apply to designated Roth contributions; see paragraph (c) of this section and § 1.403(b)–7(e) for special taxation rules that apply with respect to designated Roth contributions under a section 403(b) plan.

(1) *Not a contract issued under qualified plan or eligible governmental plan.* The annuity contract is not purchased under a qualified plan (under section 401(a) or 403(a)) or an eligible governmental plan under section 457(b).

(2) *Nonforfeitability.* The rights of the employee under the annuity contract (disregarding rights to future premiums) are nonforfeitable. An employee's rights under a contract fail to be nonforfeitable unless the employee for whom the contract is purchased has at all times a fully vested and nonforfeitable right (as defined in regulations under section 411) to all benefits provided under the contract. See paragraph (d)(2) of this section for additional rules regarding the nonforfeitability requirement of this paragraph (a)(2).

(3) *Nondiscrimination.* In the case of an annuity contract purchased by an eligible employer other than a church, the contract is purchased under a plan that satisfies section 403(b)(12) (relating to nondiscrimination requirements, including universal availability). See § 1.403(b)–5.

(4) *Limitations on elective deferrals.* In the case of an elective deferral, the contract satisfies section 401(a)(30) (relating to limitations on elective deferrals). A contract does not satisfy section 401(a)(30) as required under this paragraph (a)(4) unless the contract requires that all elective deferrals for an employee not exceed the limits of section 402(g)(1), including elective deferrals for the employee under the contract and any other elective deferrals under the plan under which the contract is purchased and under all other plans, contracts, or arrangements of the employer. See § 1.401(a)–30.

(5) *Nontransferability.* The contract is not transferable. This paragraph (a)(5) does not apply to a contract issued before January 1, 1963. See section 401(g).

(6) *Minimum required distributions.* The contract satisfies the requirements of section 401(a)(9) (relating to minimum required distributions). See § 1.403(b)–6(e).

(7) *Rollover distributions.* The contract provides that, if the distributee of an eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan, as defined in section 402(c)(8)(B), and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. See § 1.403(b)–7(b)(2).

(8) *Limitation on incidental benefits.* The contract satisfies the incidental benefit requirements of section 401(a). See § 1.403(b)–6(g).

(9) *Maximum annual additions.* The annual additions to the contract do not exceed the applicable limitations of section 415(c) (treating contributions and other additions as annual additions). See paragraph (b) of this section and § 1.403(b)–4(b) and (f).

(b) *Application of requirements*—(1) Aggregation of contracts. In accordance with section 403(b)(5), for purposes of determining whether this section is satisfied, all section 403(b) contracts purchased for an individual by an employer are treated as purchased under a single contract. Additional

aggregation rules apply under section 402(g) for purposes of satisfying paragraph (a)(4) of this section and under section 415 for purposes of satisfying paragraph (a)(9) of this section.

(2) *Disaggregation for excess annual additions.* In accordance with the last sentence of section 415(a)(2), if an excess annual addition is made to a contract that otherwise satisfies the requirements of this section, then the portion of the contract that includes such excess annual addition fails to be a section 403(b) contract (as further described in paragraph (d)(1) of this section) and the remaining portion of the contract is a section 403(b) contract. This paragraph (b)(2) is not satisfied unless, for the year of the excess and each year thereafter, the issuer of the contract maintains separate accounts for each such portion. Thus, the entire contract fails to be a section 403(b) contract if an excess annual addition is made and a separate account is not maintained with respect to the excess.

(3) *Plan in form and operation.* (i) A contract does not satisfy paragraph (a) of this section unless it is maintained pursuant to a plan. For this purpose, a plan is a written defined contribution plan, which, in both form and operation, satisfies the requirements of § 1.403(b)–1, § 1.403(b)–2, this section, and §§ 1.403(b)–4 through 1.403(b)–11. For purposes of § 1.403(b)–1, § 1.403(b)–2, this section, and §§ 1.403(b)–4 through 1.403(b)–11, the plan must contain all the material terms and conditions for eligibility, benefits, applicable limitations, the contracts available under the plan, and the time and form under which benefit distributions would be made. For purposes of § 1.403(b)–1, § 1.403(b)–2, this section, and §§ 1.403(b)–4 through 1.403(b)–11, a plan may contain certain optional features that are consistent with but not required under section 403(b), such as hardship withdrawal distributions, loans, plan-to-plan or annuity contract-to-annuity contract transfers, and acceptance of rollovers to the plan. However, if a plan contains any optional provisions, the optional provisions must meet, in both form and operation, the relevant requirements under section 403(b), this section and §§ 1.403(b)–4 through 1.403(b)–11.

(ii) The plan may allocate responsibility for performing administrative functions, including functions to comply with the requirements of section 403(b) and other tax requirements. Any such allocation must identify responsibility for compliance with the requirements of the Internal Revenue Code that apply on the basis of the aggregated contracts issued to a participant under a plan, including loans under section 72(p) and the conditions for obtaining a hardship withdrawal under § 1.403(b)–6. A plan is permitted to assign such responsibilities to parties other than the eligible employer, but not to participants (other than employees of the employer a substantial portion of whose duties are administration of the plan), and may incorporate by reference other documents, including the insurance policy or custodial account, which thereupon become part of the plan.

(iii) This paragraph (b)(3) applies to contributions to an annuity contract by a church only if the annuity is part of a retirement income account, as defined in § 1.403(b)–9.

(4) *Exclusion limited for former employees*—(i) *General rule.* Except as provided in paragraph (b)(4)(ii) of this section and in § 1.403(b)–4(d), the exclusion from gross income provided by section 403(b) does not apply to contributions made for former employees. For this purpose, a contribution is not made for a former employee if the contribution is with respect to compensation that would otherwise be paid for a payroll period that begins before severance from employment.

(ii) *Exceptions.* The exclusion from gross income provided by section 403(b) applies to contributions made for former employees with respect to compensation described in § 1.415(c)–2(e)(3)(i) (relating to certain compensation paid by the later of 2½ months after severance from employment or the end of the limitation year that includes the date of severance from employment), and compensation described in § 1.415(c)–2(e)(4), § 1.415(c)–2(g)(4), or § 1.415(c)–2(g)(7) (relating to compensation paid to participants who are permanently and totally disabled or relating to qualified military service under section 414(u)).

(c) *Special rules for designated Roth section 403(b) contributions.* (1) The rules of § 1.401(k)–1(f)(1) and (2) for designated Roth contributions under a qualified cash or deferred arrangement apply to designated Roth contributions under a section 403(b) plan. Thus, a designated Roth contribution under a section 403(b) plan is a section 403(b) elective deferral that is designated irrevocably by the employee at the time of the cash or deferred election as a designated Roth contribution that is being made in lieu of all or a portion of the section 403(b) elective deferrals the employee is otherwise eligible to make under the plan; that is treated by the employer as includible in the employee's gross income at the time the employee would have received the amount in cash if the employee had not made the cash or deferred election (such as by treating the contributions as wages subject to applicable withholding requirements); and that is maintained in a separate account (within the meaning of § 1.401(k)–1(f)(2)).

(2) A designated Roth contribution under a section 403(b) plan must satisfy the requirements applicable to section 403(b) elective deferrals. Thus, for example, designated Roth contributions under a section 403(b) plan must satisfy the requirements of § 1.403(b)–6(d). Similarly, a designated Roth account under a section 403(b) plan is subject to the rules of section 401(a)(9)(A) and (B) and § 1.403(b)–6(e).

(d) *Effect of failure*—(1) *General rules.* (i) If a contract includes any amount that fails to satisfy the requirements of section 403(b), § 1.403(b)–1, § 1.403(b)–2, this section, or §§ 1.403(b)–4 through 1.403(b)–11, then, except as otherwise provided in paragraph (d)(2) of this section (relating to failure to satisfy nonforfeitability requirements) or § 1.403(b)–4(f) (relating to excess contributions under section 415 and excess deferrals under section 402(g)), the contract is not a section 403(b) contract. In addition, section 403(b)(5) and paragraph (b)(1) of this section provide that, for purposes of determining whether a contract satisfies section 403(b), all section 403(b) contracts purchased for an individual by an employer are treated as purchased under a single contract. Thus, except as provided in paragraph (b)(2) of this section or as otherwise provided in this paragraph (d), a failure to satisfy section 403(b) with respect to any contract issued to an individual by an employer adversely affects all contracts issued to that individual by that employer.

(ii) In accordance with paragraph (b)(3) of this section, a failure to operate in accordance with the terms of a plan adversely affects all of the contracts issued by the employer to the employee or employees with respect to whom the operational failure occurred. Such a failure does not adversely affect any other contract if the failure is neither a failure to satisfy the nondiscrimination requirements of § 1.403(b)–5 (a nondiscrimination failure) nor a failure of the employer to be an eligible employer as defined in § 1.403(b)–2 (an employer eligibility failure). However, any failure that is not an operational failure adversely affects all contracts issued under the plan, including: a failure to have contracts issued pursuant to a written defined contribution plan

which, in form, satisfies the requirements of § 1.403(b)–1, § 1.403(b)–2, this section and §§ 1.403(b)–4 through 1.403(b)–11 (a written plan failure); a nondiscrimination failure; or an employer eligibility failure.

(iii) See other applicable Internal Revenue Code provisions for the treatment of a contract that is not a section 403(b) contract, such as sections 61, 83, 402(b), and 403(c). Thus, for example, section 403(c) (relating to nonqualified annuities) applies if any annuity contract issued by an insurance company fails to satisfy section 403(b), based on the value of the contract at the time of the failure. However, see paragraph (d)(2) of this section for special rules with respect to the nonforfeitability requirement of paragraph (a)(2) of this section.

(2) *Failure to satisfy nonforfeitability requirement*—(i) *Treatment before contract becomes nonforfeitable.* If an annuity contract issued by an insurance company would qualify as a section 403(b) contract but for the failure to satisfy the nonforfeitability requirement of paragraph (a)(2) of this section, then the contract is treated as a contract to which section 403(c) applies. See § 1.403(b)–8(d)(4) for a rule under which a custodial account that fails to satisfy the nonforfeitability requirement of paragraph (a)(2) of this section is treated as a section 401(a) qualified plan for certain purposes.

(ii) *Treatment when contract becomes nonforfeitable*—(A) *In general.* Notwithstanding paragraph (d)(2)(i) of this section, on or after the date on which the participant's interest in a contract described in paragraph (d)(2)(i) of this section becomes nonforfeitable, the contract may be treated as a section 403(b) contract if no election has been made under section 83(b) with respect to the contract, the participant's interest in the contract has been subject to a substantial risk of forfeiture (as defined in section 83) before becoming nonforfeitable, each contribution under the contract that is subject to a different vesting schedule is maintained in a separate account, and the contract has at all times satisfied the requirements of paragraph (a) of this section other than the nonforfeitability requirement of paragraph (a)(2) of this section. Thus, for example, for the current year and each prior year, no contribution can have been made to the contract that would cause the contract to fail to be a section 403(b) contract as a result of contributions exceeding the limitations of section 415 (except to the extent permitted under paragraph (b)(2) of this section) or to fail to satisfy the nondiscrimination rules described in § 1.403(b)–5. See also § 1.403(b)–10(a)(1) for a special rule in connection with termination of a section 403(b) plan.

(B) *Partial vesting.* For purposes of applying this paragraph (d), if only a portion of a participant's interest in a contract becomes nonforfeitable in a year, then the portion that is nonforfeitable and the portion that fails to be nonforfeitable are each treated as separate contracts. In addition, for purposes of applying this paragraph (d), if a contribution is made to an annuity contract in excess of the limitations of section 415(c) and the excess is maintained in a separate account, then the portion of the contract that includes the excess contributions account and the remainder are each treated as separate contracts. Thus, if an annuity contract that includes an excess contributions account changes from forfeitable to nonforfeitable during a year, then the portion that is not attributable to the excess contributions account constitutes a section 403(b) contract (assuming it otherwise satisfies the requirements to be a section 403(b) contract) and is not included in gross income, and the portion that is attributable to the excess contributions account is included in gross income in accordance with section 403(c). See § 1.403(b)–4(f) for additional rules.

■ **Par. 7.** Sections 1.403(b)–4, 1.403(b)–5, 1.403(b)–6, 1.403(b)–7, 1.403(b)–8, 1.403(b)–9, 1.403(b)–10, and 1.403(b)–11 are added to read as follows:

§ 1.403(b)–4 Contribution limitations.

(a) *Treatment of contributions in excess of limitations.* The exclusion provided under § 1.403(b)–3(a) applies to a participant only if the amounts contributed by the employer for the purchase of an annuity contract for the participant do not exceed the applicable limit under sections 415 and 402(g), as described in this section. Under § 1.403(b)–3(a)(4), a section 403(b) contract is required to include the limits on elective deferrals imposed by section 402(g), as described in paragraph (c) of this section. See paragraph (f) of this section for special rules concerning excess contributions and deferrals. Rollover contributions made to a section 403(b) contract, as described in § 1.403(b)–10(d), are not taken into account for purposes of the limits imposed by section 415, § 1.403(b)–3(a)(9), section 402(g), § 1.403(b)–3(a)(4), and this section, but after-tax employee contributions are taken into account under section 415, § 1.403(b)–3(a)(9), and paragraph (b) of this section.

(b) *Maximum annual contribution*—(1) *General rule.* In accordance with section 415(a)(2) and § 1.403(b)–3(a)(9), the contributions for any participant under a section 403(b) contract (namely, employer nonelective contributions (including matching contributions), section 403(b) elective deferrals, and after-tax employee contributions) are not permitted to exceed the limitations imposed by section 415. Under section 415(c), contributions are permitted to be made for participants in a defined contribution plan, subject to the limitations set forth therein (which are generally the lesser of a dollar limit for a year or the participant's compensation for the year). For purposes of section 415, contributions made for a participant are aggregated to the extent applicable under section 414(b), (c), (m), (n), and (o). For purposes of section 415(a)(2), §§ 1.403(b)–1 through 1.403(b)–3, this section, and §§ 1.403(b)–5 through 1.403(b)–11, a contribution means any annual addition, as defined in section 415(c).

(2) *Special rules.* See section 415(k)(4) for a special rule under which contributions to section 403(b) contracts are generally aggregated with contributions under other arrangements in applying section 415. For purposes of applying section 415(c)(1)(B) (relating to compensation) with respect to a section 403(b) contract, except as provided in section 415(c)(3)(C), a participant's includible compensation (as defined in § 1.403(b)–2) is substituted for the participant's compensation, as described in section 415(c)(3)(E). Any age 50 catch-up contributions under paragraph (c)(2) of this section are disregarded in applying section 415.

(c) *Section 403(b) elective deferrals*—(1) *Basic limit under section 402(g)(1).* In accordance with section 402(g)(1)(A), the section 403(b) elective deferrals for any individual are included in the individual's gross income to the extent the amount of such deferrals, plus all other elective deferrals for the individual, for the taxable year exceeds the applicable dollar amount under section 402(g)(1)(B). The applicable annual dollar amount under section 402(g)(1)(B) is $15,000, adjusted for cost-of-living after 2006 in the manner described in section 402(g)(4). See § 1.403(b)–5(b) for a universal availability rule that applies if any employee is permitted to have any section 403(b) elective deferrals made on his or her behalf.

(2) *Age 50 catch-up*—(i) *In general.* In accordance with section 414(v) and the regulations thereunder, a section 403(b) contract may provide for catch-up contributions for a participant who is age 50 by the end of the year, provided that such age 50 catch-up contributions do not exceed the catch-up limit under

section 414(v)(2) for the taxable year. The maximum amount of additional age 50 catch-up contributions for a taxable year under section 414(v) is $5,000, adjusted for cost-of-living after 2006 in the manner described in section 414(v)(2)(C). For additional requirements, see regulations under section 414(v).

(ii) *Coordination with special section 403(b) catch-up.* In accordance with sections 414(v)(6)(A)(ii) and 402(g)(7)(A), the age 50 catch-up described in this paragraph (c)(2) may apply for any taxable year in which a participant also qualifies for the special section 403(b) catch-up under paragraph (c)(3) of this section.

(3) *Special section 403(b) catch-up for certain organizations*—(i) *Amount of the special section 403(b) catch-up.* In the case of a qualified employee of a qualified organization for whom the basic section 403(b) elective deferrals for any year are not less than the applicable dollar amount under section 402(g)(1)(B), the section 403(b) elective deferral limitation of section 402(g)(1) for the taxable year of the qualified employee is increased by the least of—

(A) $3,000;

(B) The excess of—

(*1*) $15,000, over

(*2*) The total elective deferrals described in section 402(g)(7)(A)(ii) made for the qualified employee by the qualified organization for prior years, or

(C) The excess of—

(*1*) $5,000 multiplied by the number of years of service of the employee with the qualified organization, over

(*2*) The total elective deferrals (as defined at § 1.403(b)–2) made for the employee by the qualified organization for prior years.

(ii) Qualified organization. (A) For purposes of this paragraph (c)(3), *qualified organization* means an eligible employer that is—

(*1*) An educational organization described in section 170(b)(1)(A)(ii);

(*2*) A hospital;

(*3*) A health and welfare service agency (including a home health service agency);

(*4*) A church-related organization; or

(*5*) Any organization described in section 414(e)(3)(B)(ii).

(B) All entities that are in a church-related organization or an organization controlled by a church-related organization under section 414(e)(3)(B)(ii) are treated as a single qualified organization (so that years of service and any special section 403(b) catch-up elective deferrals previously made for a qualified employee for a church or other entity within a church-related organization or an organization controlled by the church-related organization are taken into account for purposes of applying this paragraph (c)(3) to the employee with respect to any other entity within the same church-related organization or organization controlled by a church-related organization).

(C) For purposes of this paragraph (c)(3)(ii), a *health and welfare service agency* means—

(*1*) An organization whose primary activity is to provide services that constitute medical care as defined in section 213(d)(1) (such as a hospice);

(*2*) A section 501(c)(3) organization whose primary activity is the prevention of cruelty to individuals or animals;

(*3*) An adoption agency; or

(*4*) An agency that provides substantial personal services to the needy as part of its primary activity (such as a section 501(c)(3) organization that either provides meals to needy individuals, is a home health service agency, provides services to help individuals who have substance abuse, or provides help to the disabled).

(iii) *Qualified employee.* For purposes of this paragraph (c)(3), *qualified employee* means an employee who has completed at least 15 years of service (as defined under paragraph (e) of this section) taking into account only employment with the qualified organization. Thus, an employee who has not completed at least 15 years of service (as defined under paragraph (e) of this section) taking into account only employment with the qualified organization is not a qualified employee.

(iv) *Coordination with age 50 catch-up.* In accordance with sections 402(g)(1)(C) and 402(g)(7), any catch-up amount contributed by an employee who is eligible for both an age 50 catch-up and a special section 403(b) catch-up is treated first as an amount contributed as a special section 403(b) catch-up to the extent a special section 403(b) catch-up is permitted, and then as an amount contributed as an age 50 catch-up (to the extent the catch-up amount exceeds the maximum special section 403(b) catch-up after taking into account sections 402(g) and 415(c), this paragraph (c)(3), and any limitations on the special section 403(b) catch-up that are imposed by the terms of the plan).

(4) *Coordination with designated Roth contributions.* See regulations under section 402A for rules for determining whether an elective deferral is a pre-tax elective deferral or a designated Roth contribution.

(5) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts illustrating application of the basic dollar limit.* Participant B, who is 45, is eligible to participate in a State university section 403(b) plan in 2006. B is not a qualified employee, as defined in paragraph (c)(3)(iii) of this section. The plan permits section 403(b) elective deferrals, but no other employer contributions are made under the plan. The plan provides limitations on section 403(b) elective deferrals up to the maximum permitted under paragraphs (c)(1) and (3) of this section and the additional age 50 catch-up amount described in paragraph (c)(2) of this section. For 2006, B will receive includible compensation of $42,000 from the eligible employer. B desires to elect to have the maximum section 403(b) elective deferral possible contributed in 2006. For 2006, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is $15,000 and the additional dollar amount permitted under the age 50 catch-up is $5,000.

(ii) *Conclusion.* B is not eligible for the age 50 catch-up in 2006 because B is 45 in 2006. B is also not eligible for the special section 403(b) catch-up under paragraph (c)(3) of this section because B is not a qualified employee. Accordingly, the maximum section 403(b) elective deferral that B may elect for 2006 is $15,000.

Example 2. (i) *Facts illustrating application of the includible compensation limitation.* The facts are the same as in *Example 1,* except B's includible compensation is $14,000.

(ii) *Conclusion.* Under section 415(c), contributions may not exceed 100 percent of includible compensation. Accordingly, the maximum section 403(b) elective deferral that B may elect for 2006 is $14,000.

Example 3. (i) *Facts illustrating application of the age 50 catch-up.* Participant C, who is 55, is eligible to participate in a State university section 403(b) plan in 2006. The plan permits section 403(b) elective deferrals, but no other employer contributions are made under the plan. The plan provides limitations on section 403(b) elective deferrals up to the maximum permitted under paragraphs (c)(1) and (c)(3) of this section and the additional age 50 catch-up amount described in paragraph (c)(2) of this section. For 2006, C will receive includible compensation of $48,000 from the eligible employer. C desires to elect to have the maximum section 403(b) elective deferral possible contributed in 2006. For 2006, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is $15,000 and the additional dollar amount permitted under the age 50 catch-up is $5,000. C does not have 15 years of service and thus is not a qualified employee, as defined in paragraph (c)(3)(iii) of this section.

(ii) *Conclusion.* C is eligible for the age 50 catch-up in 2006 because C is 55 in 2006. C is not eligible for the special section 403(b) catch-up under paragraph (c)(3) of this section because C is not a qualified employee (as defined in paragraph (c)(3)(iii) of this section). Accordingly, the maximum section 403(b) elective deferral that C may elect for 2006 is $20,000 ($15,000 plus $5,000).

Example 4. (i) *Facts illustrating application of both the age 50 and the special section*

403(b) catch-up. The facts are the same as in *Example 3*, except that C is a qualified employee for purposes of the special section 403(b) catch-up provisions in paragraph (c)(3) of this section. For 2006, the maximum additional section 403(b) elective deferral for which C qualifies under the special section 403(b) catch-up under paragraph (c)(3) of this section is $3,000.

(ii) *Conclusion.* The maximum section 403(b) elective deferrals that C may elect for 2006 is $23,000. This is the sum of the basic limit on section 403(b) elective deferrals under paragraph (c)(1) of this section equal to $15,000, plus the $3,000 additional special section 403(b) catch-up amount for which C qualifies under paragraph (c)(3) of this section, plus the additional age 50 catch-up amount of $5,000.

Example 5. (i) *Facts illustrating calculation of years of service with a predecessor organization for purposes of the special section 403(b) catch-up.* Participant A is an employee of hospital H and is eligible to participate in a section 403(b) plan of H in 2006. A does not have 15 years of service with H, but A has previously made special section 403(b) catch-up deferrals to a section 403(b) plan maintained by hospital P which has since been acquired by H.

(ii) *Conclusion.* The special section 403(b) catch-up amount for which A qualifies under paragraph (c)(3) of this section must be calculated taking into account A's prior years of service and section 403(b) elective deferrals with the predecessor hospital if and only if A did not have any severance from service in connection with the acquisition.

Example 6. (i) *Facts illustrating application of the age 50 catch-up and the section 415(c) dollar limitation.* The facts are the same as in *Example 4*, except that the employer makes a nonelective contribution for each employee equal to 20 percent of C's compensation (which is $48,000). Thus, the employer makes a nonelective contribution for C for 2006 equal to $9,600. The plan provides that a participant is not permitted to make section 403(b) elective deferrals to the extent the section 403(b) elective deferrals would result in contributions in excess of the maximum permitted under section 415 and provides that contributions are reduced in the following order: the special section 403(b) catch-up elective deferrals under paragraph (c)(3) of this section are reduced first; the age 50 catch-up elective deferrals under paragraph (c)(2) of this section are reduced second; and then the basic section 403(b) elective deferrals under paragraph (c)(1) of this section are reduced. For 2006, the applicable dollar limit under section 415(c)(1)(A) is $44,000.

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $23,000. This is the sum of the basic limit on section 403(b) elective deferrals under paragraph (c)(1) of this section equal to $15,000, plus the $3,000 additional special section 403(b) catch-up amount for which C qualifies under paragraph (c)(3) of this section, plus the additional age 50 catch-up amount of $5,000. The limit in paragraph (b) of this section would not be exceeded because the sum of the $9,600 nonelective contribution and the $23,000 section 403(b) elective deferrals does not exceed the lesser of $49,000 (which is the sum of $44,000 plus the $5,000 additional age 50 catch-up amount) or $53,000 (which is the sum of C's includible compensation for 2006 ($48,000) plus the $5,000 additional age 50 catch-up amount).

Example 7. (i) *Facts further illustrating application of the age 50 catch-up and the section 415(c) dollar limitation.* The facts are the same as in *Example 6,* except that C's includible compensation for 2006 is $58,000 and the plan provides for a nonelective contribution equal to 50 percent of includible compensation, so that the employer nonelective contribution for C for 2006 is $29,000 (50 percent of $58,000).

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $20,000. A section 403(b) elective deferral in excess of this amount would exceed the sum of the limit in section 415(c)(1)(A) plus the additional age 50 catch-up amount, because the sum of the employer's nonelective contribution of $29,000 plus a section 403(b) elective deferral in excess of $20,000 would exceed $49,000 (the sum of the $44,000 limit in section 415(c)(1)(A) plus the $5,000 additional age 50 catch-up amount). (Note that a section 403(b) elective deferral in excess of $20,000 would also exceed the limitations of section 402(g) unless a special section 403(b) catch-up were permitted.)

Example 8. (i) *Facts further illustrating application of the age 50 catch-up and the section 415(c) dollar limitation.* The facts are the same as in *Example 7,* except that the plan provides for a nonelective contribution for C equal to $44,000 (which is the limit in section 415(c)(1)(A)).

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $5,000. A section 403(b) elective deferral in excess of this amount would exceed the sum of the limit in section 415(c)(1)(A) plus the additional age 50 catch-up amount ($5,000), because the sum of the employer's nonelective contribution of $44,000 plus a section 403(b) elective deferral in excess of $5,000 would exceed $49,000 (the sum of the $44,000 limit in section 415(c)(1)(A) plus the $5,000 additional age 50 catch-up amount).

Example 9. (i) *Facts illustrating application of the age 50 catch-up and the section 415(c) includible compensation limitation.* The facts are the same as in *Example 7,* except that C's includible compensation for 2006 is $28,000, so that the employer nonelective contribution for C for 2006 is $14,000 (50 percent of $28,000).

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $19,000. A section 403(b) elective deferral in excess of this amount would exceed the sum of the limit in section 415(c)(1)(B) plus the additional age 50 catch-up amount, because C's includible compensation is $28,000 and the sum of the employer's nonelective contribution of $14,000 plus a section 403(b) elective deferral in excess of $19,000 would exceed $33,000 (which is the sum of 100 percent of C's includible compensation plus the $5,000 additional age 50 catch-up amount).

Example 10. (i) *Facts illustrating that section 403(b) elective deferrals cannot exceed compensation otherwise payable.* Employee D is age 60, has includible compensation of $14,000, and wishes to contribute section 403(b) elective deferrals of $20,000 for the year. No nonelective contributions are made for Employee D.

(ii) *Conclusion.* Because a contribution is a section 403(b) elective deferral only if it relates to an amount that would otherwise be included in the participant's compensation, the effective limitation on section 403(b) elective deferrals for a participant whose compensation is less than the basic dollar limit for section 403(b) elective deferrals is the participant's compensation. Thus, D cannot make section 403(b) elective deferrals in excess of D's actual compensation, which is $14,000, even though the basic dollar limit exceeds that amount.

Example 11. (i) *Facts illustrating calculation of the special section 403(b) catch-up.* For 2006, employee E, who is age 53, is eligible to participate in a section 403(b) plan of hospital H, which is a section 501(c)(3) organization. H's plan permits section 403(b) elective deferrals and provides for an employer contribution of 10 percent of a participant's compensation. The plan provides limitations on section 403(b) elective deferrals up to the maximum permitted under paragraphs (c)(1), (2), and (3) of this section. For 2006, E's includible compensation is $50,000. E wishes to elect to have the maximum section 403(b) elective deferral possible contributed in 2006. E has previously made $62,000 of section 403(b) elective deferrals under the plan, but has never made an election for a special section 403(b) catch-up elective deferral. For 2006, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is $15,000, the additional dollar amount permitted under the age 50 catch-up is $5,000, E's employer will make a nonelective contribution of $5,000 (10% of $50,000 compensation), and E is a qualified employee of a qualified employer as defined in paragraph (c)(3) of this section.

(ii) *Conclusion.* The maximum section 403(b) elective deferrals that E may elect under H's section 403(b) plan for 2006 is $23,000. This is the sum of the basic limit on section 403(b) elective deferrals for 2006 under paragraph (c)(1) of this section equal to $15,000, plus the $3,000 maximum additional special section 403(b) catch-up amount for which D qualifies in 2006 under paragraph (c)(3) of this section, plus the additional age 50 catch-up amount of $5,000. The limitation on the additional special section 403(b) catch-up amount is not less than $3,000 because the limitation at paragraph (c)(3)(i)(B) of this section is $15,000 ($15,000 minus zero) and the limitation at paragraph (c)(3)(i)(C) of this section is $13,000 ($5,000 times 15, minus $62,000 of total deferrals in prior years). These conclusions would be unaffected if H were an eligible governmental employer under section 457(b) that has a section 457(b) eligible governmental plan and E were in the past to have made annual deferrals to that plan, because contributions to a section 457(b) eligible governmental plan do not

constitute elective deferrals; and these conclusions would also be the same if H had a section 401(k) plan and E were in the past to have made elective deferrals to that plan, assuming that those elective deferrals did not exceed $10,000 ($5,000 times 15, minus the sum of $62,000 plus $10,000, equals $3,000), so as to result in the limitation at paragraph (c)(3)(i)(C) of this section being less than $3,000.

Example 12. (i) Facts illustrating calculation of the special section 403(b) catch-up in the next calendar year. The facts are the same as in *Example 11,* except that, for 2007, E has includible compensation of $60,000. For 2007, E now has previously made $85,000 of section 403(b) elective deferrals ($62,000 deferred before 2006, plus the $15,000 in basic section 403(b) elective deferrals in 2006, the $3,000 maximum additional special section 403(b) catch-up amount in 2006, plus the $5,000 age 50 catch-up amount in 2006). However, the $5,000 age 50 catch-up amount deferred in 2006 is disregarded for purposes of applying the limitation at paragraph (c)(3)(i)(B) of this section to determine the special section 403(b) catch-up amount. Thus, for 2007, only $80,000 of section 403(b) elective deferrals are taken into account in applying the limitation at paragraph (c)(3)(i)(B) of this section. For 2007, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is assumed to be $16,000, the additional dollar amount permitted under the age 50 catch-up is assumed to be $5,000, and E's employer contributes $6,000 (10% of $60,000) as a non-elective contribution.

(ii) *Conclusion.* The maximum section 403(b) elective deferral that D may elect under H's section 403(b) plan for 2007 is $21,000. This is the sum of the basic limit on section 403(b) elective deferrals under paragraph (c)(1) of this section equal to $16,000, plus the additional age 50 catch-up amount of $5,000. E is not entitled to any additional special section 403(b) catch-up amount for 2007 under paragraph (c)(3) of this section due to the limitation at paragraph (c)(3)(i)(C) of this section (16 times $5,000 equals $80,000, minus D's total prior section 403(b) elective deferrals of $80,000 equals zero).

(d) *Employer contributions for former employees*—(1) *Includible compensation deemed to continue for nonelective contributions.* For purposes of applying paragraph (b) of this section, a former employee is deemed to have monthly includible compensation for the period through the end of the taxable year of the employee in which he or she ceases to be an employee and through the end of each of the next five taxable years. The amount of the monthly includible compensation is equal to one twelfth of the former employee's includible compensation during the former employee's most recent year of service. Accordingly, nonelective employer contributions for a former employee must not exceed the limitation of section 415(c)(1) up to the lesser of the dollar amount in section 415(c)(1)(A) or the former employee's annual includible compensation based on the former employee's average monthly compensation during his or her most recent year of service.

(2) *Examples.* The provisions of paragraph (d)(1) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Private college M is a section 501(c)(3) organization operated on the basis of a June 30 fiscal year that maintains a section 403(b) plan for its employees. In 2004, M amends the plan to provide for a temporary early retirement incentive under which the college will make a nonelective contribution for any participant who satisfies certain minimum age and service conditions and who retires before June 30, 2006. The contribution will equal 110 percent of the participant's rate of pay for one year and will be payable over a period ending no later than the end of the fifth fiscal year that begins after retirement. It is assumed for purposes of this *Example 1* that, in accordance with § 1.401(a)(4)–10(b) and under the facts and circumstances, the post-retirement contributions made for participants who satisfy the minimum age and service conditions and retire before June 30, 2006, do not discriminate in favor of former employees who are highly compensated employees. Employee A retires under the early retirement incentive on March 12, 2006, and A's annual includible compensation for the period from March 1, 2005, through February 28, 2006 (which is A's most recent one year of service) is $30,000. The applicable dollar limit under section 415(c)(1)(A) is assumed to be $44,000 for 2006 and $45,000 for 2007. The college contributes $30,000 for A for 2006 and $3,000 for A for 2007 (totaling $33,000 or 110 percent of $30,000). No other contributions are made to a section 403(b) contract for A for those years.

(ii) *Conclusion.* The contributions made for A do not exceed A's includible compensation for 2006 or 2007.

Example 2. (i) *Facts.* Private college N is a section 501(c)(3) organization that maintains a section 403(b) plan for its employees. The plan provides for N to make monthly nonelective contributions equal to 20 percent of the monthly includible compensation for each eligible employee. In addition, the plan provides for contributions to continue for 5 years following the retirement of any employee after age 64 and completion of at least 20 years of service (based on the employee's average annual rate of base salary in the preceding 3 calendar years ended before the date of retirement). It is assumed for purposes of this *Example 2* that, in accordance with § 1.401(a)(4)–10(b) and under the facts and circumstances, the post-retirement contributions made for participants who satisfy the minimum age and service conditions do not discriminate in favor of former employees who are highly compensated employees. Employee B retires on July 1, 2006, at age 64 after completion of 20 or more years of service. At that date, B's annual includible compensation for the most recently ended fiscal year of N is $72,000 and B's average monthly rate of base salary for 2003 through 2005 is $5,000. N contributes $1,200 per month (20 percent of 1/12th of $72,000) from January of 2006 through June of 2006 and contributes $1,000 (20 percent of $5,000) per month for B from July of 2006 through June of 2011. The applicable dollar limit under section 415(c)(1)(A) is $44,000 for 2006 through 2011. No other contributions are made to a section 403(b) contract for B for those years.

(ii) *Conclusion.* The contributions made for B do not exceed B's includible compensation for any of the years from 2006 through 2010.

Example 3. (i) *Facts.* A public university maintains a section 403(b) under which it contributes annually 10% of compensation for participants, including for the first 5 calendar years following the date on which the participant ceases to be an employee. The plan provides that if a participant who is a former employee dies during the first 5 calendar years following the date on which the participant ceases to be an employee, a contribution is made that is equal to the lesser of—

(A) The excess of the individual's includible compensation for that year over the contributions previously made for the individual for that year; or

(B) The total contributions that would have been made on the individual's behalf thereafter if he or she had survived to the end of the 5-year period.

(ii) Individual C's annual includible compensation is $72,000 (so that C's monthly includible compensation is $6,000). A $600 contribution is made for C for January of the first taxable year following retirement (10% of individual C's monthly includible compensation of $6,000). Individual C dies during February of that year. The university makes a contribution for individual C for February equal to $11,400 (C's monthly includible compensation for January and February, reduced by $600).

(iii) *Conclusion.* The contribution does not exceed the amount of individual C's includible compensation for the taxable year for purposes of section 415(c), but any additional contributions would exceed C's includible compensation for purposes of section 415(c).

(3) *Disabled employees.* See also section 415(c)(3)(C) which sets forth a special rule under which compensation may be treated as continuing for purposes of section 415 for certain former employees who are disabled.

(e) *Special rules for determining years of service*—(1) *In general.* For purposes of determining a participant's includible compensation under paragraph (b)(2) of this section and a participant's years of service under paragraphs (c)(3) (special section 403(b) catch-up for qualified employees of certain organizations) and (d) (employer contributions for former employees) of this section, an employee must be credited with a full year of service for each year during which the individual is a full-time employee of the eligible employer for the entire work period, and a fraction of a year for each

part of a work period during which the individual is a full-time or part-time employee of the eligible employer. An individual's number of years of service equals the aggregate of the annual work periods during which the individual is employed by the eligible employer.

(2) *Work period.* A year of service is based on the employer's annual work period, not the employee's taxable year. For example, in determining whether a university professor is employed full time, the annual work period is the school's academic year. However, in no case may an employee accumulate more than one year of service in a twelve-month period.

(3) *Service with more than one eligible employer*—(i) *General rule.* With respect to any section 403(b) contract of an eligible employer, except as provided in paragraph (e)(3)(ii) of this section, any period during which an individual is not an employee of that eligible employer is disregarded for purposes of this paragraph (e).

(ii) *Special rule for church employees.* With respect to any section 403(b) contract of an eligible employer that is a church-related organization, any period during which an individual is an employee of that eligible employer and any other eligible employer that is a church-related organization that has an association (as defined in section 414(e)(3)(D)) with that eligible employer is taken into account on an aggregated basis, but any period during which an individual is not an employee of a church-related organization or is an employee of a church-related organization that does not have an association with that eligible employer is disregarded for purposes of this paragraph (e).

(4) *Full-time employee for full year.* Each annual work period during which an individual is employed full time by the eligible employer constitutes one year of service. In determining whether an individual is employed full-time, the amount of work which he or she actually performs is compared with the amount of work that is normally required of individuals performing similar services from which substantially all of their annual compensation is derived.

(5) *Other employees.* (i) An individual is treated as performing a fraction of a year of service for each annual work period during which he or she is a full-time employee for part of the annual work period and for each annual work period during which he or she is a part-time employee either for the entire annual work period or for a part of the annual work period.

(ii) In determining the fraction that represents the fractional year of service for an individual employed full time for part of an annual work period, the numerator is the period of time (such as weeks or months) during which the individual is a full-time employee during that annual work period, and the denominator is the period of time that is the annual work period.

(iii) In determining the fraction that represents the fractional year of service of an individual who is employed part time for the entire annual work period, the numerator is the amount of work performed by the individual, and the denominator is the amount of work normally required of individuals who perform similar services and who are employed full time for the entire annual work period.

(iv) In determining the fraction representing the fractional year of service of an individual who is employed part time for part of an annual work period, the fractional year of service that would apply if the individual were a part-time employee for a full annual work period is multiplied by the fractional year of service that would apply if the individual were a full-time employee for the part of an annual work period.

(6) *Work performed.* For purposes of this paragraph (e), in measuring the amount of work of an individual performing particular services, the work performed is determined based on the individual's hours of service (as defined under section 410(a)(3)(C)), except that a plan may use a different measure of work if appropriate under the facts and circumstances. For example, a plan may provide for a university professor's work to be measured by the number of courses taught during an annual work period in any case in which that individual's work assignment is generally based on a specified number of courses to be taught.

(7) *Most recent one-year period of service.* For purposes of paragraph (d) of this section, in the case of a part-time employee or a full-time employee who is employed for only part of the year determined on the basis of the employer's annual work period, the employee's most recent periods of service are aggregated to determine his or her most recent one-year period of service. In such a case, there is first taken into account his or her service during the annual work period for which the last year of service's includible compensation is being determined; then there is taken into account his or her service during his next preceding annual work period based on whole months; and so forth, until the employee's service equals, in the aggregate, one year of service.

(8) *Less than one year of service considered as one year.* If, at the close of a taxable year, an employee has, after application of all of the other rules in this paragraph (e), some portion of one year of service (but has accumulated less than one year of service), the employee is deemed to have one year of service. Except as provided in the previous sentence, fractional years of service are not rounded up.

(9) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual G is employed half-time in 2004 and 2005 as a clerk by H, a hospital which is a section 501(c)(3) organization. G earns $20,000 from H in each of those years, and retires on December 31, 2005.

(ii) *Conclusion.* For purposes of determining G's includible compensation during G's last year of service under paragraph (d) of this section, G's most recent periods of service are aggregated to determine G's most recent one-year period of service. In this case, since D worked half-time in 2004 and 2005, the compensation D earned in those two years are aggregated to produce D's includible compensation for D's last full year in service. Thus, in this case, the $20,000 that D earned in 2004 and 2005 for D's half-time work are aggregated, so that D has $40,000 of includible compensation for D's most recent one-year of service for purposes of applying paragraphs (b)(2), (c)(3), and (d) of this section.

Example 2. (i) *Facts.* Individual H is employed as a part-time professor by public University U during the first semester of its two-semester 2004–2005 academic year. While H teaches one course generally for 3 hours a week during the first semester of the academic year, U's full-time faculty members generally teach for 9 hours a week during the full academic year.

(ii) *Conclusion.* For purposes of calculating how much of a year of service H performs in the 2004–2005 academic year (before application of the special rules of paragraphs (e)(7) and (8) of this section concerning less than one year of service), paragraph (e)(5)(iv) of this section is applied as follows: since H teaches one course at U for 3 hours per week for 1 semester and other faculty members at U teach 9 hours per week for 2 semesters, H is considered to have completed 3/18 or 1/6 of a year of service during the 2004–2005 academic year, determined as follows:

(A) The fractional year of service if H were a part-time employee for a full year is 3/9 (number of hours employed divided by the usual number of hours of work required for that position).

(B) The fractional year of service if H were a full-time employee for half of a year is ½ (one semester, divided by the usual 2-semester annual work period).

(C) These fractions are multiplied to obtain the fractional year of service: $\frac{3}{9}$ times ½, or $\frac{3}{18}$, equals ⅙ of a year of service.

(f) *Excess contributions or deferrals*—(1) *Inclusion in gross income.* Any contribution made for a participant to a section 403(b) contract for the taxable year that exceeds either the maximum annual contribution limit set forth in paragraph (b) of this section or the maximum annual section 403(b) elective deferral limit set forth in paragraph (c) of this section constitutes an excess contribution that is included in gross income for that taxable year. See § 1.403(b)–3(d)(1)(iii) and (2)(i) for additional rules, including special rules relating to contracts that fail to be nonforfeitable. See also section 4973 for an excise tax applicable with respect to excess contributions to a custodial account and section 4979(f)(2)(B) for a special rule applicable if excess matching contributions, excess after-tax employee contributions, and excess section 403(b) elective deferrals do not exceed $100.

(2) *Separate account required for certain excess contributions; distribution of excess elective deferrals.* A contract to which a contribution is made that exceeds the maximum annual contribution limit set forth in paragraph (b) of this section is not a section 403(b) contract unless the excess contribution is held in a separate account which constitutes a separate account for purposes of section 72. See also § 1.403(b)–3(a)(4) and paragraph (f)(4) of this section for additional rules with respect to the requirements of section 401(a)(30) and any excess deferral.

(3) *Ability to distribute excess contributions.* A contract does not fail to satisfy the requirements of § 1.403(b)–3, the distribution rules of § 1.403(b)–6 or 1.403(b)–9, or the funding rules of § 1.403(b)–8 solely by reason of a distribution made from a separate account under paragraph (f)(2) of this section or made under paragraph (f)(4) of this section.

(4) *Excess section 403(b) elective deferrals.* A section 403(b) contract may provide that any excess deferral as a result of a failure to comply with the limitation under paragraph (c) of this section for a taxable year with respect to any section 403(b) elective deferral made for a participant by the employer will be distributed to the participant, with allocable net income, no later than April 15 of the following taxable year or otherwise in accordance with section 402(g). See section 402(g)(2)(A) for rules permitting the participant to allocate excess deferrals among the plans in which the participant has made elective deferrals, and see section 402(g)(2)(C) for special rules to determine the tax treatment of such a distribution.

(5) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual D's employer makes a $46,000 contribution for 2006 to an individual annuity insurance policy for Individual D that would otherwise be a section 403(b) contract. The contribution does not include any elective deferrals and the applicable limit under section 415(c) is $44,000 for 2006. The $2,000 section 415(c) excess is put into a separate account under the policy. Employer includes $2,000 in D's gross income as wages for 2006 and, to the extent of the amount held in the separate account for the section 415(c) excess contribution, does not treat the account as a contract to which section 403(b) applies.

(ii) *Conclusion.* The separate account for the section 415(c) excess contribution is a contract to which section 403(c) applies, but the excess contribution does not cause the rest of the contract to fail section 403(b).

Example 2. (i) *Facts.* Same facts as *Example 1*, except that the contribution is made to purchase mutual funds that are held in a custodial account, instead of an individual annuity insurance policy.

(ii) *Conclusion.* The conclusion is the same as in *Example 1,* except that the purchase constitutes a transfer described in section 83.

Example 3. (i) *Facts.* Same facts as *Example 1*, except that the amount held in the separate account for the section 415(c) excess contribution is subsequently distributed to D.

(ii) *Conclusion.* The distribution is included in gross income to the extent provided under section 72 relating to distributions from a section 403(c) contract.

Example 4. (i) *Facts.* Individual E makes section 403(b) elective deferrals totaling $15,500 for 2006, when E is age 45 and the applicable limit on section 403(b) elective deferrals is $15,000. On April 14, 2007, the plan refunds the $500 excess along with applicable earnings of $65.

(ii) *Conclusion.* The $565 payment constitutes a distribution of an excess deferral under paragraph (f)(4) of this section. Under section 402(g), the $500 excess deferral is included in E's gross income for 2006. The additional $65 is included in E's gross income for 2007 and, because the distribution is made by April 15, 2007 (as provided in section 402(g)(2)), the $65 is not subject to the additional 10 percent income tax on early distributions under section 72(t).

§ 1.403(b)–5 Nondiscrimination rules.

(a) *Nondiscrimination rules for contributions other than section 403(b) elective deferrals*—(1) *General rule.* Under section 403(b)(12)(A)(i), employer contributions and after-tax employee contributions to a section 403(b) plan must satisfy all of the following requirements (the nondiscrimination requirements) in the same manner as a qualified plan under section 401(a):

(i) Section 401(a)(4) (relating to nondiscrimination in contributions and benefits), taking section 401(a)(5) into account.

(ii) Section 401(a)(17) (limiting the amount of compensation that can be taken into account).

(iii) Section 401(m) (relating to matching and after-tax employee contributions).

(iv) Section 410(b) (relating to minimum coverage).

(2) *Nonapplication to section 403(b) elective deferrals.* The requirements of this paragraph (a) do not apply to section 403(b) elective deferrals.

(3) *Compensation for testing.* Except as may otherwise be specifically permitted under the provisions referenced in paragraph (a)(1) of this section, compliance with those provisions is tested using compensation as defined in section 414(s) (and without regard to section 415(c)(3)(E)). In addition, for purposes of paragraph (a)(1) of this section, there may be excluded employees who are permitted to be excluded under paragraph (b)(4)(ii)(D) and (E) of this section. However, as provided in paragraph (b)(4)(i) of this section, the exclusion of any employee listed in paragraph (b)(4)(ii)(D) or (E) of this section is subject to the conditions applicable under section 410(b)(4).

(4) *Employer aggregation rules.* See regulations under section 414(b), (c), (m), and (o) for rules treating entities as a single employer for purposes of the nondiscrimination requirements.

(5) *Special rules for governmental plans.* Paragraphs (a)(1)(i), (iii), and (iv) of this section do not apply to a governmental plan as defined in section 414(d) (but contributions to a governmental plan must comply with paragraphs (a)(1)(ii) and (b) of this section).

(b) *Universal availability required for section 403(b) elective deferrals—(1) General rule.* Under section 403(b)(12)(A)(ii), all employees of the eligible employer must be permitted to have section 403(b) elective deferrals contributed on their behalf if any employee of the eligible employer may elect to have the organization make section 403(b) elective deferrals. Further, the employee's right to make elective deferrals also includes the right to designate section 403(b) elective deferrals as designated Roth contributions.

(2) *Effective opportunity required.* For purposes of paragraph (b)(1) of this section, an employee is not treated as being permitted to have section 403(b) elective deferrals contributed on the employee's behalf unless the employee is provided an effective opportunity that satisfies the requirements of this

paragraph (b)(2). Whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections. A section 403(b) plan satisfies the effective opportunity requirement of this paragraph (b)(2) only if, at least once during each plan year, the plan provides an employee with an effective opportunity to make (or change) a cash or deferred election (as defined at § 1.401(k)–1(a)(3)) between cash or a contribution to the plan. Further, an effective opportunity includes the right to have section 403(b) elective deferrals made on his or her behalf up to the lesser of the applicable limits in § 1.403(b)–4(c) (including any permissible catch-up elective deferrals under § 1.403(b)–4(c)(2) and (3)) or the applicable limits under the contract with the largest limitation, and applies to part-time employees as well as full-time employees. An effective opportunity is not considered to exist if there are any other rights or benefits (other than rights or benefits listed in § 1.401(k)–1(e)(6)(i)(A), (B), or (D)) that are conditioned (directly or indirectly) upon a participant making or failing to make a cash or deferred election with respect to a contribution to a section 403(b) contract.

(3) *Special rules.* (i) In the case of a section 403(b) plan that covers the employees of more than one section 501(c)(3) organization, the universal availability requirement of this paragraph (b) applies separately to each common law entity (that is, applies separately to each section 501(c)(3) organization). In the case of a section 403(b) plan that covers the employees of more than one State entity, this requirement applies separately to each entity that is not part of a common payroll. An eligible employer may condition the employee's right to have section 403(b) elective deferrals made on his or her behalf on the employee electing a section 403(b) elective deferral of more than $200 for a year.

(ii) For purposes of this paragraph (b)(3), an employer that historically has treated one or more of its various geographically distinct units as separate for employee benefit purposes may treat each unit as a separate organization if the unit is operated independently on a day-to-day basis. Units are not geographically distinct if such units are located within the same Standard Metropolitan Statistical Area (SMSA).

(4) *Exclusions*—(i) *Exclusions for special types of employees.* A plan does not fail to satisfy the universal availability requirement of this paragraph (b) merely because it excludes one or more of the types of employees listed in paragraph (b)(4)(ii) of this section. However, the exclusion of any employee listed in paragraph (b)(4)(ii)(D) or (E) of this section is subject to the conditions applicable under section 410(b)(4). Thus, if any employee listed in paragraph (b)(4)(ii)(D) of this section has the right to have section 403(b) elective deferrals made on his or her behalf, then no employee listed in that paragraph (b)(4)(ii)(D) of this section may be excluded under this paragraph (b)(4) and, if any employee listed in paragraph (b)(4)(ii)(E) of this section has the right to have section 403(b) elective deferrals made on his or her behalf, then no employee listed in that paragraph (b)(4)(ii)(E) of this section may be excluded under this paragraph (b)(4).

(ii) *List of special types of excludible employees.* The following types of employees are listed in this paragraph (b)(4)(ii):

(A) Employees who are eligible under another section 403(b) plan, or a section 457(b) eligible governmental plan, of the employer which permits an amount to be contributed or deferred at the election of the employee.

(B) Employees who are eligible to make a cash or deferred election (as defined at § 1.401(k)–1(a)(3)) under a section 401(k) plan of the employer.

(C) Employees who are non-resident aliens described in section 410(b)(3)(C).

(D) Subject to the conditions applicable under section 410(b)(4) (including section 410(b)(4)(B) permitting separate testing for employees not meeting minimum age and service requirements), employees who are students performing services described in section 3121(b)(10).

(E) Subject to the conditions applicable under section 410(b)(4), employees who normally work fewer than 20 hours per week (or such lower number of hours per week as may be set forth in the plan).

(iii) *Special rules.* (A) A section 403(b) plan is permitted to take into account coverage under another plan, as permitted in paragraphs (b)(4)(ii)(A) and (B) of this section, only if the rights to make elective deferrals with respect to that coverage would satisfy paragraphs (b)(2) and (4)(i) of this section if that coverage were provided under the section 403(b) plan.

(B) For purposes of paragraph (b)(4)(ii)(E) of this section, an employee normally works fewer than 20 hours per week if and only if—

(*1*) For the 12-month period beginning on the date the employee's employment commenced, the employer reasonably expects the employee to work fewer than 1,000 hours of service (as defined in section 410(a)(3)(C)) in such period; and

(*2*) For each plan year ending after the close of the 12-month period beginning on the date the employee's employment commenced (or, if the plan so provides, each subsequent 12-month period), the employee worked fewer than 1,000 hours of service in the preceding 12-month period. (See, however, section 202(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829) Public Law 93–406, and regulations under section 410(a) of the Internal Revenue Code applicable with respect to plans that are subject to Title I of ERISA.)

(c) *Plan required.* Contributions to an annuity contract do not satisfy the requirements of this section unless the contributions are made pursuant to a plan, as defined in § 1.403(b)–3(b)(3), and the terms of the plan satisfy this section.

(d) *Church plans exception.* This section does not apply to a section 403(b) contract purchased by a church (as defined in § 1.403(b)–2).

(e) *Other rules.* This section only reflects requirements of the Internal Revenue Code applicable for purposes of section 403(b) and does not include other requirements. Specifically, this section does not reflect the requirements of ERISA that may apply with respect to section 403(b) arrangements, such as the vesting requirements at 29 U.S.C. 1053.

§ 1.403(b)–6 Timing of distributions and benefits.

(a) *Distributions generally.* This section provides special rules regarding the timing of distributions from, and the benefits that may be provided under, a section 403(b) contract, including limitations on when early distributions can be made (in paragraphs (b) through (d) of this section), required minimum distributions (in paragraph (e) of this section), and special rules relating to loans (in paragraph (f) of this section) and incidental benefits (in paragraph (g) of this section).

(b) *Distributions from contracts other than custodial accounts or amounts attributable to section 403(b) elective deferrals.* Except as provided in paragraph (c) of this section relating to distributions from custodial accounts, paragraph (d) of this section relating to distributions attributable to section 403(b) elective deferrals, § 1.403(b)–4(f) (relating to correction of excess deferrals), or § 1.403(b)–10(a) (relating to

plan termination), a section 403(b) contract is permitted to distribute retirement benefits to the participant no earlier than upon the earlier of the participant's severance from employment or upon the prior occurrence of some event, such as after a fixed number of years, the attainment of a stated age, or disability. See § 1.401–1(b)(1)(ii) for additional guidance. This paragraph (b) does not apply to after-tax employee contributions or earnings thereon.

(c) *Distributions from custodial accounts that are not attributable to section 403(b) elective deferrals.* Except as provided in § 1.403(b)–4(f) (relating to correction of excess deferrals) or § 1.403(b)–10(a) (relating to plan termination), distributions from a custodial account, as defined in § 1.403(b)–8(d)(2), may not be paid to a participant before the participant has a severance from employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½. Any amounts transferred out of a custodial account to an annuity contract or retirement income account, including earnings thereon, continue to be subject to this paragraph (c). This paragraph (c) does not apply to distributions that are attributable to section 403(b) elective deferrals.

(d) *Distribution of section 403(b) elective deferrals*—(1) *Limitation on distributions*—(i) *General rule*. Except as provided in § 1.403(b)–4(f) (relating to correction of excess deferrals) or § 1.403(b)–10(a) (relating to plan termination), distributions of amounts attributable to section 403(b) elective deferrals may not be paid to a participant earlier than the earliest of the date on which the participant has a severance from employment, dies, has a hardship, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½.

(ii) *Special rule for pre-1989 section 403(b) elective deferrals.* For special rules relating to amounts held as of the close of the taxable year beginning before January 1, 1989 (which does not apply to earnings thereon), see section 1123(e)(3) of the Tax Reform Act of 1986 (100 Stat. 2085, 2475) Public Law 99–514, and section 1011A(c)(11) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342, 3476) Public Law 100–647.

(2) *Hardship rules.* A hardship distribution under this paragraph (d) has the same meaning as a distribution on account of hardship under § 1.401(k)–1(d)(3) and is subject to the rules and restrictions set forth in § 1.401(k)–1(d)(3) (including limiting the amount of a distribution in the case of hardship to the amount necessary to satisfy the hardship). In addition, a hardship distribution is limited to the aggregate dollar amount of the participant's section 403(b) elective deferrals under the contract (and may not include any income thereon), reduced by the aggregate dollar amount of the distributions previously made to the participant from the contract.

(3) *Failure to keep separate accounts.* If a section 403(b) contract includes both section 403(b) elective deferrals and other contributions and the section 403(b) elective deferrals are not maintained in a separate account, then distributions may not be made earlier than the later of—

(i) Any date permitted under paragraph (d)(1) of this section; and

(ii) Any date permitted under paragraph (b) or (c) of this section with respect to contributions that are not section 403(b) elective deferrals (whichever applies to the contributions that are not section 403(b) elective deferrals).

(e) *Minimum required distributions for eligible plans*—(1) *In general.* Under section 403(b)(10), a section 403(b) contract must meet the minimum distribution requirements of section 401(a)(9) (in both form and operation). See section 401(a)(9) for these requirements.

(2) *Treatment as IRAs.* For purposes of applying the distribution rules of section 401(a)(9) to section 403(b) contracts, the minimum distribution rules applicable to individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) apply to section 403(b) contracts. Consequently, except as otherwise provided in paragraphs (e)(3) through (e)(5) of this section, the distribution rules in section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408–8 for purposes of determining required minimum distributions.

(3) *Required beginning date.* The required beginning date for purposes of section 403(b)(10) is April 1 of the calendar year following the later of the calendar year in which the employee attains 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan. However, for any section 403(b) contract that is not part of a governmental plan or church plan, the required beginning date for a 5-percent owner is April 1 of the calendar year following the calendar year in which the employee attains 70½.

(4) *Surviving spouse rule does not apply.* The special rule in § 1.408–8, A–5 (relating to spousal beneficiaries), does not apply to a section 403(b) contract. Thus, the surviving spouse of a participant is not permitted to treat a section 403(b) contract as the spouse's own section 403(b) contract, even if the spouse is the sole beneficiary.

(5) *Retirement income accounts.* For purposes of § 1.401(a)(9)–6, A–4 (relating to annuity contracts), annuity payments provided with respect to retirement income accounts do not fail to satisfy the requirements of section 401(a)(9) merely because the payments are not made under an annuity contract purchased from an insurance company, provided that the relationship between the annuity payments and the retirement income accounts is not inconsistent with any rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter). See also § 1.403(b)–9(a)(5 for additional rules relating to annuities payable from a retirement income account).

(6) *Special rules for benefits accruing before December 31, 1986.* (i) The distribution rules provided in section 401(a)(9) do not apply to the undistributed portion of the account balance under the section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). The distribution rules provided in section 401(a)(9) apply to all benefits under section 403(b) contracts accruing after December 31, 1986 (post-'86 account balance), including earnings after December 31, 1986. Consequently, the post-'86 account balance includes earnings after December 31, 1986, on contributions made before January 1, 1987, in addition to the contributions made after December 31, 1986, and earnings thereon.

(ii) The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (d)(6)(iii) of this section and provide such information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer or custodian does not keep such records, the entire account balance is treated as subject to section 401(a)(9).

(iii) In applying the distribution rules in section 401(a)(9), only the post-'86 account balance is used to calculate the required minimum distribution for a calendar year. The amount of any distribution from a contract is treated as being paid from the post-'86 account balance to the extent the distribution is required to satisfy the minimum

distribution requirement with respect to that contract for a calendar year. Any amount distributed in a calendar year from a contract in excess of the required minimum distribution for a calendar year with respect to that contract is treated as paid from the pre-'87 account balance, if any, of that contract.

(iv) If an amount is distributed from the pre-'87 account balance and rolled over to another section 403(b) contract, the amount is treated as part of the post-'86 account balance in that second contract. However, if the pre-'87 account balance under a section 403(b) contract is directly transferred to another section 403(b) contract (as permitted under § 1.403(b)–10(b)), the amount transferred retains its character as a pre-'87 account balance, provided the issuer of the transferee contract satisfies the recordkeeping requirements of paragraph (e)(6)(ii) of this section.

(v) The distinction between the pre-'87 account balance and the post-'86 account balance provided for under this paragraph (e)(6) of this section has no relevance for purposes of determining the portion of a distribution that is includible in income under section 72.

(vi) The pre-'87 account balance must be distributed in accordance with the incidental benefit requirement of § 1.401–1(b)(1)(i). Distributions attributable to the pre-'87 account balance are treated as satisfying this requirement if all distributions from the section 403(b) contract (including distributions attributable to the post-'86 account balance) satisfy the requirements of § 1.401–1(b)(1)(i) without regard to this section, and distributions attributable to the post-'86 account balance satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)). Distributions attributable to the pre-'87 account balance are treated as satisfying the incidental benefit requirement if all distributions from the section 403(b) contract (including distributions attributable to both the pre-'87 account balance and the post-'86 account balance) satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)).

(7) *Application to multiple contracts for an employee.* The required minimum distribution must be separately determined for each section 403(b) contract of an employee. However, because, as provided in paragraph (e)(2) of this section, the distribution rules in section 401(a)(9) apply to section 403(b) contracts in accordance with the provisions in § 1.408–8, the required minimum distribution from one section 403(b) contract of an employee is permitted to be distributed from another section 403(b) contract in order to satisfy section 401(a)(9). Thus, as provided in § 1.408–8, A–9, with respect to IRAs, the required minimum distribution amount from each contract is then totaled and the total minimum distribution taken from any one or more of the individual section 403(b) contracts. However, consistent with the rules in § 1.408–8, A–9, only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. Amounts in section 403(b) contracts that an individual holds as a beneficiary of the same decedent may be aggregated, but such amounts may not be aggregated with amounts held in section 403(b) contracts that the individual holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts do not satisfy the minimum distribution requirements for IRAs, nor do distributions from IRAs satisfy the minimum distribution requirements for section 403(b) contracts.

(f) *Loans.* The determination of whether the availability of a loan, the making of a loan, or a failure to repay a loan made from an issuer of a section 403(b) contract to a participant or beneficiary is treated as a distribution (directly or indirectly) for purposes of this section, and the determination of whether the availability of the loan, the making of the loan, or a failure to repay the loan is in any other respect a violation of the requirements of section 403(b) and §§ 1.403(b)–1 through 1.403(b)–5, this section, and §§ 1.403(b)–7 through 1.403(b)–11, depends on the facts and circumstances. Among the facts and circumstances are whether the loan has a fixed repayment schedule and bears a reasonable rate of interest, and whether there are repayment safeguards to which a prudent lender would adhere. Thus, for example, a loan must bear a reasonable rate of interest in order to be treated as not being a distribution. However, a plan loan offset is a distribution for purposes of this section. See § 1.72(p)–1, Q&A–13. See also § 1.403(b)–7(d) relating to the application of section 72(p) with respect to the taxation of a loan made under a section 403(b) contract. (Further, see section 408(b)(1) of Title I of ERISA and 29 CFR 2550.408b–1 of the Department of Labor regulations concerning additional requirements applicable with respect to plans that are subject to Title I of ERISA.)

(g) *Death benefits and other incidental benefits.* An annuity is not a section 403(b) contract if it fails to satisfy the incidental benefit requirement of § 1.401–1(b)(1)(ii) (in form or in operation). For purposes of this paragraph (g), to the extent the incidental benefit requirement of § 1.401–1(b)(1)(ii) requires a distribution of the participant's or beneficiary's accumulated benefit, that requirement is deemed to be satisfied if distributions satisfy the minimum distribution requirements of section 401(a)(9). In addition, if a contract issued by an insurance company qualified to issue annuities in a State includes provisions under which, in the event a participant becomes disabled, benefits will be provided by the insurance carrier as if employer contributions were continued until benefit distribution commences, then that benefit is treated as an incidental benefit (as insurance for a deferred annuity benefit in the event of disability) that must satisfy the incidental benefit requirement of § 1.401–1(b)(1)(ii) (taking into account any other incidental benefits provided under the plan).

(h) *Special rule regarding severance from employment.* For purposes of this section, severance from employment occurs on any date on which an employee ceases to be an employee of an eligible employer, even though the employee may continue to be employed either by another entity that is treated as the same employer where either that other entity is not an entity that can be an eligible employer (such as transferring from a section 501(c)(3) organization to a for-profit subsidiary of the section 501(c)(3) organization) or in a capacity that is not employment with an eligible employer (for example, ceasing to be an employee performing services for a public school but continuing to work for the same State employer). Thus, this paragraph (h) does not apply if an employee transfers from one section 501(c)(3) organization to another section 501(c)(3) organization that is treated as the same employer or if an employee transfers from one public school to another public school of the same State employer.

(i) *Certain limitations do not apply to rollover contributions.* The limitations on distributions in paragraphs (b) through (d) of this section do not apply to amounts held in a separate account for eligible rollover distributions as described in § 1.403(b)–10(d).

§ 1.403(b)–7 Taxation of distributions and benefits.

(a) *General rules for when amounts are included in gross income.* Except as provided in this section (or in § 1.403(b)–10(c) relating to payments pursuant to a qualified domestic relations order), amounts actually

distributed from a section 403(b) contract are includible in the gross income of the recipient participant or beneficiary (in the year in which so distributed) under section 72 (relating to annuities). For an additional income tax that may apply to certain early distributions that are includible in gross income, see section 72(t).

(b) *Rollovers to individual retirement arrangements and other eligible retirement plans*—(1) *Timing of taxation of rollovers.* In accordance with sections 402(c), 403(b)(8), and 403(b)(10), a direct rollover in accordance with section 401(a)(31) is not includible in the gross income of a participant or beneficiary in the year rolled over. In addition, any payment made in the form of an eligible rollover distribution (as defined in section 402(c)(4)) is not includible in gross income in the year paid to the extent the payment is contributed to an eligible retirement plan (as defined in section 402(c)(8)(B)) within 60 days, including the contribution to the eligible retirement plan of any property distributed. For this purpose, the rules of section 402(c)(2) through (7) and (c)(9) apply. Thus, to the extent that a portion of a distribution (including a distribution from a designated Roth account) would be excluded from gross income if it were not rolled over, if that portion of the distribution is to be rolled over into an eligible retirement plan that is not an IRA, the rollover must be accomplished through a direct rollover of the entire distribution to a plan qualified under section 401(a) or section 403(b) plan and that plan must agree to separately account for the amount not includible in income (so that a 60-day rollover to a plan qualified under section 401(a) or another section 403(b) plan is not available for this portion of the distribution). Any direct rollover under this paragraph (b)(1) is a distribution that is subject to the distribution requirements of § 1.403(b)–6.

(2) *Requirement that contract provide rollover options for eligible rollover distributions.* As required in § 1.403(b)–3(a)(7), an annuity contract is not a section 403(b) contract unless the contract provides that if the distributee of an eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B)) and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. For purposes of determining whether a contract satisfies this requirement, the provisions of section 401(a)(31) apply to the annuity as though it were a plan qualified under section 401(a) unless otherwise provided in section 401(a)(31). Thus, the special rule in § 1.401(k)–1(f)(3)(ii) with respect to distributions from a designated Roth account that are expected to total less than $200 during a year applies to designated Roth accounts under a section 403(b) plan. In applying the provisions of this paragraph (b)(2), the payor of the eligible rollover distribution from the contract is treated as the plan administrator.

(3) *Requirement that contract payor provide notice of rollover option to distributees.* To ensure that the distributee of an eligible rollover distribution from a section 403(b) contract has a meaningful right to elect a direct rollover, section 402(f) requires that the distributee be informed of the option. Thus, within a reasonable time period before making the initial eligible rollover distribution, the payor must provide an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. For purposes of satisfying the reasonable time period requirement, the plan timing rule provided in section 402(f)(1) and § 1.402(f)–1 applies to section 403(b) contracts.

(4) *Mandatory withholding upon certain eligible rollover distributions from contracts.* If a distributee of an eligible rollover distribution from a section 403(b) contract does not elect to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover, the eligible rollover distribution is subject to 20–percent income tax withholding imposed under section 3405(c). See section 3405(c) and § 31.3405(c)–1 of this chapter for provisions regarding the withholding requirements relating to eligible rollover distributions.

(5) *Automatic rollover for certain mandatory distributions under section 401(a)(31).* In accordance with section 403(b)(10), a section 403(b) plan is required to comply with section 401(a)(31) (including automatic rollover for certain mandatory distributions) in the same manner as a qualified plan.

(c) *Special rules.* See section 402(g)(2)(C) for special rules to determine the tax treatment of a distribution of excess deferrals, and see § 1.401(m)–1(e)(3)(v) for the tax treatment of corrective distributions of after-tax employee contributions and matching contributions to comply with section 401(m). See sections 402(l) and 403(b)(2) for a special rule regarding distributions for certain retired public safety officers made from a governmental plan for the direct payment of certain premiums.

(d) *Amounts taxable under section 72(p)(1).* In accordance with section 72(p), the amount of any loan from a section 403(b) contract to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is treated as having been received as a distribution from the contract under section 72(p)(1), except to the extent set forth in section 72(p)(2) (relating to loans that do not exceed a maximum amount and that are repayable in accordance with certain terms) and § 1.72(p)–1. See generally § 1.72(p)–1. Thus, except to the extent a loan satisfies section 72(p)(2), any amount loaned from a section 403(b) contract to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is includible in the gross income of the participant or beneficiary for the taxable year in which the loan is made. A deemed distribution is not an actual distribution for purposes of § 1.403(b)–6, as provided at § 1.72(p)–1, Q&A–12 and Q&A–13. (Further, see section 408(b)(1) of Title I of ERISA concerning the effect of noncompliance with Title I loan requirements for plans that are subject to Title I of ERISA.)

(e) *Special rules relating to distributions from a designated Roth account.* If an amount is distributed from a designated Roth account under a section 403(b) plan, the amount, if any, that is includible in gross income and the amount, if any, that may be rolled over to another section 403(b) plan is determined under § 1.402A–1. Thus, the designated Roth account is treated as a separate contract for purposes of section 72. For example, the rules of section 72(b) must be applied separately to annuity payments with respect to a designated Roth account under a section 403(b) plan and separately to annuity payments with respect to amounts attributable to any other contributions to the section 403(b) plan.

(f) *Aggregation of contracts.* In accordance with section 403(b)(5), the rules of this section are applied as if all annuity contracts for the employee by the employer are treated as a single contract.

(g) *Certain rules relating to employment taxes.* With respect to contributions under the Federal Insurance Contributions Act (FICA) under Chapter 21, see section 3121(a)(5)(D) for a special rule relating to section 403(b) contracts. With respect to income tax withholding on distributions from section 403(b) contracts, see section 3405 generally. However, see section 3401 for income

tax withholding applicable to annuity contracts or custodial accounts that are not section 403(b) contracts or for cases in which an annuity contract or custodial account ceases to be a section 403(b) contract. See also § 1.72(p)–1, Q&A–15, and § 35.3405(c)–1, Q&A–11 of this chapter, for special rules relating to income tax withholding for loans made from certain employer plans, including section 403(b) contracts.

§ 1.403(b)–8 Funding.

(a) *Investments.* Section 403(b) and § 1.403(b)–3(a) only apply to amounts held in an annuity contract (as defined in § 1.403(b)–2), including a custodial account that is treated as an annuity contract under paragraph (d) of this section, or a retirement income account that is treated as an annuity contract under § 1.403(b)–9.

(b) *Contributions to the plan.* Contributions to a section 403(b) plan must be transferred to the insurance company issuing the annuity contract (or the entity holding assets of any custodial or retirement income account that is treated as an annuity contract) within a period that is not longer than is reasonable for the proper administration of the plan. For purposes of this requirement, the plan may provide for section 403(b) elective deferrals for a participant under the plan to be transferred to the annuity contract within a specified period after the date the amounts would otherwise have been paid to the participant. For example, the plan could provide for section 403(b) elective deferrals under the plan to be contributed within 15 business days following the month in which these amounts would otherwise have been paid to the participant.

(c) *Annuity contracts*—(1) *Generally.* As defined in § 1.403(b)–2, and except as otherwise permitted under this section, an annuity contract means a contract that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity. This paragraph (c) sets forth additional rules regarding annuity contracts.

(2) *Certain insurance contracts.* Neither a life insurance contract, as defined in section 7702, an endowment contract, a health or accident insurance contract, nor a property, casualty, or liability insurance contract meets the definition of an annuity contract. See § 1.401(f)–4(e). If a contract issued by an insurance company qualified to issue annuities in a State provides death benefits as part of the contract, then that coverage is permitted, assuming that those death benefits do not cause the contract to fail to satisfy any requirement applicable to section 403(b) contracts, for example, assuming that those benefits satisfy the incidental benefit requirement of § 1.401–1(b)(1)(i), as required by § 1.403(b)–6(g).

(3) *Special rule for certain contracts.* This paragraph (c)(3) applies in the case of a contract issued under a State section 403(b) plan established on or before May 17, 1982, or for an employee who becomes covered for the first time under the plan after May 17, 1982, unless the Commissioner had before that date issued any written communication (either to the employer or financial institution) to the effect that the arrangement under which the contract was issued did not meet the requirements of section 403(b). The requirement that the contract be issued by an insurance company qualified to issue annuities in a State does not apply to a contract described in the preceding sentence if one of the following two conditions is satisfied and that condition has been satisfied continuously since May 17, 1982—

(i) Benefits under the contract are provided from a separately funded retirement reserve that is subject to supervision of the State insurance department; or

(ii) Benefits under the contract are provided from a fund that is separate from the fund used to provide statutory benefits payable under a state retirement system and that is part of a State teachers retirement system (including a state university retirement system) to purchase benefits that are unrelated to the basic benefits provided under the retirement system, and the death benefit provided under the contract does not at any time exceed the larger of the reserve or the contribution made for the employee.

(d) *Custodial accounts*—(1) *Treatment as a section 403(b) contract.* Under section 403(b)(7), a custodial account is treated as an annuity contract for purposes of §§ 1.403(b)–1 through 1.403(b)–7, this section and §§ 1.403(b)–9 through 1.403(b)–11. See section 403(b)(7)(B) for special rules regarding the tax treatment of custodial accounts and section 4973(c) for an excise tax that applies to excess contributions to a custodial account.

(2) *Custodial account defined.* A custodial account means a plan, or a separate account under a plan, in which an amount attributable to section 403(b) contributions (or amounts rolled over to a section 403(b) contract, as described in § 1.403(b)–10(d)) is held by a bank or a person who satisfies the conditions in section 401(f)(2), if—

(i) All of the amounts held in the account are invested in stock of a regulated investment company (as defined in section 851(a) relating to mutual funds);

(ii) The requirements of § 1.403(b)–6(c) (imposing restrictions on distributions with respect to a custodial account) are satisfied with respect to the amounts held in the account;

(iii) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries (for which purpose, assets are treated as diverted to the employer if the employer borrows assets from the account); and

(iv) The account is not part of a retirement income account.

(3) *Effect of definition.* The requirement in paragraph (d)(2)(i) of this section is not satisfied if the account includes any assets other than stock of a regulated investment company.

(4) *Treatment of custodial account.* A custodial account is treated as a section 401 qualified plan solely for purposes of subchapter F of subtitle A and subtitle F of the Internal Revenue Code with respect to amounts received by it (and income from investment thereof). This treatment only applies to a custodial account that constitutes a section 403(b) contract under §§ 1.403(b)–1 through 1.403(b)–7, this section and §§ 1.403(b)–9 through 1.403(b)–11 or that would constitute a section 403(b) contract under §§ 1.403(b)–1 through 1.403(b)–7, this section and §§ 1.403(b)–9 through 1.403(b)–11 if the amounts held in the account were to satisfy the nonforfeitability requirement of § 1.403(b)–3(a)(2).

(e) *Retirement income accounts.* See § 1.403(b)–9 for special rules under which a retirement income account for employees of a church-related organization is treated as a section 403(b) contract for purposes of §§ 1.403(b)–1 through 1.403(b)–7, this section and §§ 1.403(b)–9 through 1.403(b)–11.

(f) *Combining assets.* To the extent permitted by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), trust assets held under a custodial account and trust assets held under a retirement income account, as described in § 1.403(b)–9(a)(6), may be invested in a group trust with trust assets held under a qualified plan or individual retirement plan. For this purpose, a trust includes a custodial account that is treated as a trust under section 401(f).

§ 1.403(b)–9 Special rules for church plans.

(a) *Retirement income accounts*—(1) *Treatment as a section 403(b) contract.* Under section 403(b)(9), a retirement income account for employees of a church-related organization (as defined in § 1.403(b)–2) is treated as an annuity contract for purposes of §§ 1.403(b)–1 through 1.403(b)–8, this section, § 1.403(b)–10 and § 1.403(b)–11.

(2) *Retirement income account defined*—(i) *In general.* A retirement income account means a defined contribution program established or maintained by a church-related organization under which—

(A) There is separate accounting for the retirement income account's interest in the underlying assets (namely, there must be sufficient separate accounting in order for it to be possible at all times to determine the retirement income account's interest in the underlying assets and to distinguish that interest from any interest that is not part of the retirement income account);

(B) Investment performance is based on gains and losses on those assets; and

(C) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries (and for this purpose, assets are treated as diverted to the employer if there is a loan or other extension of credit from assets in the account to the employer).

(ii) *Plan required.* A retirement income account must be maintained pursuant to a program which is a plan (as defined in § 1.403(b)–3(b)(3)) and the plan document must state (or otherwise evidence in a similarly clear manner) the intent to constitute a retirement income account.

(3) *Ownership or use constitutes distribution.* Any asset of a retirement income account that is owned or used by a participant or beneficiary is treated as having been distributed to that participant or beneficiary. See §§ 1.403(b)–6 and 1.403(b)–7 for rules relating to distributions.

(4) *Coordination of retirement income account with custodial account rules.* A retirement income account that is treated as an annuity contract is not a custodial account (as defined in § 1.403(b)–8(d)(2)), even if it is invested solely in stock of a regulated investment company.

(5) *Life annuities.* A retirement income account may distribute benefits in a form that includes a life annuity only if—

(i) The amount of the distribution form has an actuarial present value, at the annuity starting date, equal to the participant's or beneficiary's accumulated benefit, based on reasonable actuarial assumptions, including regarding interest and mortality; and

(ii) The plan sponsor guarantees benefits in the event that a payment is due that exceeds the participant's or beneficiary's accumulated benefit.

(6) *Combining retirement income account assets with other assets.* For purposes of § 1.403(b)–8(f) relating to combining assets, retirement income account assets held in trust (including a custodial account that is treated as a trust under section 401(f)) are subject to the same rules regarding combining of assets as custodial account assets. In addition, retirement income account assets are permitted to be commingled in a common fund with amounts devoted exclusively to church purposes (such as a fund from which unfunded pension payments are made to former employees of the church). However, unless otherwise permitted by the Commissioner, no assets of the plan sponsor, other than retirement income account assets, may be combined with custodial account assets or any other assets permitted to be combined under § 1.403(b)–8(f). This paragraph (a)(6) is subject to any additional rules issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(7) *Trust treated as tax exempt.* A trust (including a custodial account that is treated as a trust under section 401(f)) that includes no assets other than assets of a retirement income account is treated as an organization that is exempt from taxation under section 501(a).

(b) *No compensation limitation up to $10,000.* See section 415(c)(7) for special rules regarding certain annual additions not exceeding $10,000.

(c) *Special deduction rule for self-employed ministers.* See section 404(a)(10) for a special rule regarding the deductibility of a contribution made by a self-employed minister.

§ 1.403(b)–10 Miscellaneous provisions.

(a) *Plan terminations and frozen plans*—(1) *In general.* An employer is permitted to amend its section 403(b) plan to eliminate future contributions for existing participants or to limit participation to existing participants and employees (to the extent consistent with § 1.403(b)–5). A section 403(b) plan is permitted to contain provisions that provide for plan termination and that allow accumulated benefits to be distributed on termination. However, in the case of a section 403(b) contract that is subject to the distribution restrictions in § 1.403(b)–6(c) or (d) (relating to custodial accounts and section 403(b) elective deferrals), termination of the plan and the distribution of accumulated benefits is permitted only if the employer (taking into account all entities that are treated as the same employer under section 414(b), (c), (m), or (o) on the date of the termination) does not make contributions to any section 403(b) contract that is not part of the plan during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. However, if at all times during the period beginning 12 months before the termination and ending 12 months after distribution of all assets from the terminated plan, fewer than 2 percent of the employees who were eligible under the section 403(b) plan as of the date of plan termination are eligible under the alternative section 403(b) contract, the alternative section 403(b) contract is disregarded. To the extent a contract fails to satisfy the nonforfeitability requirement of § 1.403(b)–3(a)(2) at the date of plan termination, the contact is not, and cannot later become, a section 403(b) contract. In order for a section 403(b) plan to be considered terminated, all accumulated benefits under the plan must be distributed to all participants and beneficiaries as soon as administratively practicable after termination of the plan. For this purpose, delivery of a fully paid individual insurance annuity contract is treated as a distribution. The mere provision for, and making of, distributions to participants or beneficiaries upon plan termination does not cause a contract to cease to be a section 403(b) contract. See § 1.403(b)–7 for rules regarding the tax treatment of distributions, including § 1.403(b)–7(b)(1) under which an eligible rollover distribution is not included in gross income if paid in a direct rollover to an eligible retirement plan or if transferred to an eligible retirement plan within 60 days.

(2) *Employers that cease to be eligible employers.* An employer that ceases to be an eligible employer may no longer contribute to a section 403(b) contract for any subsequent period, and the contract will fail to satisfy § 1.403(b)–3(a) if any further contributions are made with respect to a period after the employer ceases to be an eligible employer.

(b) *Contract exchanges and plan-to-plan transfers*—(1) *Contract exchanges and transfers*—(i) *General rule.* If the conditions in paragraph (b)(2) of this section are met, a section 403(b) contract held under a section 403(b)

plan is permitted to be exchanged for another section 403(b) contract held under that section 403(b) plan. Further, if the conditions in paragraph (b)(3) of this section are met, a section 403(b) plan is permitted to provide for the transfer of its assets (including any assets held in a custodial account or retirement income account that are treated as section 403(b) contracts) to another section 403(b) plan. In addition, if the conditions in paragraph (b)(4) of this section (relating to permissive service credit and repayments under section 415) are met, a section 403(b) plan is permitted to provide for the transfer of its assets to a qualified plan under section 401(a). However, neither a qualified plan nor an eligible governmental plan under section 457(b) may transfer assets to a section 403(b) plan, and a section 403(b) plan may not accept such a transfer. In addition, a section 403(b) contract may not be exchanged for an annuity contract that is not a section 403(b) contract. Neither a plan-to-plan transfer nor a contract exchange permitted under this paragraph (b) is treated as a distribution for purposes of the distribution restrictions at § 1.403(b)–6. Therefore, such a transfer or exchange may be made before severance from employment or another distribution event. Further, no amount is includible in gross income by reason of such a transfer or exchange.

(ii) *ERISA rules.* See § 1.414(l)–1 for other rules that are applicable to section 403(b) plans that are subject to section 208 of the Employee Retirement Income Security Act of 1974 (88 Stat. 829, 865).

(2) *Requirements for contract exchange within the same plan*—(i) *General rule.* A section 403(b) contract of a participant or beneficiary may be exchanged under paragraph (b)(1) of this section for another section 403(b) contract of that participant or beneficiary under the same section 403(b) plan if each of the following conditions are met:

(A) The plan under which the contract is issued provides for the exchange.

(B) The participant or beneficiary has an accumulated benefit immediately after the exchange that is at least equal to the accumulated benefit of that participant or beneficiary immediately before the exchange (taking into account the accumulated benefit of that participant or beneficiary under both section 403(b) contracts immediately before the exchange).

(C) The other contract is subject to distribution restrictions with respect to the participant that are not less stringent than those imposed on the contract being exchanged, and the employer enters into an agreement with the issuer of the other contract under which the employer and the issuer will from time to time in the future provide each other with the following information:

(*1*) Information necessary for the resulting contract, or any other contract to which contributions have been made by the employer, to satisfy section 403(b), including information concerning the participant's employment and information that takes into account other section 403(b) contracts or qualified employer plans (such as whether a severance from employment has occurred for purposes of the distribution restrictions in § 1.403(b)–6 and whether the hardship withdrawal rules of § 1.403(b)–6(d)(2) are satisfied).

(*2*) Information necessary for the resulting contract, or any other contract to which contributions have been made by the employer, to satisfy other tax requirements (such as whether a plan loan satisfies the conditions in section 72(p)(2) so that the loan is not a deemed distribution under section 72(p)(1)).

(ii) *Accumulated benefit.* The condition in paragraph (b)(2)(i)(B) of this section is satisfied if the exchange would satisfy section 414(l)(1) if the exchange were a transfer of assets.

(iii) *Authority for future guidance.* Subject to such conditions as the Commissioner determines to be appropriate, the Commissioner may issue rules of general applicability, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), permitting an exchange of one section 403(b) contract for another section 403(b) contract for an exchange that does not satisfy paragraph (b)(2)(i)(C) of this section. Any such rules must require the resulting contract to set forth procedures that the Commissioner determines are reasonably designed to ensure compliance with those requirements of section 403(b) or other tax provisions that depend on either information concerning the participant's employment or information that takes into account other section 403(b) contracts or other employer plans (such as whether a severance from employment has occurred for purposes of the distribution restrictions in § 1.403(b)–6, whether the hardship withdrawal rules of § 1.403(b)–6(d)(2) are satisfied, and whether a plan loan constitutes a deemed distribution under section 72(p)).

(3) *Requirements for plan-to-plan transfers.* (i) A plan-to-plan transfer under paragraph (b)(1) of this section from a section 403(b) plan to another section 403(b) plan is permitted if each of the following conditions are met—

(A) In the case of a transfer for a participant, the participant is an employee or former employee of the employer (or the business of the employer) for the receiving plan.

(B) In the case of a transfer for a beneficiary of a deceased participant, the participant was an employee or former employee of the employer (or business of the employer) for the receiving plan.

(C) The transferor plan provides for transfers.

(D) The receiving plan provides for the receipt of transfers.

(E) The participant or beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that participant or beneficiary immediately before the transfer.

(F) The receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under § 1.403(b)–6, the receiving plan imposes restrictions on distributions to the participant or beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan.

(G) If a plan-to-plan transfer does not constitute a complete transfer of the participant's or beneficiary's interest in the section 403(b) plan, the transferee plan treats the amount transferred as a continuation of a pro rata portion of the participant's or beneficiary's interest in the section 403(b) plan (for example, a pro rata portion of the participant's or beneficiary's interest in any after-tax employee contributions).

(ii) *Accumulated benefit.* The condition in paragraph (b)(3)(i)(D) of this section is satisfied if the transfer would satisfy section 414(l)(1).

(4) *Purchases of permissive service credit by contract-to-plan transfers from a section 403(b) contract to a qualified plan*—(i) *General rule.* If the conditions in paragraph (b)(4)(ii) of this section are met, a section 403(b) plan may provide for the transfer of assets held in the plan to a qualified defined benefit plan that is a governmental plan (as defined in section 414(d)).

(ii) *Conditions for plan-to-plan transfers.* A transfer may be made under this paragraph (b)(4) only if the transfer is either—

(A) For the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under the receiving defined benefit plan; or

(B) A repayment to which section 415 does not apply by reason of section 415(k)(3).

(c) *Qualified domestic relations orders.* In accordance with the second sentence of section 414(p)(9), any distribution from an annuity contract under section 403(b) (including a distribution from a custodial account or retirement income account that is treated as a section 403(b) contract) pursuant to a qualified domestic relations order is treated in the same manner as a distribution from a plan to which section 401(a)(13) applies. Thus, for example, a section 403(b) plan does not fail to satisfy the distribution restrictions set forth in § 1.403(b)–6(b), (c), or (d) merely as a result of distribution made pursuant to a qualified domestic relations order under section 414(p), so that such a distribution is permitted without regard to whether the employee from whose contract the distribution is made has had a severance from employment or another event permitting a distribution to be made under section 403(b). In the case of a plan that is subject to Title I of ERISA, see also section 206(d)(3) of ERISA under which the prohibition against assignment or alienation of plan benefits under section 206(d)(1) of ERISA does not apply to an order that is determined to be a qualified domestic relations order.

(d) *Rollovers to a section 403(b) contract*—(1) *General rule.* A section 403(b) contract may accept a contribution that is an eligible rollover distribution (as defined in section 402(c)(4)) made from another eligible retirement plan (as defined in section 402(c)(8)(B)). Any amount contributed to a section 403(b) contract as an eligible rollover distribution is not taken into account for purposes of the limits in § 1.403(b)–4, but, except as otherwise specifically provided (for example, at § 1.403(b)–6(i)), is otherwise treated in the same manner as an amount held under a section 403(b) contract for purposes of §§ 1.403(b)–3 through 1.403(b)–9 and this section.

(2) *Special rules relating to after-tax employee contributions and designated Roth contributions.* A section 403(b) plan that receives an eligible rollover distribution that includes after-tax employee contributions or designated Roth contributions is required to obtain information regarding the employee's section 72 basis in the amount rolled over. A section 403(b) plan is permitted to receive an eligible rollover distribution that includes designated Roth contributions only if the plan permits employees to make elective deferrals that are designated Roth contributions.

(e) *Deemed IRAs.* See regulations under section 408(q) for special rules relating to deemed IRAs.

(f) *Defined benefit plans*—(1) *Defined benefit plans generally.* Except for a TEFRA church defined benefit plan as defined in paragraph (f)(2) of this section, section 403(b) does not apply to any contributions or accrual under a defined benefit plan.

(2) *TEFRA church defined benefit plans.* See section 251(e)(5) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, for a provision permitting certain arrangements established by a church-related organization and in effect on September 3, 1982 (a TEFRA church defined benefit plan) to be treated as section 403(b) contract even though it is a defined benefit arrangement. In accordance with section 403(b)(1), for purposes of applying section 415 to a TEFRA church defined benefit plan, the accruals under the plan are limited to the maximum amount permitted under section 415(c) when expressed as an annual addition, and, for this purpose, the rules at § 1.402(b)–1(a)(2) for determining the present value of an accrual under a nonqualified defined benefit plan also apply for purposes of converting the accrual under a TEFRA church defined benefit plan to an annual addition. See section 415(b) for additional limits applicable to TEFRA church defined benefit plans.

(g) *Other rules relating to section 501(c)(3) organizations.* See section 501(c)(3) and regulations thereunder for the substantive standards for tax-exemption under that section, including the requirement that no part of the organization's net earnings inure to the benefit of any private shareholder or individual. See also sections 4941 (self dealing), 4945 (taxable expenditures), and 4958 (excess benefit transactions), and the regulations thereunder, for rules relating to excise taxes imposed on certain transactions involving organizations described in section 501(c)(3).

§ 1.403(b)–11 Applicable dates.

(a) *General rule.* Except as otherwise provided in this section, §§ 1.403(b)–1 through 1.403(b)–10 apply for taxable years beginning after December 31, 2008.

(b) *Collective bargaining agreements.* In the case of a section 403(b) plan maintained pursuant to one or more collective bargaining agreements that have been ratified and in effect on July 26, 2007, §§ 1.403(b)–1 through 1.403(b)–10 do not apply before the earlier of—

(1) The date on which the last of the collective bargaining agreements terminates (determined without regard to any extension thereof after July 26, 2007); or

(2) July 26, 2010.

(c) *Church conventions; retirement income account.* (1) In the case of a section 403(b) plan maintained by a church-related organization for which the authority to amend the plan is held by a church convention (within the meaning of section 414(e)), §§ 1.403(b)–1 through 1.403(b)–10 do not apply before the first day of the first plan year that begins after December 31, 2009.

(2) In the case of a loan or other extension of credit to the employer that was entered into under a retirement income account before July 26, 2007 the plan does not fail to satisfy § 1.403(b)–9(a)(2)(C) on account of the loan or other extension of credit if the plan takes reasonable steps to eliminate the loan or other extension of credit to the employer before the applicable date for § 1.403(b)–9(a)(2) or as promptly as practical thereafter (including taking steps after July 26, 2007 and before the applicable date).

(d) *Special rules for plans that exclude certain types of employees from elective deferrals.* (1) If, on July 26, 2007, a plan excludes any of the following categories of employees, then the plan does not fail to satisfy § 1.403(b)–5(b) as a result of that exclusion before the first day of the first taxable year that begins after December 31, 2009:

(i) Employees who make a one-time election to participate in a governmental plan described in section 414(d) that is not a section 403(b) plan.

(ii) Professors who are providing services on a temporary basis to another educational organization (as defined under section 170(b)(1)(A)(ii)) for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original educational organization.

(iii) Employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement from eligibility to make elective deferrals.

(2) If, on July 26, 2007, a plan excludes employees who are covered by a collective bargaining agreement from eligibility to make elective deferrals, the plan does not fail to satisfy § 1.403(b)–5(b) (relating to universal availability) as

a result of that exclusion before the later of—

(i) The first day of the first taxable year that begins after December 31, 2008; or

(ii) The earlier of—

(A) The date on which the related collective bargaining agreement terminates (determined without regard to any extension thereof after July 26, 2007); or

(B) July 26, 2010.

(3) In the case of a governmental plan (as defined in section 414(d)) for which the authority to amend the plan is held by a legislative body that meets in legislative session, the plan does not fail to satisfy § 1.403(b)–5(b) as a result of any exclusion in paragraph (d)(1)(i), (d)(1)(ii),(d)(1)(iii), or (d)(2) of this section before the earlier of —

(i) The close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after January 1, 2009; or

(ii) January 1, 2011.

(e) *Special rules for plans that permit in-service distributions.* (1) Section 1.403(b)–6(b) does not apply to a contract issued by an insurance company before January 1, 2009.

(2) Any amendment to comply with the requirements of § 1.403(b)–6 (disregarding paragraph (e)(1) of this section) that is adopted before January 1, 2009, or such later date as may be permitted under guidance issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), does not violate section 204(g) of the Employee Retirement Income Security Act of 1974 to the extent the amendment eliminates or reduces a right to receive benefit distributions during employment.

(f) *Special rule for life insurance contracts.* Section 1.403(b)–8(c)(2) does not apply to a contract issued before September 24, 2007.

(g) *Special rule for contracts received in an exchange.* Section 1.403(b)–10(b)(2) does not apply to a contract received in an exchange that occurred on or before September 24, 2007 if the exchange (including the contract received in the exchange) satisfies such rules as the Commissioner has prescribed in guidance of general applicability at the time of the exchange.

(h) *Special rule for coordination with regulations under section 415.* Section 1.403(b)–3(b)(4)(ii) is applicable for taxable years beginning on or after July 1, 2007.

(i) *Special rule for coordination with regulations under section 402A.* Sections 1.403(b)–3(c), 1.403(b)–7(e), and 1.403(b)–10(d)(2) are applicable with respect to taxable years beginning on or after January 1, 2007.

§ 1.403(d)–1 [Removed]

■ **Par. 8.** Section 1.403(d)–1 is removed.

■ **Par. 9.** Section 1.414(c)–5 is redesignated as § 1.414(c)–6 and new § 1.414(c)–5 is added to read as follows:

§ 1.414(c)–5 Certain tax-exempt organizations.

(a) *Application.* This section applies to an organization that is exempt from tax under section 501(a). The rules of this section only apply for purposes of determining when entities are treated as the same employer for purposes of section 414(b), (c), (m), and (o) (including the sections referred to in section 414(b), (c), (m), (o), and (t)), and are in addition to the rules otherwise applicable under section 414(b), (c), (m), and (o) for determining when entities are treated as the same employer. Except to the extent set forth in paragraphs (d), (e), and (f) of this section, this section does not apply to any church, as defined in section 3121(w)(3)(A), or any qualified church-controlled organization, as defined in section 3121(w)(3)(B).

(b) *General rule.* In the case of an organization that is exempt from tax under section 501(a) (an exempt organization) whose employees participate in a plan, the employer with respect to that plan includes the exempt organization whose employees participate in the plan and any other organization that is under common control with that exempt organization. For this purpose, common control exists between an exempt organization and another organization if at least 80 percent of the directors or trustees of one organization are either representatives of, or directly or indirectly controlled by, the other organization. A trustee or director is treated as a representative of another exempt organization if he or she also is a trustee, director, agent, or employee of the other exempt organization. A trustee or director is controlled by another organization if the other organization has the general power to remove such trustee or director and designate a new trustee or director. Whether a person has the power to remove or designate a trustee or director is based on facts and circumstances. To illustrate the rules of this paragraph (b), if exempt organization A has the power to appoint at least 80 percent of the trustees of exempt organization B (which is the owner of the outstanding shares of corporation C, which is not an exempt organization) and to control at least 80 percent of the directors of exempt organization D, then, under this paragraph (b) and § 1.414(b)–1, entities A, B, C, and D are treated as the same employer with respect to any plan maintained by A, B, C, or D for purposes of the sections referenced in section 414(b), (c), (m), (o), and (t).

(c) *Permissive aggregation with entities having a common exempt purpose*—(1) *General rule.* For purposes of this section, exempt organizations that maintain a plan to which section 414(c) applies that covers one or more employees from each organization may treat themselves as under common control for purposes of section 414(c) (and, thus, as a single employer for all purposes for which section 414(c) applies) if each of the organizations regularly coordinates their day-to-day exempt activities. For example, an entity that provides a type of emergency relief within one geographic region and another exempt organization that provides that type of emergency relief within another geographic region may treat themselves as under common control if they have a single plan covering employees of both entities and regularly coordinate their day-to-day exempt activities. Similarly, a hospital that is an exempt organization and another exempt organization with which it coordinates the delivery of medical services or medical research may treat themselves as under common control if there is a single plan covering employees of the hospital and employees of the other exempt organization and the coordination is a regular part of their day-to-day exempt activities.

(2) *Authority to permit aggregation.* (i) For determining when entities are treated as the same employer under section 414(b), (c), (m), and (o), the Commissioner may issue rules of general applicability, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), permitting other types of combinations of entities that include exempt organizations to elect to be treated as under common control for one or more specified purposes if:

(A) There are substantial business reasons for maintaining each entity in a separate trust, corporation, or other form; and

(B) Such treatment would be consistent with the anti-abuse standards in paragraph (f) of this section.

(ii) For example, this authority might be exercised in any situation in which

the organizations are so integrated in their operations as to effectively constitute a single coordinated employer for purposes of section 414(b), (c), (m), and (o), including common employee benefit plans.

(d) *Permissive disaggregation between qualified church controlled organizations and other entities.* In the case of a church plan (as defined in section 414(e)) to which contributions are made by more than one common law entity, any employer may apply paragraphs (b) and (c) of this section to those entities that are not a church (as defined in section 403(b)(12)(B) and § 1.403(b)–2) separately from those entities that are churches. For example, in the case of a group of entities consisting of a church (as defined in section 3121(w)(3)(A)), a secondary school (that is treated as a church under § 1.403(b)–2), and several nursing homes each of which receives more than 25 percent of its support from fees paid by residents (so that none of them is a qualified church-controlled organization under § 1.403(b)–2 and section 3121(w)(3)(B)), the nursing homes may treat themselves as being under common control with each other, but not as being under common control with the church and the school, even though the nursing homes would be under common control with the school and the church under paragraph (b) of this section.

(e) *Application to certain church entities under section 3121(w)(3).* [Reserved].

(f) *Anti-abuse rule.* In any case in which the Commissioner determines that the structure of one or more exempt organizations (which may include an exempt organization and an entity that is not exempt from income tax) or the positions taken by those organizations has the effect of avoiding or evading any requirements imposed under section 401(a), 403(b), or 457(b), or any applicable section (as defined in section 414(t)), or any other provision for which section 414(c) applies, the Commissioner may treat an entity as under common control with the exempt organization.

(g) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Organization A is a tax-exempt organization under section 501(c)(3) which owns 80% or more of the total value of all classes of stock of corporation B, which is a for profit organization.

(ii) *Conclusion.* Under paragraph (a) of this section, this section does not alter the rules of section 414(b) and (c), so that organization A and corporation B are under common control under § 1.414(c)–2(b).

Example 2. (i) *Facts.* Organization M is a hospital which is a tax-exempt organization under section 501(c)(3) and organization N is a medical clinic which is also a tax-exempt organization under section 501(c)(3). N is located in a city and M is located in a nearby suburb. There is a history of regular coordination of day-to-day activities between M and N, including periodic transfers of staff, coordination of staff training, common sources of income, and coordination of budget and operational goals. A single section 403(b) plan covers professional and staff employees of both the hospital and the medical clinic. While a number of members of the board of directors of M are also on the board of directors of N, there is less than 80% overlap in board membership. Both organizations have approximately the same percentage of employees who are highly compensated and have appropriate business reasons for being maintained in separate entities.

(ii) *Conclusion.* M and N are not under common control under this section, but, under paragraph (c) of this section, may chose to treat themselves as under common control, assuming both of them act in a manner that is consistent with that choice for purposes of § 1.403(b)–5(a), sections 401(a), 403(b), and 457(b), and any other applicable section (as defined in section 414(t)), or any other provision for which section 414(c) applies.

Example 3. (i) *Facts.* Organization O and P are each tax-exempt organizations under section 501(c)(3). Each organization maintains a qualified plan for its employees, but one of the plans would not satisfy section 410(b) (or section 401(a)(4)) if the organizations were under common control. The two organizations are closely related and, while the organizations have several trustees in common, the common trustees constitute fewer than 80 percent of the trustees of either organization. Organization O has the power to remove any of the trustees of P and to select the slate of replacement nominees.

(ii) *Conclusion.* Under these facts, pursuant to paragraphs (b) and (f) of this section, the Commissioner treats the entities as under common control.

(h) *Applicable date.* This section applies for plan years beginning after December 31, 2008.

■ **Par. 10.** For each entry listed in the ''Location'' column, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place.

Location	Remove	Add
§ 1.101–1(a)(2)(ii)	paragraph (a) or (b) of § 1.403(b)–1	§ 1.403(b)–3.
§ 1.101–1(a)(2)(ii)	paragraph (c)(3) of § 1.403(b)–1	§ 1.403(b)–7.
§ 1.401(a)(9)–1, A–1	§ 1.403(b)–3	§ 1.403(b)–6(e).
§ 1.401(a)(31)–1. introductory text	§ 1.403(b)–2	§ 1.403(b)–7(b).
§ 1.401(a)(31)–1, A–1(b)(3)	§ 1.403(b)–2	§ 1.403(b)–7(b).
§ 1.402(c)–2, introductory text	§ 1.403(b)–2	§ 1.403(b)–7(b).
§ 1.402(c)–2, A–1(b)(4)	§ 1.403(b)–2	§ 1.403(b)–7(b).
§ 1.402(f)–1, introductory text	§ 1.403(b)–2	§ 1.403(b)–7(b).
§ 1.403(a)–1(a)	§ 1.403(b)–1	§§ 1.403(b)–1 through 1.403(b)–10.
§ 1.403(c)–1, all locations	§ 1.403(b)–1(b)	§ 1.403(b)–3.
§ 1.403(c)–1, all locations	§ 1.403(b)–1(b)(2)	§ 1.403(b)–3(c).

PART 31—EMPLOYMENT TAXES, INCOME TAXES, PENALTIES, PENSIONS, RAILROAD RETIREMENT, REPORTING AND RECORDKEEPING REQUIREMENTS, SOCIAL SECURITY, UNEMPLOYMENT COMPENSATION

■ **Par. 11.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 12.** For each entry listed in the ''Location'' column, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place.

Location	Remove	Add
§ 31.3405(c)–1, all locations	§ 1.403(b)–2, Q&A–1	§ 1.403(b)–7(b).
§ 31.3405(c)–1, A–1(b)	§ 1.403(b)–2, Q&A–3	§ 1.403(b)–7(b).
§ 31.3405(c)–1, A–1(b)	§ 1.403(b)–2, Q&A–1 and Q&A–2	§ 1.403(b)–7(b).
§ 31.3405(c)–1, A–2	§ 1.403(b)–2, Q&A–2	§ 1.403(b)–7(b).

PART 54—EXCISE TAXES. PENSIONS, REPORTING AND RECORDKEEPING REQUIREMENTS

■ **Par. 13.** The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 14.** For the entry listed in the ''Location'' column, remove the language in the ''Remove'' column and add the language in the ''Add'' column in its place.

Location	Remove	Add
§ 54.4974–2, A–3(a)(2)	§ 1.403(b)–3	§ 1.403(b)–6(e).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par 15.** The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par 16.** In § 602.101, paragraph (b) is amended by removing the entry for § 1.403(b)–2 and adding entries to the table for §§ 1.403(b)–7 and 1.402(b)–10 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.* * * * *
1.403(b)–7	1545–1341
* * * * *	
1.403(b)–10	1545–2068
* * * * *	

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 2, 2007.

Eric Solomon,

Assistant Secretary of Treasury (Tax Policy).

[FR Doc. 07–3649 Filed 7–23–07; 8:45 am]

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Thursday,
July 26, 2007

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Conservation Program for Commercial and Industrial Equipment; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–2006–STD–0126]

RIN 1904–AB59

Energy Conservation Program for Commercial and Industrial Equipment: Energy Conservation Standards for Commercial Ice-Cream Freezers; for Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers without Doors; and for Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The Energy Policy and Conservation Act (EPCA) authorizes the Department of Energy (DOE) to establish energy conservation standards for various consumer products and commercial and industrial equipment, including commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers, if DOE determines that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings. DOE publishes this Advance Notice of Proposed Rulemaking (ANOPR) to consider establishing energy conservation standards for the categories of commercial refrigeration equipment mentioned above, and to announce a public meeting to receive comments on a variety of issues.

DATES: DOE will hold a public meeting on August 23, 2007, from 9 a.m. to 5 p.m. in Washington, DC. DOE must receive requests to speak at the public meeting no later than 4 p.m., August 3, 2007. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m., August 9, 2007. DOE will accept comments, data, and information regarding this ANOPR no later than October 9, 2007. See section IV, ''Public Participation,'' of this ANOPR for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.

You may submit comments identified by docket number EE–2006–STD–0126 and/or Regulatory Information Number (RIN) 1904–AB59 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: commercial refrigeration.rulemaking@ee.doe.gov*. Include EE–2006–STD–0126 and/or RIN 1904–AB59 in the subject line of your message.
- *Postal Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192. E-mail: *Charles.Llenza@ee.doe.gov*, or Ms. Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov*.

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I. Introduction

A. Purpose of the Advance Notice of Proposed Rulemaking

The purpose of this Advance Notice of Proposed Rulemaking (ANOPR) is to provide interested persons with an opportunity to comment on:

1. The equipment classes that the Department of Energy (DOE) is planning to analyze in this rulemaking;

2. The analytical framework, models, and tools (e.g., life-cycle cost (LCC) and national energy savings (NES) spreadsheets) that DOE has been using to perform analyses of the impacts of energy conservation standards for commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers; [1]

3. The results of the preliminary engineering analyses, the markups analysis to determine equipment price, the energy use characterization, the LCC and payback period (PBP) analyses, and the NES and national impact analyses as presented in the *ANOPR Technical Support Document (TSD): Energy Efficiency Standards for Commercial and Industrial Equipment: Commercial Ice-Cream Freezers; Self-Contained Commercial Refrigerators, Freezers, and Refrigerator-Freezers without Doors; and Remote Condensing Commercial Refrigerators, Freezers, and Refrigerator-Freezers,* and summarized in this ANOPR; and

4. The candidate energy conservation standard levels that DOE has developed from these analyses.

B. Summary of the Analysis

The Energy Policy and Conservation Act, as amended, (EPCA) authorizes DOE to establish minimum energy conservation standards for various consumer products and commercial and industrial equipment, including commercial refrigeration equipment, which are the subject of this ANOPR. (42 U.S.C. 6291 *et seq.*) DOE conducted in-depth technical analyses for this ANOPR in the following areas: engineering, markups to determine equipment price, energy use characterization, LCC and PBP, and NES and net present value (NPV). The ANOPR discusses the methodologies and assumptions for each of these analyses. Table I.1 identifies the sections in this document that contain the results of each of the analyses, and summarizes the methodologies, key inputs and assumptions for the analyses. DOE consulted with interested parties and stakeholders in developing these analyses, and invites further input from interested parties and stakeholders on these topics. Obtaining that input is a primary purpose of this ANOPR. Thus, the results of the preliminary analyses presented in this ANOPR are subject to revision following review and input from stakeholders and other interested parties. The final rule will contain the results of the final analyses.

TABLE I.1.—IN-DEPTH TECHNICAL ANALYSES CONDUCTED FOR THE ADVANCE NOTICE OF PROPOSED RULEMAKING

Analysis area	Methodology	Key inputs	Key assumptions	ANOPR section for results	TSD section for results
Engineering (TSD Chapter 5).	Efficiency level approach supplemented with design option analysis.	Component cost data and performance values.	Component performance improvements are estimated using ANSI/ARI Standard 1200–2006.	Section II.C.5	Chapter 5, section 5.10, and appendix B.
Markups to Determine Equipment Price (TSD Chapter 6).	Assessment of company financial reports to develop markups to transform manufacturer prices into customer prices.	Distribution channels; market shares across the different channels; State sales taxes; and shipments to different States.	Markups for baseline and more efficient equipment are different.	Section II.D	Chapter 6, section 6.7.

[1] These types of equipment are referred to collectively hereafter as ''commercial refrigeration equipment.''

TABLE I.1.—IN-DEPTH TECHNICAL ANALYSES CONDUCTED FOR THE ADVANCE NOTICE OF PROPOSED RULEMAKING—Continued

Analysis area	Methodology	Key inputs	Key assumptions	ANOPR section for results	TSD section for results
Energy Use Characterization (TSD Chapter 7).	Energy use estimates from the engineering analysis, validated using whole-building annual simulation for selected climates.	Component energy use and refrigerant load (from engineering analysis); and condenser rack performance data.	Case lighting operates for 24 hours a day; and supermarket is used as building prototype.	Section II.E	Chapter 7, section 7.4.4, and appendix D.
LCC and Payback Period (TSD Chapter 8).	Analysis of a representative sample of commercial customers by building-type and location.	Manufacturer selling prices; markups (including sales taxes); installation price; energy consumption; electricity prices and future trends; maintenance costs; repair costs; equipment lifetime; and discount rate.	Baseline efficiency level is Level 1; average electricity prices are by customer-type and State; *Annual Energy Outlook (AEO) 2006* is used as reference case for future trends; equipment lifetime is 10 years; and discount rate is estimated by weighted average cost of capital by customer type.	Section II.G.15	Chapter 8, section 8.4, and appendix G.
Shipments (TSD Chapter 9).	Projection of linear footage of total sales by equipment class for new and replacement markets.	Wholesaler markups from company balance-sheet data and mechanical markups from U.S. Census Bureau data; current shipments data by equipment class; average equipment lifetime; construction forecasts for food sales buildings; and shipments by equipment size.	Market shares by equipment class are constant; saturation by building type is constant; and shipments do not change in response to standards.	Section II.H	Chapter 9, section 9.4.
National Impact (TSD Chapter 10).	Forecasts of commercial refrigeration equipment costs, annual energy consumption and operating costs to the year 2042.	Shipments; effective date of standard; base case efficiencies; shipment-weighted market shares; annual energy consumption, total installed cost and repair & maintenance costs, all on a per linear foot basis; escalation of electricity prices; electricity site-to-source conversion; discount rate; and present year.	Annual shipments are from shipments model; annual weighted-average energy efficiency and installed cost are a function of energy efficiency level; annual weighted-average repair and maintenance costs are constant with energy consumption level; *AEO2006* is used for electricity price escalation; National Energy Modeling System (NEMS) is used for site-to-source conversion; discount rates are 3 percent and 7 percent real; and future costs are discounted to present year: 2007.	Section II.I.4	Chapter 10, section 10.4, and appendix I.

1. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency of commercial refrigeration equipment. This relationship serves as the basis for cost and benefit calculations for individual commercial consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing technologies that provide energy efficiency improvements. Baseline equipment here refers to a model or models having features and technologies typically found in equipment currently offered for sale. The baseline model in each equipment class represents the characteristics of equipment in that class. After identifying baseline models, DOE estimated manufacturer selling prices (MSPs) through an analysis of

manufacturer costs and manufacturer markups. Manufacturer markups are the multipliers used to determine the MSPs based on manufacturing cost.

The engineering analysis uses 4 industry-supplied cost-efficiency curves, which are based on an efficiency-level approach, and 15 cost-efficiency curves derived from DOE analysis, which are based on a design-options approach.[2] [3] DOE also discusses in the engineering analysis the equipment classes analyzed, the methodology used to extend the analysis to equipment classes that have low volumes of shipments, an analysis of sensitivity to material prices, and the use of alternative refrigerants.

2. Markups To Determine Equipment Price

DOE determines customer prices for commercial refrigeration equipment from MSP and equipment price markups using industry balance sheet data and U.S. Census Bureau data. To determine price markups, DOE identifies distribution channels for equipment sales and determines the existence and amounts of markups within each distribution channel. For each distribution channel, DOE distinguishes between ''baseline markups'' applied to the MSP for baseline equipment and ''incremental markups'' applied to the incremental increase in MSP for higher efficiency equipment. Overall baseline and overall incremental markups are calculated separately based on the product of all baseline markups at each step within a distribution channel or the product of all incremental markups at each step within a distribution channel, respectively. The combination of the overall baseline markup applied to the baseline MSP and the incremental markups applied to the incremental increase in MSP for higher efficiency equipment, including sales tax, determines the final customer price.

3. Energy Use Characterization

The energy use characterization provides estimates of annual energy consumption for commercial refrigeration equipment, which are used in the subsequent LCC and PBP analyses and the national impact analysis (NIA). DOE developed energy consumption estimates for the 15 classes of equipment analyzed in the engineering analysis. DOE validated these estimates with simulation modeling of energy consumption on an annual basis for selected equipment classes and efficiency levels.

4. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual commercial consumers. The LCC is the total consumer expense for a piece of equipment over the life of the equipment. The LCC analysis compares the LCCs of equipment designed to meet more stringent energy conservation standards with the LCC of the equipment likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of MSP, sales taxes, distribution channel markups, and installation cost), (2) the operating expenses of the equipment (energy cost and maintenance and repair cost), (3) equipment lifetime, and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient equipment through savings in the operating cost of the equipment. The PBP is the increase in total installed cost due to increased efficiency divided by the (undiscounted) decrease in annual operating cost from increased efficiency.

5. National Impact Analysis

The NIA estimates the NES, and the NPV of total national customer costs and savings, expected to result from new standards at specific efficiency levels. DOE calculated the NES and NPV for each standard level for commercial refrigeration equipment as the difference between a base case forecast (without new standards) and the standards case forecast (with new standards). For the NES, DOE determined national annual energy consumption by multiplying the number of commercial refrigeration equipment units in use (by vintage) by the average unit energy consumption (also by vintage). DOE then computed cumulative energy savings, which is the sum of each annual NES determined from the year 2012 to 2042. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and the increase in total installed costs. Critical inputs to the NIA include shipments projections, rates at which users retire equipment (based on estimated equipment lifetimes), and estimates of changes in shipments and retirement rates in response to changes in equipment costs due to new standards.

C. Authority

Title III of EPCA, 42 U.S.C. 6311–6317, as amended by the Energy Policy Act of 2005 (EPACT 2005), Pub. L. 109–58, provides an energy conservation program for certain commercial and industrial equipment. Further, EPACT 2005 prescribes new or amended energy conservation standards and test procedures, and directs DOE to undertake rulemakings to promulgate such requirements. In particular, section 136(c) of EPACT 2005 directs DOE to prescribe energy conservation standards for commercial refrigeration equipment. (42 U.S.C. 6313(c)(4)(A))

Before DOE prescribes any such standards, however, it must first solicit comments on proposed standards. Moreover, DOE must design each new standard for commercial refrigeration equipment to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A), (o)(3)) To determine whether a standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, considering the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of each of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared with any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to

[2] An efficiency-level approach establishes the relationship between manufacturer cost and increased efficiency at predetermined efficiency levels above the baseline. Under this approach, manufacturers typically provide incremental manufacturer cost data for incremental increases in efficiency.

[3] A design-options approach uses individual or combinations of design options to identify increases in efficiency. Under this approach, estimates are based on manufacturer or component supplier data, or through the use of engineering computer simulation models. Individual design options, or combinations of design options, are added to the baseline model in ascending order of cost-effectiveness.

result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)).

Other statutory requirements are set forth in 42 U.S.C. 6295 (o)(1)–(2)(A), (2)(B)(ii)–(iii), and (3)–(4), and 42 U.S.C. 6316(e).

D. Background

1. History of Standards Rulemaking for Commercial Refrigeration Equipment

Section 136(c) of EPACT 2005 amended section 342 of EPCA, in part, by adding new subsection 342(c)(4)(A), (42 U.S.C. 6313(c)(4)(A)) which directs the Secretary to issue, by rule, no later than January 1, 2009, energy conservation standards for the following equipment, manufactured on or after January 1, 2012: commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers. This equipment, which has never before been regulated at the Federal level, is the subject of this rulemaking.

Section 136(a)(3) of EPACT 2005 amended section 340 of EPCA, in part by adding the definitions for ''commercial refrigerator, freezer, and refrigerator-freezer,'' ''holding temperature application,'' ''pull-down temperature application,'' ''remote condensing unit,'' and ''self-contained condensing unit.'' [4]

EPCA does not explicitly define the terms ''self-contained commercial refrigerator, freezer, or refrigerator-freezer'' and ''remote condensing commercial refrigerator, freezer, or refrigerator-freezer,'' which delineate two of the categories of equipment covered by this rulemaking. DOE construes these two terms to mean ''commercial refrigerator, freezer, or refrigerator-freezer that is connected to a self-contained condensing unit'' and ''commercial refrigerator, freezer, or refrigerator-freezer that is connected to a remote condensing unit,'' respectively.

On April 25, 2006, DOE published in the **Federal Register** a notice of public meeting and availability of the *Rulemaking Framework for Commercial Refrigeration Equipment Including Ice-Cream Freezers; Self-Contained Commercial Refrigerators, Freezers, and Refrigerator-Freezers without doors; and Remote Condensing Commercial Refrigerators, Freezers, and Refrigerator-Freezers* (Framework Document) that describes the procedural and analytical approaches that DOE anticipates using to evaluate energy conservation standards for commercial refrigeration equipment. 71 FR 23876. This document is available at *http://www.eere.energy.gov/buildings/appliance_standards/commercial/refrigeration_equipment.html.* DOE held a Framework public meeting on May 16, 2006, to discuss the procedural and analytical approaches for use in the rulemaking, and to inform and facilitate stakeholders' involvement in the rulemaking process. The analytical framework presented at the public meeting described different analyses, such as LCC and PBP, the proposed methods for conducting them, and the relationships among the various analyses. The ANOPR TSD describes the analytical framework in detail.

Statements received after publication of the Framework Document and at the May 16, 2006, Framework public meeting helped identify issues involved in this rulemaking and provided information that has contributed to DOE's proposed resolution of these issues. Many of the statements are quoted or summarized in this ANOPR. A parenthetical reference at the end of a quotation or passage provides the location index in the public record.

2. Rulemaking Process

Table I.2 sets forth a list of the analyses DOE has conducted and intends to conduct in its evaluation of standards for commercial refrigeration equipment. Until recently, DOE performed the manufacturer impact analysis (MIA) in its entirety between the ANOPR and notice of proposed rulemaking (NOPR) during energy conservation standards rulemakings. As noted in the table, DOE has performed a preliminary MIA for this ANOPR. DOE believes this change will improve the rulemaking process.

TABLE I.2.—COMMERCIAL REFRIGERATION EQUIPMENT ANALYSIS

ANOPR	NOPR	Final Rule *
• Market and technology assessment	• Revised ANOPR analyses	• Revised NOPR analyses.
• Screening analysis	• Life-cycle cost sub-group analysis.	
• Engineering analysis	• Manufacturer impact analysis.	
• Energy use characterization	• Utility impact analysis.	
• Markups to determine equipment price	• Employment impact analysis.	
• Life-cycle cost and payback period analyses	• Environmental assessment.	
• Shipments analysis	• Regulatory impact analysis.	
• National impact analysis.		

[4] ''(9)(A) The term 'commercial refrigerator, freezer, and refrigerator-freezer' means refrigeration equipment that—

(i) Is not a consumer product (as defined in section 321 of EPCA [42 U.S.C. 6291(1)]);

(ii) Is not designed and marketed exclusively for medical, scientific, or research purposes;

(iii) Operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(iv) Displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;

(v) Has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(vi) Is designed for pull-down temperature applications or holding temperature applications; and

(vii) Is connected to a self-contained condensing unit or to a remote condensing unit.'' (42 U.S.C. 6311(9)(A)).

''(B) The term 'holding temperature application' means a use of commercial refrigeration equipment other than a pull-down temperature application, except a blast chiller or freezer.'' (42 U.S.C. 6311(9)(B)).

''(D) The term 'pull-down temperature application' means a commercial refrigerator with doors that, when fully loaded with 12 ounce beverage cans at 90 degrees Fahrenheit (F), can cool those beverages to an average stable temperature of 38 degrees F in 12 hours or less.'' (42 U.S.C. 6311(9)(D)).

''(E) The term 'remote condensing unit' means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is remotely located from the refrigerated equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.'' (42 U.S.C. 6311(9)(E)).

''(F) The term 'self-contained condensing unit' means a factory-made assembly of refrigerating components designed to compress and liquefy a specific refrigerant that is an integral part of the refrigerated equipment and consists of 1 or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory supplied accessories.'' (42 U.S.C. 6311(9)(F)).

TABLE I.2.—COMMERCIAL REFRIGERATION EQUIPMENT ANALYSIS—Continued

ANOPR	NOPR	Final Rule *
• Preliminary manufacturer impact analysis.		

* During the Final Rule phase, DOE considers the comments submitted by the U.S. Department of Justice in the NOPR phase concerning the impact of any lessening of competition that is likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(v)).

The analyses in Table I.2 include the development of economic models and analytical tools. If timely new data, models, or tools that enhance the development of standards become available, DOE will incorporate them into this rulemaking.

3. Miscellaneous Rulemaking Issues

a. Federal Preemption

During the Framework public meeting, the Air-Conditioning and Refrigeration Institute (ARI) stated that it interpreted EPACT 2005 as authorizing DOE to conduct a rulemaking for commercial refrigeration equipment, and to exempt certain categories from the standards DOE adopts. (Public Meeting Transcript, No. 3.4 at p. 80) [5] The Appliance Standards Awareness Project (ASAP) responded that setting a ''no-standard'' standard that preempts the States is problematic. (Public Meeting Transcript, No. 3.4 at pp. 81–82) However, ASAP agrees with ARI's basic view that DOE should address opportunities for energy savings, and should not necessarily have standards for every unit in the marketplace, because the objective is to save energy in a cost-effective way. *Id.* The American Council for an Energy-Efficient Economy (ACEEE), in apparent agreement with ARI and ASAP, expressed doubt that States would seek to set energy conservation standards for equipment that are truly niche equipment. (Public Meeting Transcript, No. 3.4 at p. 82) The Alliance to Save Energy, ACEEE, ASAP, Natural Resources Defense Council (NRDC), Northeast Energy Efficiency Partnerships (NEEP), and Northwest Power and Conservation Council (hereafter ''Joint Comment'') strongly opposed any suggestion that States be preempted from setting standards for equipment for which DOE does not itself set standards. (Joint Comment, No. 9 at p. 3) [6]

DOE is evaluating all commercial refrigeration equipment—*i.e.*, all commercial ice-cream freezers, self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors, and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers—for the development of standards. DOE will evaluate all relevant equipment classes during this evaluation. This equipment has a large number of classes, however, and DOE intends to prioritize the technical analyses based on shipment data and only to conduct a full technical analysis on classes with the highest numbers of shipments for this ANOPR. In accordance with 42 U.S.C. 6316(e)(1), DOE intends to adopt standards for all equipment for which standards would satisfy the criteria in 42 U.S.C. 6295(o). DOE is not aware of any basis for it to exclude from this rule any commercial refrigeration equipment for which a standard would meet the statutory criteria above. Furthermore, the extent to which States will be barred from regulating the efficiency of any commercial refrigeration equipment for which the final rule in this rulemaking omits standards, will be governed by the relevant provisions of EPCA as to preemption, 42 U.S.C. 6297 and 6316(e)(3)–(4).

b. State Exemptions From Federal Preemption

Southern Company Services (Southern Company) and Edison Electric Institute (EEI) believe that the standards for commercial refrigeration equipment should be a ''50-state'' rule without exemptions from Federal preemption. They claim that exemptions would complicate the regulation of this equipment and increase costs to both manufacturers and consumers. (Southern Company, No. 6 at p. 1 and EEI, No. 8 at p. 1)

DOE fully intends that any standards it adopts in this rulemaking will apply uniformly in all of the States. In addition, any such Federal standards would, on the date of publication of the final rule, preempt any State standards that apply to the equipment covered by the Federal standards. In the event any State or local standard is issued before the date of publication of the final rule by the Secretary, that State or local standard shall not be preempted until the Federal standards take effect. (42 U.S.C. 6297 and 6316(e)(3)(A)) However, EPCA allows the States to petition DOE for waivers of preemption with regard to specific State standards, and DOE to grant such waiver applications if the statutory criteria are met. (42 U.S.C. 6297(d)) DOE does not have the authority to preclude States from seeking waivers or to decree in advance that it will not grant them, either generally or for any particular type of equipment.

c. Equipment Class Prioritization

ARI stated that it strongly recommends that DOE focus its rulemaking efforts on the commercial refrigeration equipment classes with the highest energy savings potential, and not spend its scarce resources establishing standards for equipment with limited shipment volume and/or energy consumption. (ARI, No. 7 at p. 1)

Because of the large number of equipment classes included in this rulemaking, for the ANOPR phase of the rulemaking DOE has focused on conducting a thorough examination of the equipment classes with the greatest energy savings potential. To determine which equipment classes have the greatest energy savings potential, DOE relied on industry-supplied shipment data and addressed equipment classes with the highest shipment values first. To address low-shipment equipment classes, DOE could, for the NOPR phase of the rulemaking, either conduct a full technical analysis of these equipment classes, or develop correlations to extend analyses or standard levels. DOE explored the approach of developing correlations by conducting a ''focused

[5] A notation in the form ''Public Meeting Transcript, No. 3.4 at p. 80'' identifies an oral comment that DOE received during the May 16, 2006, Framework public meeting and which was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EE–2006–STD–0126), maintained in the Resource Room of the Building Technologies Program This particular notation refers to a comment (1) made during the public meeting, (2) recorded in document number 3.4, which is the public meeting transcript that is filed in the docket of this rulemaking, and (3) which appears on page 80 of document number 3.4.

[6] A notation in the form ''Joint Comment'', No. 9 at p. 3'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to (1) A joint comment, (2) in document number 9 in the docket of this rulemaking, and (3) appearing on page 3 of document number 9.

matched-pair analysis.''[7] This methodology is described in further detail in chapter 5 of the TSD. DOE specifically seeks feedback on its approach to equipment-class prioritization and the approach to extend the technical analysis from high-shipment equipment classes to low-shipment equipment classes. This is identified as Issue 1 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

4. Test Procedure

A test procedure outlines the method by which manufacturers will determine the efficiency of their commercial refrigeration equipment, and thereby assess compliance with an energy conservation standard.

Section 136(f)(1)(B) of EPACT 2005 amended section 343 of EPCA (42 U.S.C. 6314) by adding new subsections 343(a)(6)(A)–(D) (42 U.S.C. 6314(a)(6)(A)–(D)), which direct the Secretary to develop test procedures for commercial refrigeration equipment. On December 8, 2006, DOE published a final rule (the December 2006 final rule) in which it adopted American National Standards Institute (ANSI)/ARI Standard 1200–2006, *Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,* with one modification, as the DOE test procedure for this equipment. 71 FR 71340, 71369–70.[8] ANSI/ARI Standard 1200–2006 contains rating temperature specifications of 38 °F (±2 °F) for commercial refrigerators and refrigerator compartments, 0 °F (±2 °F) for commercial freezers and freezer compartments, and −5 °F (±2 °F) for commercial ice-cream freezers, and requires performance tests to be conducted according to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 72–2005, *Method of Testing Commercial Refrigerators and Freezers,* test method. The one modification DOE made in adopting ANSI/ARI Standard 1200–2006 was to adopt in the final rule −15 °F (±2 °F) as the rating temperature for commercial ice-cream freezers, instead of −5 °F (±2 °F). 71 FR 71370. In addition, DOE adopted ANSI/Association of Home Appliance Manufacturers (AHAM) Standard HRF–1–2004, *Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,* for determining compartment volumes for this equipment. 71 FR 71369–70.

As mentioned above, on April 25, 2006, DOE published a Framework Document that describes the procedural and analytical approaches to evaluate energy conservation standards for commercial refrigeration equipment and presented this analytical framework to stakeholders during the Framework public meeting held on May 16, 2006. During the Framework public meeting, the Food Products Association (FPA) suggested, in lieu of climate-adjusted standards, climate conditions be part of the test method. FPA stated that DOE should specify the range of conditions that are expected for efficiency testing, and pointed out that most grocery stores across the country operate in a 65 °F to 70 °F range. (Public Meeting Transcript, No. 3.4 at pp. 158–159) ANSI/ARI Standard 1200–2006 requires that testing be in accordance with ASHRAE Standard 72–2005, which requires ambient conditions during testing of 75.2 °F (±1.8 °F) for dry bulb temperature and 64.4 °F (±1.8 °F) for wet bulb temperature. Although this is not the range recommended by FPA, it is close to FPA's recommended range, these temperatures have been widely used for testing commercial refrigeration equipment, and they provide ambient test temperatures that are typical of the conditions in which this equipment generally operates. Therefore, DOE's test procedure for commercial refrigeration equipment does include ambient rating conditions that represent normal operation conditions for commercial refrigeration equipment.

During the Framework public meeting and Framework comment period, DOE received comments on the inclusion of ''application temperatures'' for commercial refrigeration equipment, which are rating temperatures other than the standard rating temperatures prescribed by DOE's test procedures (38 °F for commercial refrigerators, 0 °F for commercial freezers, and −15 °F for commercial ice-cream freezers). Hill Phoenix stated that manufacturers of commercial refrigeration equipment occasionally produce a piece of equipment (usually at the customer's request) that is designed to operate at a temperature significantly different from one of the three standard temperatures. (Public Meeting Transcript, No. 3.4 at pp. 74–76) ARI commented that DOE should analyze the shipment data and determine whether it would be worth regulating equipment that operates at application temperatures if shipments for these units are very low. (Public Meeting Transcript, No. 3.4 at p. 79) ARI also asserted that allowing for an application temperature category is essential because operating temperature plays a key role in equipment energy consumption. (ARI, No. 7 at p. 4) The Joint Comment pointed out that the application temperature category should be reserved for equipment that cannot operate at 0 °F or at 38 °F, that DOE should not regulate equipment that has a small shipments volume, and that appropriate Federal standards and rating temperatures should be developed if shipments are large. (Joint Comment, No. 9 at p. 3)

DOE analyzed the shipments data provided by ARI during the Framework comment period. Excluding equipment for which EPACT 2005 amended EPCA to set standards (self-contained commercial refrigerators and commercial freezers with doors), there were 170,949 units of remote condensing commercial refrigerators and commercial freezers, self-contained commercial refrigerators and commercial freezers without doors, and commercial ice-cream freezers shipped in 2005. Shipments of commercial refrigerator-freezers were not reported, but are considered to be very small. Of the total shipments (both self-contained and remote condensing), only 1.7 percent were equipment that operate at 45 °F, 20 °F, 10 °F, or −30 °F (application temperatures), and 98.3 percent were equipment that operate at 38 °F, 0 °F, or −15 °F. By far, the application temperature with the largest number of units shipped is the 45 °F category (typically ''wine chillers''), and these were predominately remote condensing equipment. There were 1,834 units of remote condensing wine chillers shipped in 2005. Comparatively, in 2005 there were 85,001 units of remote condensing refrigerators that operate at 38 °F.

As stated above, DOE's test procedure for commercial refrigeration equipment requires that all equipment, including equipment designed to operate at application temperatures, be tested at one of the three rating temperatures: 38 °F for refrigerators, 0 °F for freezers, and −15 °F for ice-cream freezers. Given the relatively low shipment volumes of equipment that operates at application temperatures, as well as DOE's understanding that some of this equipment already can operate and be tested at one of the standard rating temperatures and that manufacturers might be able to redesign other equipment in relatively minor ways to have these capabilities, DOE believes this requirement will not place an

[7] The ''focused matched-pair analysis'' establishes a correlation between rating temperature levels and energy consumption by quantifying the differences in energy consumption for matched pairs of equipment classes that are very similar in features and dimensions, but have different operating temperatures.

[8] DOE incorporated by reference the ANSI/ARI Standard 1200–2006 test procedure in section 431.64 of 10 CFR Part 431. 71 FR 71340 (December 8, 2006).

unreasonable burden on manufacturers. In addition, if necessary, manufacturers could seek waivers from the DOE test procedure, pursuant to 10 CFR 431.401. For these reasons, DOE does not intend to develop separate standards for equipment that operates at application temperatures.

II. Commercial Refrigeration Equipment Analyses

This section addresses the analyses DOE has performed and intends to perform for this rulemaking. A separate subsection addresses each analysis, and contains a general introduction that describes the analysis and a discussion of comments received from interested parties.

A. Market and Technology Assessment

When DOE begins a standards rulemaking, it develops information that provides an overall picture of the market for the equipment concerned, including the nature of the equipment, the industry structure, and the market characteristics for the equipment. This activity consists of both quantitative and qualitative efforts based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include definitions, equipment classes, manufacturers and market shares, shipments of covered equipment, regulatory and non-regulatory programs, and technologies that could be used to improve the efficiency of covered commercial refrigeration equipment. This information serves as resource material for use throughout the rulemaking.

1. Definitions of Commercial Refrigeration Equipment Categories

Section 136(c) of EPACT 2005 amended section 342 of EPCA to include new subsection (c)(4)(A), which mandates that DOE issue standards for three categories of commercial refrigerators, commercial freezers, and commercial refrigerator-freezers.[9] Accordingly, pursuant to this provision, the three categories of equipment addressed by this rulemaking are: remote condensing commercial refrigerators, commercial freezers and commercial refrigerator-freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and commercial ice-cream freezers. These categories of equipment are referred to collectively as ''commercial refrigeration equipment.''

a. Coverage of Equipment Excluded From American National Standards Institute/Air-Conditioning and Refrigeration Institute Standard 1200–2006

During the Framework comment period, ARI stated that the ANSI/ARI Standard 1200–2006 test procedure specifically excludes ice-cream ''dipping cabinets,'' but recommended that DOE include this equipment under this rulemaking as commercial freezers. (ARI, No. 7 at p. 3) ARI also appeared to suggest, however, that this and certain other equipment excluded from ANSI/ARI Standard 1200–2006, such as floral merchandisers, are excluded from coverage under EPCA because they are not considered commercial display merchandisers or storage cabinets. (ARI, No. 7 at p. 7)

EPCA directs DOE to set standards for commercial refrigeration equipment (*i.e.*, the three categories of equipment identified above). Any equipment that meets the EPCA definition of a ''commercial refrigerator, freezer, or refrigerator-freezer'' (see section I.D and the preceding section) and falls under one of these three categories will be covered by this rulemaking. In the December 2006 final rule, DOE incorporated by reference certain sections of ANSI/ARI Standard 1200–2006 as the test procedure for commercial refrigeration equipment, but did not reference section 2.2, which provides exclusions for certain equipment such as ice-cream dipping cabinets and floral display merchandisers. The equipment excluded in this section of ANSI/ARI Standard 1200–2006 will only be excluded from this rulemaking if they do not meet the EPACT 2005 definition of a ''commercial refrigerator, freezer, or refrigerator-freezer.''

b. Coverage of Equipment Not Designed for Retail Use

During the Framework comment period, several stakeholders commented on whether this rulemaking applies to equipment not designated for retail use. FPA commented that DOE needs to distinguish between ''industrial'' and ''commercial.'' FPA believes that the EPCA requirements for commercial refrigeration equipment were intended for ''point-of-sale'' equipment that is found in convenience stores and supermarkets. FPA continued that, in the food industry, ''refrigeration'' includes the industrial equipment found in manufacturing and processing facilities, not just the equipment in retail stores. (Public Meeting Transcript, No. 3.4 at pp. 23–24) Southern Company stated that the language ''storing or displaying or dispensing'' in DOE's definition of ''ice-cream freezer'' is ambiguous because it could include some industrial equipment the size of a tractor-trailer compartment. Southern Company believes there needs to be language to clarify that this rulemaking covers equipment used at the retail level. (Public Meeting Transcript, No. 3.4 at pp. 35–36) Southern Company and EEI both stated that a literal reading of DOE's proposed equipment classes appears to include industrial refrigeration equipment, which is not used for the display of merchandise for sale to the consumer. Southern Company and EEI believe that the inclusion of this equipment would unnecessarily complicate the analysis and the development of test procedures. They also stated that this equipment is not covered by EPCA and only commercial equipment is covered. They suggest that DOE define which equipment is for commercial purposes and which is for industrial purposes. Southern Company and EEI suggest that DOE define commercial refrigeration equipment as ''refrigeration equipment which would normally be used in a commercial business which sells products to ultimate consumers.'' Further, the definition ''should not include equipment which is normally used only in refrigerated warehouses or manufacturing facilities.'' (Southern Company, No. 6 at pp. 1–2; EEI, No. 8 at p. 1)

DOE understands that industrial refrigeration equipment consists of equipment used to process, manufacture, transport, or store chilled or frozen food and other perishable items. Industrial refrigeration equipment used to process or manufacture chilled or frozen food primarily includes equipment used to flash-freeze or chill food on an assembly line or in a batch manufacturing process. Industrial refrigeration equipment used to transport chilled or frozen food or other perishable items primarily includes refrigerated rail cars and tractor-trailers. In industrial buildings, temporary storage of chilled or frozen food is also necessary, as the manufactured product is often held at

[9] ''Commercial refrigerators, commercial freezers, and commercial refrigerator-freezers'' is a type of covered commercial equipment. For purposes of discussion only in this proceeding, DOE uses the term ''categories'' to designate groupings of ''commercial refrigeration equipment.'' The categories of equipment are: self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers; and commercial ice-cream freezers. DOE will analyze specific equipment classes that fall within these general categories and set appropriate standards.

the manufacturing facility for processing or while awaiting transport. Industrial refrigeration equipment used to store chilled or frozen food is accomplished with refrigerated warehouses and/or refrigerated walk-in rooms (''walk-ins'').

The term ''commercial refrigerator, freezer, and refrigerator-freezer'' is defined as refrigeration equipment that, in part, ''displays or stores merchandise and other perishable materials'' (see section I.D of this ANOPR). DOE interprets this language to mean that equipment used in the *processing, manufacture* or *transport* of chilled or frozen food is not considered commercial refrigeration equipment because it is not used to ''display or store.'' However, equipment that is used to *store* chilled or frozen food is considered covered equipment. This language does not make mention of the intended destination of the equipment, so DOE believes that walk-ins are covered under the definition because they *store* chilled or frozen food, regardless of whether the application is commercial or industrial. However, it is unclear whether this rulemaking would be the appropriate place to address walk-ins. The test procedures for self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers with doors specified in EPCA section 343(a)(6)(A)(ii) specifically exclude walk-ins and therefore DOE believes that the standards in EPCA sections 342(c)(2) and (3) do not apply to walk-ins. Since the test procedures DOE adopted for equipment covered under this rulemaking also specifically exclude walk-ins, DOE believes that the standards being developed in this rulemaking under EPCA section 342(c)(4)(A) also do not apply to walk-ins.[10] DOE could, however, address walk-ins under EPCA section 342(c)(4)(B), which states that DOE may issue standard levels, by rule, for other categories of commercial refrigerators, commercial freezers and commercial refrigerator-freezers.

c. Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers

Under EPCA, this equipment includes commercial refrigerators, commercial freezers, and commercial refrigerator-freezers that have a remote condensing unit, except for any remote condensing equipment that would meet DOE's definition of ''ice-cream freezer'' as set forth at 10 CFR 431.62, 71 FR 71369.[11] This equipment is typically used to store and display merchandise for direct sale to the consumer, and referred to as ''display cases,'' ''display cabinets,'' or ''merchandisers.'' The remote condensing unit has at least one compressor and a condenser coil, and most remote condensing units consist of multiple compressors (a compressor ''rack'') that serve multiple display cases.

EPCA does not specifically define the term ''commercial refrigerator-freezer,'' nor is DOE aware of an existing, written definition for such equipment. Therefore, in its Framework Document, DOE sought feedback on use of the definition of ''electric refrigerator-freezer'' for consumer products (set forth in 10 CFR 430.2) as a basis for defining the term ''remote condensing commercial refrigerator-freezer.'' (As discussed below, DOE also sought input on using this definition as a basis for defining self-contained commercial refrigerator-freezers.) The consumer product definition in 10 CFR 430.2 states that ''electric refrigerator-freezer means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food at temperatures above 32°F. [*sic*] and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8°F. [*sic*] which may be adjusted by the user to a temperature of 0°F. [*sic*] or below. The source of refrigeration requires single phase, alternating current [(AC)] electric energy input only.'' During the Framework comment period, three stakeholders commented on this definition. (ARI, No. 7 at p. 3; Public Meeting Transcript, No. 3.4 at p. 45; and Public Meeting Transcript, No. 3.4 at pp. 50–53) ARI and Zero Zone believe the definition is inappropriate for commercial equipment. ARI proposed that a remote condensing commercial refrigerator, freezer, or refrigerator-freezer be defined as ''a cabinet cooled by a remote refrigerating system for displaying and/or storing chilled and/or frozen food to be maintained within prescribed temperature limits. The cabinet is connected to one or more power sources ranging from 120 to 240 volts AC.'' (ARI, No. 7 at p. 3) During the Framework public meeting, ASAP indicated that DOE should look at the detailed definition given in EPACT 2005 for refrigerator-freezers. (Public Meeting Transcript, No. 3.4 at p. 53)

Based on the comments, DOE now believes that it need not adopt a definition of ''remote condensing commercial refrigerator-freezer.'' The comments by Zero Zone indicate the difficulties of adapting the residential product definition of refrigerator-freezer to the commercial setting. ARI did not comment on the need for a definition of commercial refrigerator-freezer discrete from definitions of refrigerator and freezer, and its suggested definition of ''commercial refrigerator, commercial freezer, and commercial refrigerator-freezer'' both duplicates and, in some ways, is inconsistent with the EPCA definition of this term. For example, one inconsistency is that the ARI definition states that the cabinet is connected to one or more power sources ranging from 120 to 240 volts AC, whereas the EPCA definition does not have any requirements for power sources. Further, ASAP did not address the fact that the definition in EPACT 2005 does not distinguish refrigerator-freezers from refrigerators and freezers. The comments by ARI and ASAP, however, indicate that they believe DOE does not need to adopt a separate definition for refrigerator-freezers.

DOE intends to rely here on the definition of ''commercial refrigerator, freezer, and refrigerator-freezer'' in EPCA (42 U.S.C. 6311(9)(A), added by EPACT 2005, section 136(a)(3)), and on its understanding of the well-accepted meaning of ''refrigerator-freezer.'' Thus, DOE construes the EPCA term ''remote condensing commercial refrigerator-freezer'' (see 42 U.S.C. 6313(c)(4)(A), added by EPACT 2005, section 136(c)) to mean refrigeration equipment that operates at both chilled and frozen temperatures and that is connected to a remote condensing unit. This term refers to equipment with two or more separate compartments, at least one of which is capable of maintaining food or other perishable items at temperatures above freezing and at least one of which maintains its contents frozen. By contrast, refrigerators operate only at temperatures above freezing, and freezers only at or below freezing temperatures.

In its Framework Document, DOE pointed out that EPCA defines a ''self-contained condensing unit,'' in part, as an assembly of refrigerating components ''that is an integral part of the refrigerated equipment * * * '' (42

[10] Test procedures are found at 10 CFR 431.64.

[11] The EPCA provision that requires this rulemaking identifies ''ice-cream freezers'' separately from ''self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors'' and ''remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers.'' (42 U.S.C. 6313(c)(4)(A), added by EPACT 2005, section 136(c)) Since the Act neither specifies nor indicates that ''ice-cream freezers'' are limited to equipment with a particular type of condensing unit (*i.e.*, remote or self-contained), equipment that has a remote condensing unit and also meets DOE's definition of ''ice-cream freezer'' would be considered an ''ice-cream freezer.''

U.S.C. 6311(9)(F), added by EPACT 2005, section 136(a)(3)) EPCA also defines a ''remote condensing unit,'' in part, as an assembly of refrigerating components ''that is remotely located from the refrigerated equipment * * *.'' (42 U.S.C. 6311(9)(E), added by EPACT 2005, section 136(a)(3)) DOE also stated in the Framework Document that this difference in the definitions may mean that, under EPCA, remote condensing units are not a part of the refrigerated equipment and that energy conservation standards for remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers would apply only to the refrigerated equipment (*i.e.*, storage cabinets and display cases), but not to the remote condensing units. DOE specifically requested stakeholder comments on this topic.

ARI asserted that it was responsible for the language in EPACT 2005 on this subject and the intent was to cover the display case and storage cabinet only, not the remote condensing unit. (Public Meeting Transcript, No. 3.4 at pp. 47–48, 49) ACEEE responded by stating that it may be worth trying to cover the remote condensing unit so that the whole system is regulated. (Public Meeting Transcript, No. 3.4 at p. 48) Zero Zone pointed out that regulating the remote condensing unit would prove to be difficult because of the wide range of design differences in compressors and condensing units, and recommended not regulating them now. (Public Meeting Transcript, No. 3.4 at p. 48) ARI stated that it agreed with DOE's interpretation of EPACT 2005 that the rulemaking should be limited to the refrigerated display merchandisers and storage cabinets only. Furthermore, ARI asserted that including the remote condensing unit in this rulemaking would significantly complicate the analysis and likely delay the completion date, and it recommended that DOE reassess the situation in the future to determine whether energy conservation standards should be established for remote condensing equipment. (ARI, No. 7 at p. 3) Finally, the Joint Comment stated that DOE should cover remote condensing units under this rulemaking because it would provide more opportunity for energy savings and for manufacturers to trade off performance between different parts of the system. However, if DOE determines that including the entire system in this rulemaking is impractical, then the balance of the system should not be included under ''covered'' equipment for now, but instead, DOE should consider such coverage in a subsequent revision to the standard. (Joint Comment, No. 9 at p. 5).

Clearly, stakeholders differed on whether a remote condensing unit is considered part of the equipment to which it is connected, and whether such units are covered by the EPCA directive that DOE set standards for remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers. (42 U.S.C. 6313(c)(4)(A), added by EPACT 2005, section 136(c)) ARI indicated that it believes EPCA does not authorize application of standards to remote condensing units, while ACEEE and the Joint Comment argued that remote condensing units should be covered but not necessarily in this rulemaking. However, DOE agrees with the stakeholders who stated that including remote condensing units in the present rulemaking would significantly complicate the rulemaking. There would be many difficulties in establishing standards for the display cases and the remote condensing units as a system. For example, display cases and remote condensing units are typically purchased from different manufacturers and installed at the site. Multiple display cases may be connected to one or more remote condensing units through an extensive network of refrigerant piping. Since each system is custom designed for its location, each individual system will have unique aspects to its design and operation (*e.g.*, number of display cases, variation in temperature control, use of heat recovery, etc.). Further, because the intended configuration of the final system design is not known when the components are manufactured, it would be difficult, if not impossible, to set an energy conservation standard for the entire system at the point of manufacture.

For these reasons, the energy conservation standards DOE intends to develop in this rulemaking for remote condensing commercial refrigeration equipment will apply to display cases only, not to the remote condensing units. DOE will address at a later time whether and to what extent it has the authority to regulate remote condensing units and, if so, whether standards that address these units are warranted and feasible.

d. Secondary Coolant Applications

In its Framework Document, DOE stated that it construed the language in section 136(a)(3) of EPACT 2005, 42 U.S.C. 6311(9)(A)(vii), the definition for ''commercial refrigerator, freezer, and refrigerator-freezer,'' to mean that so-called ''secondary-coolant applications'' are not covered under this rulemaking. DOE stated that it believed this interpretation of EPACT 2005 was consistent with ANSI/ARI Standard 1200–2006, which explicitly excludes secondary-coolant applications.

During the Framework comment period, several stakeholders commented on the coverage of equipment that uses secondary coolant systems.[12] ACEEE stated that DOE should have a broad scope of coverage and should in general cover as much as possible in the rulemaking. (Public Meeting Transcript, No. 3.4 at p. 26) ARI stated that it agrees with the interpretation DOE expressed in the Framework Document that secondary coolant applications should not be covered under this rulemaking. ARI explained that these systems represent a very small percentage of currently installed commercial refrigeration systems in the United States, and that there are no test procedures currently available for measuring the energy consumption of such systems. ARI noted, however, that DOE should revisit the secondary coolant issue in the next three to four years. (ARI, No. 7 at p. 2) Hill Phoenix stated that based on its experience, display cases that use secondary coolant make up less than five percent of what it sells and that this statistic is probably representative of the market in general. (Public Meeting Transcript, No. 3.4 at p. 30) Further, Southern Company stated, and EEI agreed, that it opposes the inclusion of secondary-coolant systems in this rulemaking because of timing and complexity. Since ANSI/ARI Standard 1200–2006 excludes secondary-coolant applications, their inclusion would complicate the development of a test procedure for commercial refrigeration equipment. Also, Southern Company and EEI oppose the inclusion of secondary coolant systems based on the small size of the secondary coolant market. (Southern Company, No. 6 at p. 2 and EEI, No. 8 at p. 1) The Joint Comment stated that they do not object to DOE's interpretation that secondary-coolant equipment is not covered under this rulemaking, provided that this equipment in fact accounts for no more than five percent of remote equipment sold, as asserted by Hill Phoenix. (Joint Comment, No. 9 at p. 5)

Section 340(9)(A)(vii) of EPCA (42 U.S.C. 6311((9)(A)(vii), added by EPACT 2005, section 136(a)(3)), states that the term ''commercial refrigerator, freezer,

[12] Secondary coolant systems use a direct expansion refrigeration cycle to cool a secondary single-phase fluid, which is pumped to heat exchangers in remote condensing display cases and is used to cool food or other perishable items.

and refrigerator-freezer means equipment that ''is connected to a self-contained condensing unit or to a remote condensing unit.'' (See section I.D.1 of this ANOPR.) In the Framework Document, DOE stated that it construes this language to mean that secondary coolant applications are not covered under this rulemaking. As indicated in the Framework Document, equipment using such applications are not directly connected to a self-contained or remote condensing unit. DOE further stated that it believed its interpretation to be consistent with ANSI/ARI Standard 1200–2006. DOE has considered the comments it received, but continues to believe that the language in section 340(9)(A)(vii) of EPCA means that equipment using secondary coolant systems are not covered under this rulemaking because they are not directly connected to a self-contained or remote condensing unit and, therefore, do not fit within the definition of ''commercial refrigerator, freezer, and refrigerator-freezer'' in EPCA.

e. Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers Without Doors

Under EPCA, this equipment includes all types of commercial refrigerators, commercial freezers, and commercial refrigerator-freezers that have a self-contained condensing unit and have no doors, except for self-contained equipment that meets DOE's definition of ''ice-cream freezer'' as set forth at 10 CFR 431.62. 71 FR 71369. As with remote condensing equipment, self-contained equipment is typically used to store and display merchandise for direct sale to the consumer, and is commonly referred to as a ''refrigerated display case,'' ''display cabinet,'' or ''merchandiser.'' Self-contained equipment is defined as having an integral condensing unit (*i.e.*, the condensing unit is not remote from the refrigerated cabinet). (See 42 U.S.C. 6311(9)(F), added by EPACT 2005, section 136(a)(3)) The 2006 ASHRAE Refrigeration Handbook (see chapter 47, p. 47.1) defines ''reach-in'' refrigerators or freezers as being upright and box shaped, and having hinged or sliding doors. Given this definition, self-contained reach-in commercial refrigerators, commercial freezers, and commercial refrigerator-freezers (*i.e.*, self-contained units with doors) are not covered in this rulemaking because the rulemaking only covers self-contained equipment without doors.

In its Framework Document, as with the term ''remote condensing commercial refrigerator-freezers,'' DOE sought feedback on use of the definition of ''electric refrigerator-freezer'' for consumer products (as set forth in 10 CFR 430.2) as a basis for defining the term ''self-contained commercial refrigerator-freezer.'' The comments on this subject were virtually identical to those received with respect to the remote condensing equipment, which are discussed above in section II.A.1.c, and DOE has reached the same conclusion here as it reached with respect to that equipment. Specifically, DOE does not intend at this point to adopt a definition for ''self-contained commercial refrigerator-freezer without doors.'' Rather, DOE intends to rely on EPCA's definition of ''commercial refrigerator, freezer, and refrigerator-freezer,'' and on its understanding of the well-accepted meaning of ''refrigerator-freezer.'' DOE construes the EPCA term ''self-contained commercial refrigerator-freezer without doors'' (see 42 U.S.C. 6313(c)(4)(A), added by EPACT 2005, section 136(c)) to mean refrigeration equipment that operates at both chilled and frozen temperatures, is connected to a self-contained condensing unit, and has no doors. Such equipment has two or more separate compartments, at least one of which is capable of maintaining food or other perishable items at temperatures above freezing and at least one of which maintains its contents frozen.

f. Commercial Ice-Cream Freezers

The EPCA provision that requires this rulemaking identifies ''ice-cream freezers'' separately from ''self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors'' and ''remote condensing commercial refrigerators, freezers, and refrigerator-freezers.'' (42 U.S.C. 6313(c)(4)(A), added by EPACT 2005, section 136(c)) EPCA neither specifies nor indicates that ''ice-cream freezers'' are limited to equipment with a particular door configuration (*e.g.*, with or without doors) or type of condensing unit (*i.e.*, remote or self-contained). Thus, pursuant to EPCA's definition of ''commercial refrigerator, freezer, and refrigerator-freezer'' (42 U.S.C. 6311(9)(A), added by EPACT 2005, section 136(a)(3)), DOE believes commercial ice-cream freezers include equipment with all door types (*i.e.*, solid doors, transparent doors, or no doors) and configurations (*e.g.*, vertical or horizontal), as well as equipment with either integral or remote condensing units (*i.e.*, self-contained or remote condensing).

During the Framework comment period, several stakeholders commented on the definition of commercial ice-cream freezer. ARI stated that the majority of equipment intended for ice cream operates at −5 °F or 0 °F, with a minority that operates at −30 °F, and stated that DOE should focus on those ice-cream freezers with high shipment volumes. (Public Meeting Transcript, No. 3.4 at pp. 32–33) Zero Zone stated that there are many interpretations of what an ice-cream freezer is. Zero Zone asserted that California and Canada define an ice-cream freezer ''along the lines of a dipping cabinet.'' (Public Meeting Transcript, No. 3.4 at p. 35) Zero Zone further commented that the display-type freezers it sells for ice cream and frozen food are the same, that these cases have adjustable temperatures, and that the user sets the temperature of the equipment a little lower when it uses the equipment for ice cream. Typically, the equipment has two ratings, one for use of frozen food and for ice cream, because customers want to know the energy use for each. Zero Zone also characterized as ''true ice-cream cabinets'' those which have specific functions for the processing and storage of ice cream, rather than its display, and asserted that comparatively few of these are sold. (Public Meeting Transcript, No. 3.4 at p. 38) Zero Zone asserted that the term ''ice-cream freezer'' cannot be specifically defined because ice cream can be stored or displayed in a number of cabinets that have different cabinet styles and that may also be used to store other, non-ice-cream equipment. In addition, it stated that not all ice cream is stored at the same temperature. Zero Zone recommended that freezers be divided into three categories: ice-cream dipping cabinets, 0 °F to −15 °F, and below −15 °F. (Zero Zone, No. 5 at p. 1) Hill Phoenix stated that its freezer cases also can operate at either 0 °F or −5 °F, but there is no distinction in the design of the case used for ice cream and that used for frozen food, only in how the customer uses it. Hill Phoenix added that because these two temperatures are so close, there is a linear relationship between temperature and energy usage. Hill Phoenix also stated there is a category of cases that operate at −15 °F to −30 °F, called ''hardening'' cabinets, which have a different design than typical freezer cases. (Public Meeting Transcript, No. 3.4 at p. 41) Both Southern Company and EEI stated that it is important that DOE develop definitions for commercial freezer and ice-cream freezer that are all-inclusive, and do not leave any loopholes for States to regulate. (Southern Company, No. 6 at p. 2; EEI, No. 8 at p. 1) ARI stated that there is very little difference

between freezers designed to operate at 0 °F and −5 °F, both in terms of features and in terms of energy consumption. ARI added that a recent survey of its members revealed that a significant number of ice-cream freezers operate at −15 °F. It requested that freezers that operate at −5 °F be included in the freezer category. ARI intends to amend ANSI/ARI Standard 1200–2006 to reflect an ice-cream freezer temperature of −15 °F. In addition, ARI proposed that specialty freezers, such as hardening cabinets that operate far below the ice-cream freezer temperature, be excluded from this rulemaking. (ARI, No. 7 at p. 2) The Joint Comment agreed with ARI that freezers that operate at −5 °F be tested at 0 °F, and that testing at −5 °F will only be for information purposes, not for setting standards. (Joint Comment, No. 9 at p. 3)

As part of the December 8, 2006 final rule, in which it adopted test procedures for commercial refrigeration equipment, DOE adopted the following definition for ''ice-cream freezer:'' ''a commercial freezer that is designed to operate at or below −5 °F (−21 °C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream.'' 71 FR 71369; 10 CFR 431.62. In addition, this final rule prescribed the rating temperature at −15 °F for ice-cream freezers. 71 FR 71370; 10 CFR 431.64.

Under this definition, unless equipment is designed, marketed, or intended specifically for the storage, display or dispensing of ice cream, it would not be considered an ''ice-cream freezer.'' Multi-purpose commercial freezers, manufactured for storage and display, for example, of frozen foods as well as ice cream would not meet this definition, and DOE would not treat them as commercial ice-cream freezers in this rulemaking. This is in accord with the comments listed above, which indicated that DOE should not classify such freezers as ice-cream freezers. On the other hand, any commercial freezer that is specifically manufactured for storing, displaying or dispensing ice cream, and that is designed so that in normal operation it can operate at or below −5 °F (−21 °C), would meet the definition. This includes equipment that some stakeholders referred to as true ice-cream cabinets—freezers designed to operate considerably below −5 °F and that are sometimes referred to as ''hardening'' cabinets and are specifically designed for ice cream storage, for example—as well as those ice-cream dipping cabinets that are designed to operate at least to some extent below −5 °F. DOE intends to classify and address these types of equipment as commercial ice-cream freezers in this rulemaking.

2. Equipment Classes

In general, when evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used, capacity or other performance-related features that affect efficiency, and factors such as the utility of the equipment to users. (See 42 U.S.C. 6295(q).) Different energy conservation standards may apply to different equipment classes.

Commercial refrigeration equipment can be divided into various equipment classes categorized by physical characteristics that affect the efficiency of the equipment. Most of these characteristics affect the merchandise that the equipment can be used to display, and how that merchandise can be accessed by the customer. Key physical characteristics are the operating temperature, the presence or absence of doors (*i.e.*, closed cases or open cases), the type of doors used (*i.e.*, transparent or solid), the angle of the door or air curtain (*i.e.*, horizontal, semivertical, or vertical) and the type of condensing unit (*i.e.*, remote or self-contained). ARI agreed that definitions for the terms horizontal, semivertical, and vertical be based upon the angle of the air curtain. (ARI, No. 7 at p. 7)

DOE could not identify an existing industry definition of air-curtain angle, but developed a preliminary definition for consideration. DOE is considering defining air-curtain angle as the angle between a vertical line and the line formed by the points at the center of the discharge air grille and the center of the return air grille, when viewed in cross-section. DOE specifically seeks feedback on this definition of air-curtain angle. This is identified as Issue 2 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

DOE proposed an organization of equipment classes in its Framework Document based on the equipment classes for self-contained commercial refrigerators, commercial freezers and commercial refrigerator-freezers with doors described in section 136(c)(2) of EPACT 2005. Another organization of equipment classes for commercial refrigeration equipment was proposed by ARI during the Framework comment period, and presented by DOE during the Framework public meeting. ARI organized commercial refrigeration equipment by equipment family (where equipment family is considered as broad groups of covered equipment that have similar geometric characteristics), condensing unit type, and operating temperature.[13] (ARI, No. 7 at pp. 5–7) During the public meeting, DOE noted that ARI's equipment families included a ''service over counter'' equipment family, which was absent from DOE's equipment class organization. DOE understands that the service over counter equipment family is unique in that access to merchandise on display is provided only to sales personnel from the rear of the cabinet. ARI noted that DOE did not categorize equipment with doors based on whether the doors are solid or transparent, and ARI explained that this is a necessary distinction. (ARI, No. 7 at p. 7) The Joint Comment stated that the equipment families proposed by ARI are reasonable. (Joint Comment, No. 9 at p. 3)

DOE agrees with ARI that the characteristics of the service over counter design affect efficiency, and is proposing an equipment class organization that includes a service over counter equipment family. DOE also agrees with ARI that the energy consumption of commercial refrigeration equipment with doors is affected by whether the doors are solid or transparent, and is proposing to include this distinction in its equipment class organization.

In its Framework Document, DOE suggested that equipment without doors be divided into equipment classes based on air-curtain angles of 0° to 30° (vertical), 30° to 60° (semivertical), and 60° to 90° (horizontal) from the vertical. During the Framework public meeting, DOE asked for comments on these proposed ranges of air-curtain angle. Hill Phoenix stated that the industry defines these as 0° to 10° for vertical, 10° to 80° for semivertical, and 80° to 90° for horizontal. (Public Meeting Transcript, No. 3.4 at p. 86) The Joint Comment stated that the ranges for vertical and semivertical should be closer to those used in DOE's proposal. Specifically, the Joint Comment stated that because vertical equipment will tend to be more efficient and thus likely

[13] For this rulemaking, equipment class designations consist of a combination (in sequential order separated by periods) of an (1) equipment family code (VOP=vertical open, SVO=semivertical open, HZO=horizontal open, VCT=vertical transparent doors, VCS=vertical solid doors, HCT=horizontal transparent doors, HCS=horizontal solid doors, or SOC=service over counter), (2) an operating mode code (RC=remote condensing or SC=self-contained), and (3) a rating temperature code (M=medium temperature (38 °F), L=low temperature (0 °F), or I=ice-cream temperature (−15 °F)). For example, ''VOP.RC.M'' refers to the ''vertical open, remote condensing, medium temperature'' equipment class. See discussion below and chapter 3 of the TSD, market and technology assessment, for a more detailed explanation of the equipment class terminology.

to have more stringent standards, if the equipment family delineations allow manufacturers to substitute semivertical for vertical, they could unintentionally shift the market to the less efficient standard. Therefore, the Joint Comment stated that DOE should determine a divide between vertical and semivertical that will not result in one type of equipment being substituted for the other. (Joint Comment, No. 9 at pp. 3–4)

The cost-efficiency data DOE received from ARI for four covered equipment classes were based on the industry definitions of 0° to 10° for vertical equipment, 10° to 80° for semivertical equipment, and 80° to 90° for horizontal equipment, as measured from the vertical. Therefore, DOE conducted its analyses for the ANOPR based on these definitions of equipment families, but recognizes the concern raised by the Joint Comment that these delineations may result in one type of equipment being substituted for another. To investigate the relationship of air-curtain angle to energy consumption for remote condensing medium temperature open display cases (VOP.RC.M, SVO.RC.M, and HZO.RC.M equipment classes), DOE collected market data, which is documented in the market and technology assessment (see chapter 3 of the TSD).[14] [15] These data show significant clusters of equipment divided by air-curtain angles of 10°, 30° and 65° from the vertical. The most significant cluster of equipment is in the range of 0° to 10° from the vertical (this cluster corresponds to the VOP.RC.M equipment class as currently defined), with less significant clusters between 10° and 30°, 30° and 65°, and 65° and 90° from the vertical. The large cluster of equipment between 0° to 10° from the vertical has a high frequency of units at 6° to 9° from the vertical. With the delineation between vertical and semivertical equipment families at an angle of 10°, if the SVO.RC.M equipment class had a less stringent standard than the VOP.RC.M equipment class, DOE is concerned that manufacturers may adjust their equipment designs slightly to take advantage of the lower standard for SVO.RC.M equipment. A piece of equipment could be redesigned with a small change in air-curtain angle (*e.g.*, from 9° to 11° from the vertical), that would not significantly affect energy consumption or utility. This redesign would move the equipment from the VOP.RC.M equipment class to the SVO.RC.M equipment class, where it would not be subject to as stringent a standard.

DOE understands that there is the potential for manufacturers to redesign equipment to move from one equipment class to another regardless of where the air-curtain angle delineation is made. However, the concern raised above is heightened by the concentration of equipment in the 0° to 10° from the vertical range, and the potential for mass redesign of the majority of equipment currently classified as VOP.RC.M in order to be classified as SVO.RC.M. According to DOE's market data, there is a clear region of low density at an air-curtain angle of 30° from the vertical, and DOE believes that drawing the delineation between the VOP and SVO equipment families here could potentially result in less equipment migration from the VOP.RC.M equipment class to the SVO.RC.M equipment class.

Additionally, DOE's market data provides little support for delineating the SVO.RC.M and the HZO.RC.M equipment families at 80° from the vertical. A significant group of equipment with similar characteristics (but clearly distinguished from the SVO.RC.M and VOP.RC.M equipment classes) is present with air curtain angles of 65° to 90° from the vertical. This supports drawing the SVO.HZO equipment family delineation at 60° to 65° from the vertical. In light of this market data, DOE welcomes any additional data or feedback regarding the proposed ranges of air-curtain angles or shipments of equipment in the VOP.RC.M, SVO.RC.M and HZO.RC.M equipment classes broken down by energy use and air-curtain angle.

DOE believes that the orientation of doors affects the energy consumption of commercial refrigeration equipment with doors and that this equipment can be broadly categorized by the angle of the door. DOE did not receive stakeholder feedback on how to define the door angle for equipment with doors, but is considering defining door angle as ''the angle between a vertical line and the line formed by the plane of the door, when viewed in cross-section.'' DOE specifically seeks feedback on this definition of door angle. This is identified as Issue 3 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

During the Framework comment period, no objections were raised to the proposal of equipment families of ''horizontal'' and ''vertical'' equipment with doors. In addition, Hill Phoenix commented that ARI eliminated the ''semivertical with doors'' equipment family (doors with an angle that deviated substantially from 0° or 90° with respect to the vertical) because no manufacturers could identify any shipments of semivertical equipment with doors. (Public Meeting Transcript, No. 3.4 at p. 63) Therefore, for equipment with solid and transparent doors, DOE is considering defining two equipment families each, based on door angles of 0° to 45° (vertical) and 45° to 90° (horizontal). DOE specifically seeks feedback on these ranges of door angles for equipment with doors. This is identified as Issue 4 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

Based on the above information, DOE intends to use eight equipment families, which are shown in Table II.1.

TABLE II.1.—EQUIPMENT FAMILY DESIGNATIONS

Equipment family	Description
Vertical Open (VOP)	Equipment without doors and an air-curtain angle greater than or equal to 0° and less than 10° from the vertical.
Semivertical Open (SVO)	Equipment without doors and an air-curtain angle greater than or equal to 10 and less than 80° from the vertical.
Horizontal Open (HZO)	Equipment without doors and an air-curtain angle greater than or equal to 80° from the vertical.

[14] See Table II.1 through Table II.3, which set forth the meaning of the equipment class lettering designations. Also, see chapter 3 of the TSD for more details on the equipment class lettering designations. For example, ''VOP.RC.M'' refers to the ''vertical open, remote condensing, medium temperature'' equipment class.

[15] The market data that DOE collected represents equipment offerings of major commercial refrigeration equipment manufacturers as of 2006. Each data point represents a particular model offered, not a piece of equipment shipped, and is not intended to represent shipments of equipment in the VOP.RC.M, SVO.RC.M, and HZO.RC.M equipment classes. However, in the absence of detailed shipment information broken down by energy use and air-curtain angle, DOE believes this market data provides a reasonable estimate of the distribution of equipment by energy use and air-curtain angle within these equipment classes.

TABLE II.1.—EQUIPMENT FAMILY DESIGNATIONS—Continued

Equipment family	Description
Vertical Closed Transparent (VCT)	Equipment with hinged or sliding transparent doors and a door angle less than 45°.
Horizontal Closed Transparent (HCT)	Equipment with hinged or sliding transparent doors and a door angle greater than or equal to 45°.
Vertical Closed Solid (VCS)	Equipment with hinged or sliding solid (opaque) doors and a door angle less than 45°.
Horizontal Closed Solid (HCS)	Equipment with hinged or sliding solid (opaque) doors and a door angle greater than or equal to 45°.
Service Over Counter (SOC)	Equipment with sliding or hinged doors intended for use by sales personnel and fixed or hinged glass for displaying merchandise.

Within each of these eight equipment families are equipment that have one of the two condensing unit configurations shown in Table II.2.

TABLE II.2.—CONDENSING UNIT CONFIGURATION DESIGNATIONS

Condensing unit configuration	Description
Remote condensing (RC)	Condensing unit is remotely located from the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory-supplied accessories.
Self-contained (SC)	Condensing unit is an integral part of the refrigerated equipment and consists of one or more refrigerant compressors, refrigerant condensers, condenser fans and motors, and factory-supplied accessories.

Equipment classes would also be organized based on the three rating temperatures shown in Table II.3.

TABLE II.3.—RATING TEMPERATURE DESIGNATIONS

Rating temperature	Description
38 °F (M)	Medium temperature (refrigerators).
0 °F (L)	Low temperature (freezers).
−15 °F (I)	Ice-cream temperature (ice-cream freezers).

Based on stakeholder feedback, DOE is considering 38 of the 48 equipment classes shown in Table II.4.[16] The equipment classes are organized by equipment family, compressor operating mode, and rating temperature. The right hand column in Table II.4, which has the heading ''Equipment Class Designation,'' identifies each of the 48 equipment classes with a particular set of letters. The first three letters for each class represent the equipment family for that class, the next two letters represent the condensing unit configuration, and the last letter represents the rating temperature. Table II.1 through Table II.3 set forth the meaning of the equipment class lettering designations. (Also, see chapter 3 of the TSD for more details on the equipment class lettering designations.)

TABLE II.4.—COMMERCIAL REFRIGERATION EQUIPMENT CLASSES

Equipment family	Condensing unit configuration	Rating temperature (°F)	Equipment class designation
Vertical Open	Remote	38	VOP.RC.M.
		0	VOP.RC.L.
		−15	VOP.RC.I
	Self-Contained	38	VOP.SC.M.
		0	VOP.SC.L.
		−15	VOP.SC.I.
Semivertical Open	Remote	38	SVO.RC.M.
		0	SVO.RC.L.
		−15	SVO.RC.I.
	Self-Contained	38	SVO.SC.M.
		0	SVO.SC.L.
		−15	SVO.SC.I.
Horizontal Open	Remote	38	HZO.RC.M.

[16] Table II.4 identifies 48 classes of commercial refrigeration equipment. Of the 48 classes, 10 classes are identified by asterisks. EPCA has already established energy conservation standards for these 10 classes. (42 U.S.C. 6313(c)(2)–(3)) Therefore, these 10 classes are not covered under this rulemaking.

TABLE II.4.—COMMERCIAL REFRIGERATION EQUIPMENT CLASSES—Continued

Equipment family	Condensing unit configuration	Rating temperature (°F)	Equipment class designation
		0	HZO.RC.L.
		−15	HZO.RC.I.
	Self-Contained	38	HZO.SC.M.
		0	HZO.SC.L.
		−15	HZO.SC.I.
Vertical Closed Transparent	Remote	38	VCT.RC.M.
		0	VCT.RC.L.
		−15	VCT.RC.I.
	Self-Contained	38	VCT.SC.M.*
		0	VCT.SC.L.*
		−15	VCT.SC.I.
Horizontal Closed Transparent	Remote	38	HCT.RC.M.
		0	HCT.RC.L.
		−15	HCT.RC.I.
	Self-Contained	38	HCT.SC.M.*
		0	HCT.SC.L.*
		−15	HCT.SC.I.
Vertical Closed Solid	Remote	38	VCS.RC.M.
		0	VCS.RC.L.
		−15	VCS.RC.I.
	Self-Contained	38	VCS.SC.M.*
		0	VCS.SC.L.*
		−15	VCS.SC.I.
Horizontal Closed Solid	Remote	38	HCS.RC.M.
		0	HCS.RC.L.
		−15	HCS.RC.I.
	Self-Contained	38	HCS.SC.M.*
		0	HCS.SC.L.*
		−15	HCS.SC.I.
Service Over Counter	Remote	38	SOC.RC.M.
		0	SOC.RC.L.
		−15	SOC.RC.I.
	Self-Contained	38	SOC.SC.M.*
		0	SOC.SC.L.*
		−15	SOC.SC.I.

*These equipment classes have standards established by EPCA and are therefore not covered under this rulemaking. (42 U.S.C. 6313(c)(2)–(3)).

EPCA contains standards for self-contained commercial refrigerators, commercial freezers and commercial refrigerator-freezers with doors (42 U.S.C. 6313(c)(2)–(3)); therefore this equipment is not included in this rulemaking. Table II.5 identifies, by sets of letters, 10 potential equipment classes for this equipment. DOE has based the designations of these possible equipment classes on the equipment class designations presented in Table II.1 through Table II.3. Because these equipment classes are not included in this rulemaking, they are indicated with an asterisk in Table II.4.

TABLE II.5.—POTENTIAL EQUIPMENT CLASSES NOT INCLUDED IN THIS RULEMAKING

VCT.SC.M	VCS.SC.M	HCT.SC.M	HCS.SC.M	SOC.SC.M.
VCT.SC.L	VCS.SC.L	HCT.SC.L	HCS.SC.L	SOC.SC.L.

During the Framework public meeting, Hill Phoenix asserted that equipment with separate refrigerator and freezer compartments (*i.e.*, refrigerator-freezers) is custom built and is a low shipment-volume type of equipment. Hill Phoenix believes that spending time on these equipment categories might unnecessarily slow the rulemaking. (Public Meeting Transcript, No. 3.4 at p. 52) Based on this comment and DOE's own analysis of the shipments data, DOE has not established equipment classes for remote condensing commercial refrigerator-freezers or self-contained commercial refrigerator-freezers without doors (also called ''dual temperature'' units). DOE addresses how it might set standards for this equipment in sections III and IV.E.1.

In sum, Table II.6 presents the equipment classes covered under this rulemaking organized by the three equipment categories, in accordance with EPCA section 325(p)(1)(A). (42 U.S.C. 6295(p)(1)(A)) Pursuant to EPCA section 325(p)(1)(B), DOE specifically seeks feedback on these equipment classes and invites interested persons to submit written presentations of data, views, and arguments. (42 U.S.C. 6295(p)(1)(B)) This is identified as Issue 5 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

TABLE II.6.—COMMERCIAL REFRIGERATION EQUIPMENT CLASSES BY CATEGORY

Equipment category	Condensing unit configuration	Equipment family	Rating temperature (°F)	Equipment class designation
Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers.	Remote	Vertical Open	38	VOP.RC.M.
		Semivertical Open	0	VOP.RC.L.
			38	SVO.RC.M.
		Horizontal Open	0	SVO.RC.L.
			38	HZO.RC.M.
		Vertical Closed Transparent	0	HZO.RC.L.
		Horizontal Closed Transparent	38	VCT.RC.M.
		Vertical Closed Solid	0	VCT.RC.L.
		Horizontal Closed Solid	38	HCT.RC.M.
		Service Over Counter	0	HCT.RC.L.
			38	VCS.RC.M.
			0	VCS.RC.L.
			38	HCS.RC.M.
			0	HCS.RC.L.
			38	SOC.RC.M.
			0	SOC.RC.L.
Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers without Doors.	Self-Contained	Vertical Open	38	VOP.SC.M.
			0	VOP.SC.L.
		Semivertical Open	38	SVO.SC.M.
			0	SVO.SC.L.
		Horizontal Open	38	HZO.SC.M.
			0	HZO.SC.L.
Commercial Ice-Cream Freezers	Remote	Vertical Open	−15	VOP.RC.I.
		Semivertical Open	−15	SVO.RC.I.
		Horizontal Open	−15	HZO.RC.I.
		Vertical Closed Transparent	−15	VCT.RC.I.
		Horizontal Closed Transparent	−15	HCT.RC.I.
		Vertical Closed Solid	−15	VCS.RC.I.
		Horizontal Closed Solid	−15	HCS.RC.I.
		Service Over Counter	−15	SOC.RC.I.
	Self-Contained	Vertical Open	−15	VOP.SC.I.
		Semivertical Open	−15	SVO.SC.I.
		Horizontal Open	−15	HZO.SC.I.
		Vertical Closed Transparent	−15	VCT.SC.I.
		Horizontal Closed Transparent	−15	HCT.SC.I.
		Vertical Closed Solid	−15	VCS.SC.I.
		Horizontal Closed Solid	−15	HCS.SC.I.
		Service Over Counter	−15	SOC.SC.I.

3. Normalization Metric

The standards being developed in this rulemaking must apply to equipment of varying size and capacity within an equipment class, so they must be normalized by some factor that is representative of the varying energy use of the equipment. A ''normalization metric'' is a measure of capacity or utility that allows comparison of energy use of various sizes of equipment on a unit capacity basis. During the Framework public meeting, DOE asked what normalization metric would be most appropriate for the equipment in this rulemaking—total display area (TDA), refrigerated volume, or length. ARI commented that in remote condensing equipment, the trend has been to use TDA, not only in the United States, but in Europe as well. ARI is trying to align itself with standards like those from the International Standards Organization (ISO) that use TDA, and wants DOE to be consistent with these ISO standards. ARI's certification program will be based on TDA, and that is how the data will be listed in its certification directory. (Public Meeting Transcript, No. 3.4 at pp. 95–96) ARI also proposed that daily energy consumption be calculated as a function of the refrigerated volume for self-contained equipment with doors, and as a function of TDA for self-contained equipment without doors, because these respective normalization metrics are most representative of the energy consumption of these two types of equipment. (ARI, No. 7 at p. 9) ARI also stated that it will collect and analyze data for daily energy consumption as a function of refrigerated volume and TDA for remote condensing equipment in order to develop an appropriate recommendation for that type of equipment. (ARI, No. 7 at p. 9) The Joint Comment stated that they do not agree with DOE's proposal to use TDA as the metric for cases without doors, because, they assert, such an approach would favor ''shallow'' and ''tall'' equipment over ''deeper'' and ''shorter'' equipment of equivalent volume. The Joint Comment proposed that DOE instead use volume, length, or potentially a combination of TDA and volume. One compromise would be to use a multiple regression equation that would consider both refrigerated volume and length or refrigerated volume and TDA. (Joint Comment, No. 9 at p. 5, and Public Meeting Transcript, No. 3.4 at pp. 94–95)

In this rulemaking, DOE intends to establish standards for remote condensing commercial refrigerators, commercial freezers and commercial refrigerator-freezers, as well as commercial ice-cream freezers, with solid or transparent doors. Equipment with transparent doors is subject to significant radiation loads (as much as 50 percent of the total refrigeration load) as well as loads due to anti-sweat heaters that are required to keep the door free of condensation. In addition, transparent doors are inherently poorer

insulators than solid doors with an insulation value of roughly R–2 compared with R–16, respectively, for a typical freezer. For equipment with transparent doors, TDA is a good indicator of the magnitude of the radiation load, the anti-sweat load, and the conduction load through the door. Additionally, TDA is representative of the ability of the equipment to display merchandise, which is a measure of its utility or usefulness to the owner. Thus, DOE believes that TDA is an appropriate normalization metric for all remote condensing refrigerators and freezers with transparent doors, as well as all commercial ice-cream freezers with transparent doors. Remote condensing commercial refrigerators, commercial freezers and commercial refrigerator-freezers with solid doors and commercial ice-cream freezers with solid doors (*i.e.*, ''storage cabinets'') inherently have no TDA, since there is no visible product and thus no glass or other transparent opening. Therefore, DOE believes refrigerated volume is an appropriate normalization metric for this equipment. This is consistent with the fact that EPCA sets standards for self-contained units with solid doors in the form of upper limits on daily energy consumption using refrigerated volume as the normalization metric (42 U.S.C. 6313(c)(2), added by EPACT 2005, section 136(c)). DOE also believes that length is not an appropriate metric for equipment with solid or transparent doors because it does not capture the physical relationship between heat loads and equipment capacity as accurately as either TDA or volume.

DOE will also establish in this rulemaking standards for remote condensing and self-contained commercial refrigerators, commercial freezers and commercial refrigerator-freezers, and commercial ice-cream freezers, without doors. The physical relationship between heat loads and energy consumption is fundamentally different for this equipment than for the equipment that has standards set by EPCA (*i.e.*, self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers with doors).[17] Equipment without doors is subject to large loads due to infiltration of warm moist air from the area around the equipment. These loads are typically 25 percent to 85 percent of the total refrigeration load (depending on the air-curtain angle and other factors), while the conduction loads experienced by equipment without doors are typically less than 5 percent and are rarely more than 25 percent. TDA is a much better indicator of infiltration load than volume because the open area of the equipment is directly related to the amount of infiltrated air. Current standards in Europe (EUROVENT—CECOMAF), the United Kingdom (Enhanced Capital Allowance Program), and Australia (Australian Greenhouse Office Minimum Energy Performance Standards) use TDA as a normalization metric for equipment without doors. Moreover, similar to equipment with transparent doors, TDA is representative of the ability of equipment without doors to display merchandise, which is a measure of its utility or usefulness to the owner. Thus, DOE believes that TDA should be the normalization metric for all remote condensing and self-contained commercial refrigerators, commercial freezers and commercial refrigerator-freezers without doors, and all commercial ice-cream freezers without doors. DOE also believes that length is not an appropriate metric for equipment without doors because it does not capture the physical relationship between heat loads and equipment capacity as accurately as TDA.

4. Extension of Standards

During the Framework public meeting, DOE asked stakeholders if it would be appropriate to extend the standards prescribed for self-contained refrigeration equipment with doors in EPCA to similar remote condensing equipment with doors and commercial ice-cream freezers with doors covered in this rulemaking, and if so, what methodology would be appropriate. ARI commented that it would not be appropriate to extend the standards from self-contained equipment because that equipment is normalized by volume, and the remote condensing equipment industry uses TDA or some other metric. (Public Meeting Transcript, No. 3.4 at p. 89) Hill Phoenix commented that as DOE has the opportunity to look at energy data, it will see that for remote condensing cases, energy consumption would be lower than for the self-contained cases. However, Hill Phoenix did not explain how to make the comparison. (Public Meeting Transcript No. 3.4 at p. 91) ARI also asserted that an extension of the EPCA standards for self-contained commercial refrigeration equipment with doors to remote condensing commercial refrigeration equipment with doors is not appropriate. ARI explained that the interior volume of self-contained equipment is calculated using the ANSI/AHAM Standard HRF–1–2004, whereas the interior volume of remote condensing equipment should be calculated according to ANSI/ARI Standard 1200–2006. (ARI, No. 7 at p. 8)

Because of the differences in energy consumption, and calculation of interior volume, DOE will not apply the standards prescribed by EPCA for self-contained equipment with doors to remote condensing equipment with doors. Instead, DOE will perform an analysis of the impacts of potential standards and will adopt levels that meet the requirements of EPCA section 325(o). (42 U.S.C. 6295(o)) As to commercial ice-cream freezers with doors, in the market and technology assessment (see chapter 3 of the TSD), DOE identified 16 commercial ice-cream freezer equipment classes. During the engineering analysis (see chapter 5 of the TSD), DOE developed cost-efficiency curves directly for 3 of the 16 commercial ice-cream freezer equipment classes (HCT.SC.I, VCT.SC.I, and VCS.SC.I) because of their high shipment volumes. For these three classes, this eliminated the issue of extending standards from self-contained commercial freezers with doors. For the remaining 13 equipment classes, DOE is considering use of the cost-efficiency curves (or standards) developed in this rulemaking for certain equipment classes of remote condensing commercial freezers and self-contained commercial freezers without doors, for equivalent equipment classes of commercial ice-cream freezers. For a portion of these 13 low-shipment-volume commercial ice-cream freezer equipment classes (as well as other low-shipment-volume equipment classes) DOE is also considering use of the EPACT 2005 standards for self-contained commercial freezers with doors. The intent of this approach is to save time and resources by eliminating direct analysis of equipment classes that have low shipment volumes and lower overall potential energy savings. At this point in the rulemaking, DOE only demonstrated this approach with two commercial ice-cream freezer equipment classes, as well as one other commercial refrigeration equipment class, (see chapter 5 of the TSD) and not the full set of covered equipment classes. DOE specifically seeks feedback on this approach to extending cost-efficiency curves (or standards) from high-shipment-volume equipment classes to low-shipment-volume equipment classes, and of extending EPCA standards to equipment classes in this rulemaking. This is identified as

[17] Standards for self-contained commerical refrigerators, commercial freezers, and commercial refrigerator-freezers with doors were added to 42 U.S.C. 6313(c)(2), by EPACT 2005, section 136(c).

Issue 1 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

5. Market Assessment

In the market assessment, DOE develops a qualitative and quantitative characterization of the commercial refrigeration equipment industry and market structure based on publicly available information and data and information submitted by manufacturers and other stakeholders.

DOE identified 34 manufacturers of commercial refrigeration equipment. Four of these companies hold approximately 85 percent of the domestic market share of refrigerated display cases. These four manufacturers produce self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors and commercial ice-cream freezers, although their primary business is in remote condensing commercial refrigerators and commercial freezers with and without doors. Like most industries, there exists a second tier of smaller, but well-known manufacturers. These other manufacturers make up the remaining 15 percent of U.S. market share. See chapter 3 of the TSD for more information regarding manufacturers of commercial refrigeration equipment.

DOE is considering the possibility that small businesses would be particularly impacted by the promulgation of energy conservation standards for commercial refrigeration equipment. The Small Business Administration (SBA) defines small business manufacturing enterprises for commercial refrigeration equipment as those having 750 employees or fewer. SBA lists small business size standards for industries as they are described in the North American Industry Classification System (NAICS). The size standard for an industry is the largest that a for-profit concern can be in that industry and still qualify as a small business for Federal Government programs. These size standards are generally expressed in terms of the average annual receipts or the average employment of a firm. For commercial refrigeration equipment, the size standard is matched to NAICS code 333415, Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing, and is 750 employees. DOE will study the potential impacts on these small businesses in detail during the MIA, which will be conducted as a part of the NOPR analysis. See chapter 3 of the TSD for more information regarding commercial refrigeration equipment for small businesses.

ARI submitted annual shipment data by equipment class for its member companies. (ARI, No. 7 Exhibit B at p. 1) DOE understands that these data do not include the entire industry, since not all major manufacturers are represented by ARI (most notably, True Manufacturing, which DOE understands has a large market share of self-contained commercial equipment with doors and commercial ice-cream freezers). However, because these data cover the vast majority of the commercial refrigeration equipment sold, and because no other detailed data were available, the ARI shipment data became the basis of DOE's analysis.

The market and technology assessment (see chapter 3 of the TSD) provides detailed shipment information from ARI for each category of commercial refrigeration equipment by equipment class for 2005. The ARI data included shipments for equipment that operates at an ''application'' temperature (*e.g.*, wine chillers that operate at 45°F and freezers that operate at −30°F). However, DOE only considered shipments of equipment at the three operating temperatures considered in this rulemaking (38°F, 0°F, and −15°F). The shipments of equipment that operate at one of these three temperatures constitute approximately 98 percent of the shipments reported by ARI. See chapter 3 of the TSD for more information regarding commercial refrigeration equipment shipments.

DOE reviewed available literature and consulted with experts on commercial refrigeration equipment in order to establish typical equipment lifetimes. The literature and individuals consulted estimated a wide range of typical equipment lifetimes. Based on the literature reviewed and discussions with industry experts and other stakeholders, DOE concluded that a typical lifetime of 10 years is appropriate for commercial refrigeration equipment. See chapter 3 of the TSD for more information regarding equipment lifetimes.

DOE characterized commercial refrigeration equipment energy consumption by conducting a survey of existing remote condensing refrigeration equipment from major manufacturers and compiling a performance database. The primary source of information for the database was equipment data sheets that were publicly available on manufacturers' websites. From these data sheets, equipment information such as total refrigeration load, evaporator temperature, lighting power draw, defrost power draw, and motor power draw allowed determination of calculated daily energy consumption (CDEC) according to the test procedure in ANSI/ARI Standard 1200–2006. See chapter 3 of the TSD for more information regarding the performance data for selected remote condensing equipment classes.

6. Technology Assessment

In the technology assessment, DOE identified technologies and design options that could improve the efficiency of commercial refrigeration equipment. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. For commercial refrigeration equipment, DOE based its list of technologically feasible design options on input from manufacturers, industry experts, component suppliers, trade publications, and technical papers. See chapter 3 of the TSD for additional detail on the technology assessment and technologies analyzed.

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve the efficiency of equipment, to determine which technologies to consider further and which options to screen out. DOE consulted with industry, technical experts, and other interested parties to develop a list of technologies for consideration. DOE then applied the following four screening criteria to determine which technologies are unsuitable for further consideration in the rulemaking (10 CFR Part 430, Subpart C, Appendix A at 4(a)(4) and 5(b)):

1. Technological feasibility. Technologies incorporated in commercial equipment or in working prototypes will be considered technologically feasible.

2. Practicability to manufacture, install, and service. If mass production of a technology in commercial equipment and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

3. Adverse impacts on equipment utility or equipment availability. If a technology is determined to have significant adverse impact on the utility of the equipment to significant subgroups of consumers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes,

capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

4. Adverse impacts on health or safety. If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

DOE eliminated five of the technologies considered in the market and technology assessment. The specific technologies that were eliminated are: (1) Air-curtain design, (2) thermoacoustic refrigeration, (3) magnetic refrigeration, (4) electro-hydrodynamic heat exchangers, and (5) copper rotor motors. Because all five of these technologies are in the research stage, DOE believes that they would not be practicable to manufacture, install and service on the scale necessary to serve the relevant market at the time of the effective date of the standard. In addition, because these technologies are in the research stage, DOE cannot assess whether they will have any adverse impacts on utility to significant subgroups of consumers, result in the unavailability of any types of equipment, or present any significant adverse impacts on health or safety. Therefore, DOE will not consider these technologies as design options for improving the energy efficiency of commercial refrigeration equipment.

For more details on how DOE developed the technology options and the process for screening these options, refer to the market and technology assessment (see chapter 3 of the TSD) and the screening analysis (see chapter 4 of the TSD).

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the cost and efficiency of commercial refrigeration equipment. For each equipment class, this relationship estimates the baseline manufacturer cost, as well as the incremental cost for equipment at efficiency levels above a baseline. In determining the performance of higher efficiency equipment, DOE considers technologies and design option combinations not eliminated in the screening analysis. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.*, the LCC and PBP analyses and the NIA).

DOE typically structures its engineering analysis around one of three methodologies. These are: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels; and (3) the reverse-engineering or cost-assessment approach, which involves a ''bottoms-up'' manufacturing cost assessment based on a detailed bill of materials derived from commercial refrigeration equipment tear-downs.

1. Approach

In this rulemaking, DOE is adopting an efficiency-level approach, supplemented by a design-option approach. For the four equipment classes with the highest shipment volumes, DOE used industry-supplied cost-efficiency curves developed using an efficiency-level approach in downstream analyses.[18] These industry-supplied curves are qualified using analytically derived curves developed by DOE using a design-option approach. In addition, for the equipment classes where industry-supplied curves were not available, DOE used the analytically derived curves developed using a design-option approach in the downstream analyses.

In the Framework Document, DOE requested feedback on the use of an efficiency-level approach supported, as needed, by a design-option approach to determine the cost-efficiency relationship for commercial refrigeration equipment. ACEEE expressed concern about the use of an efficiency-level approach because it effectively creates a ''black box'' that does not allow for any independent analyses. ACEEE prefers the design-option approach because of its transparency and the ability to be independently verified. ACEEE noted that in the past, DOE has taken both approaches simultaneously. By doing both, DOE can calibrate one approach against another and have data that are publicly available so all parties can comment. (Public Meeting Transcript, No. 3.4 at p. 110) ASAP stated that the design-option approach remains very important because it validates the data and shows the benefits of different technical options. (Public Meeting Transcript, No. 3.4 at p. 119) ARI stated that it supports DOE's suggested approach for determining the cost-efficiency relationship for commercial refrigeration equipment. (ARI, No. 7 at p. 9) The Joint Comment stated that it supports the use of an efficiency-level approach, provided that the estimates used are sufficiently supported with design-option data for purposes of both qualification and adding transparency to the ''black box'' of the efficiency-level data. In particular, the Joint Comment pointed out that this will require DOE to qualify multiple points for each equipment class, carrying out further design-option analysis as necessary to identify the most reasonable costs to use if the design-options and efficiency-level data are not in alignment. (Joint Comment, No. 9 at p. 1)

As previously described, DOE used an efficiency-level approach supported by a design-option approach. DOE supplemented the industry-supplied data with its own design-option analysis, which involved consultation with outside experts, review of publicly available cost and performance information, and modeling of equipment cost and energy consumption. The supplemental design-option analysis provides validation of the industry efficiency-level data, transparency of assumptions and results, and the ability to perform independent analyses for verification. In addition, the supplemental design-option analysis allows analytically derived cost-efficiency curves to be generated for equipment classes where no industry-supplied curves are available. The methodology used to perform the design-option analysis is described in detail in chapter 5 of the TSD.

2. Equipment Classes Analyzed

Because of the large number of equipment classes in this rulemaking (see Table II.6), DOE did not directly analyze all equipment classes in the engineering analysis for this ANOPR. Instead, DOE prioritized the engineering analysis by examining only the equipment classes with shipment volumes greater than 100 units per year. Table II.7 lists the 15 equipment classes that DOE directly analyzed in the engineering analysis. This table includes the 14 equipment classes with greater than 100 annual unit shipments, as well as the VOP.RC.L equipment class.[19] According to the 2005 ARI

[18] The four equipment classes with the highest shipment volumes are: vertical closed transparent, remote condensing, low temperature (VCT.RC.L); vertical open, remote condensing, medium temperature (VOP.RC.M); semivertical open, remote condensing, medium temperature (SVO.RC.M); and horizontal open, remote condensing, low temperature (HZO.RC.L).

[19] The VOP.RC.L equipment class was reported as having zero shipments in the ARI shipment data, but was included in the analysis based on a recommendation from a manufacturer during the preliminary manufacturer impact analysis interviews. This manufacturer estimated that shipments of the VOP.RC.L equipment class are actually around 2500 units per year. Regardless of the actual shipment volume, DOE believes it is unlikely that this equipment class has zero annual shipments, and likely has more than 100 annual

shipments data, these 15 equipment classes represent 98 percent of the shipments of covered commercial refrigeration equipment.

TABLE II.7.—EQUIPMENT CLASSES DIRECTLY ANALYZED IN THE ENGINEERING ANALYSIS

Equipment class	Description
VOP.RC.M	Vertical Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
VOP.RC.L	Vertical Freezer without Doors with a Remote Condensing Unit, Low Temperature.
SVO.RC.M	Semi-Vertical Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
HZO.RC.M	Horizontal Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
HZO.RC.L	Horizontal Freezer without Doors with a Remote Condensing Unit, Low Temperature.
VCT.RC.M	Vertical Refrigerator with Transparent Doors with a Remote Condensing Unit, Medium Temperature.
VCT.RC.L	Vertical Freezer with Transparent Doors with a Remote Condensing Unit, Low Temperature.
SOC.RC.M	Service Over Counter Refrigerator with a Remote Condensing Unit, Medium Temperature.
VOP.SC.M	Vertical Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
SVO.SC.M	Semi-Vertical Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
HZO.SC.M	Horizontal Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
HZO.SC.L	Horizontal Freezer without Doors with a Self-Contained Condensing Unit, Low Temperature.
VCT.SC.I	Vertical Ice-Cream Freezer with Transparent Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.
VCS.SC.I	Vertical Ice-Cream Freezer with Solid Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.
HCT.SC.I	Horizontal Ice-Cream Freezer with Transparent Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.

3. Analytical Models

In the design-option approach, DOE used models to develop estimates of cost and energy consumption for each equipment class at each efficiency level. A cost model was used to estimate the manufacturer production cost (MPC) in dollars, and an energy consumption model was used to estimate the daily energy consumption in kilowatt hours (kWh) of covered commercial refrigeration equipment.

a. Cost Model

Development of the cost model involved the disassembly of a self-contained refrigerator with transparent doors, an analysis of the materials and manufacturing processes, and the development of a parametric spreadsheet model flexible enough to cover all equipment classes. The manufacturing cost model estimated MPC and reported it in aggregated form to maintain confidentiality of sensitive cost data. DOE obtained input from stakeholders on the MPC estimates and assumptions to confirm accuracy. The cost model was used for 7 of the 15 examined equipment classes and the results were extended to 6 of the remaining examined equipment classes. The cost of the remaining two equipment classes was estimated using available manufacturer list price (MLP) information discounted to MPC. Details of the cost model are provided in chapter 5 of the TSD.

A manufacturer markup is applied to the MPC estimates to arrive at the MSP. This is the price of equipment sold at which the manufacturer can recover both production and non-production costs, and earn a profit. A market-share-weighted average industry markup was developed by examining several major commercial refrigeration equipment manufacturers' gross margin information from annual reports and Securities and Exchange Commission (SEC) 10–K reports. The manufacturers whose gross margin information was examined by DOE represent approximately 80 percent of the commercial refrigeration equipment market, and each of these companies is a subsidiary of a more diversified parent company that manufactures equipment other than commercial refrigeration equipment. Because the SEC 10–K reports do not provide gross margin information at the subsidiary level, the estimated markups represent the average markups that the parent company applies over its entire range of offerings.

Markups were evaluated for the years 2000 to 2005, inclusively. The manufacturer markup is calculated as $100/(100 - \textit{average gross margin})$, where gross margin is calculated as $\textit{revenue} - \textit{cost of goods sold}$ (COGS). To validate the SEC 10–K and annual report information, Internal Revenue Service industry statistics were used as a check. DOE estimated the average manufacturer markup within the industry as 1.39.

DOE received industry-supplied curves from ARI in the form of daily energy consumption versus MLP, (both normalized by TDA). Since DOE's analytically derived curves were developed in the form of CDEC versus MSP (both normalized by TDA), it was necessary for DOE to estimate an industry list price markup so that comparisons between the two sets of curves could be made. The industry list price markup is a markup to the production cost that provides the list price. To make comparisons between the analytically derived cost-efficiency curves and the industry-supplied cost-efficiency curves, DOE discounted the industry data with the list price markup and normalized the analytically derived curves by TDA.

DOE understands that manufacturers typically offer a discount off the MLP, which depends on various factors such as the relationship with the customer and the volume and type of equipment being purchased. For the estimate of list price markup, DOE relied on information gathered on self-contained commercial refrigeration equipment, since list price information is readily available and typically published by self-contained equipment manufacturers for this equipment. A review of the data for self-contained equipment shows that the list price markup is typically 2.0 (*i.e.*, manufacturers will typically sell their equipment for 50 percent off the published list price). DOE further verified the estimate by obtaining list price quotes from several remote condensing equipment manufacturers. During manufacturer interviews, some commercial refrigeration equipment manufacturers agreed with the 2.0 markup estimate, while others stated the estimate was somewhat high. Because the list price markup can vary significantly from manufacturer to manufacturer and from customer to customer, DOE applied the same estimated list price markup across each

shipments. DOE believes this warrants inclusion of the VOP.RC.L equipment class in the analysis.

equipment class to simplify the analysis.

b. Energy Consumption Model

The energy consumption model estimates the daily energy consumption of commercial refrigeration equipment at various performance levels using a design-options approach. The model is specific to the categories of equipment covered under this rulemaking, but is sufficiently generalized to model the energy consumption of all covered equipment classes. For a given equipment class, the model estimates the daily energy consumption for the baseline and the energy consumption of several levels of performance above the baseline. The model is used to calculate each performance level separately. For the baseline level, a corresponding cost is calculated using the cost model, and for each level above the baseline, the cost increases resulting from the addition of various design options are used to recalculate the cost.

In the market and technology assessment (see chapter 3 of the TSD), DOE defined an initial list of technologies that can reduce the energy consumption of commercial refrigeration equipment. In the screening analysis, DOE screened out technologies based on four screening criteria: Technological feasibility, practicability to manufacture, changes to product utility, and safety. The remaining list of technologies becomes one of the inputs to the engineering analysis. However, for reasons noted below, DOE did not incorporate all of these technologies in the energy consumption model. Technologies that were not used include: Remote lighting ballast location, evaporator fan motor controllers, higher efficiency evaporator and condenser fan blades, insulation increases or improvements, low pressure differential evaporators, defrost cycle controls, and defrost mechanisms.

Relocation of fluorescent lamp ballasts outside the refrigerated space can reduce energy consumption by lessening the refrigeration load on the compressor. However, for the majority of commercial refrigeration equipment currently manufactured, ballasts are already located in electrical trays outside of the refrigerated space, in either the base or top of the equipment. The notable exceptions are the equipment classes in the VCT equipment family, where ballasts are most often located on the interior of each door mullion. Most commercial refrigeration equipment manufacturers purchase doors for VCT units that are preassembled with the entire lighting system in place rather than configured for separate ballasts. DOE believes that most commercial refrigeration equipment manufacturers choose doors this way because it would be labor intensive and time consuming to relocate these ballasts at the factory, and because of the additional cost and labor of wiring separate ballasts. In addition, the potential energy savings are small, since modern electronic ballasts are very efficient and typically contribute only a few watts each to the refrigeration load. Therefore, DOE did not consider remote relocation of ballasts as a design option.

Evaporator fan motor controllers allow fan motors to run at variable speed, to match changing conditions in the case. For evaporator fan motor controllers, there is some opportunity for savings as the buildup and removal of frost creates differing pressure drops across the evaporator coil. Theoretically, less fan power is required when the coil is free of frost. Additionally, the coil would operate at a more stable temperature during the period of frost build-up. However, the effectiveness of the air curtain in equipment without doors is very sensitive to changes in airflow, so fan motor controllers could disrupt the air curtain. The potential of disturbance to the air curtain, which could lead to higher infiltration loads, does not warrant the use of evaporator fan motor controllers in equipment without doors, even if there were some reduction in fan energy use. In addition, DOE believes that savings from evaporator fan motor controllers in all equipment types would be small. Therefore, DOE did not consider evaporator fan motor controllers as a design option.

Higher efficiency evaporator and condenser fan blades reduce motor shaft power requirements by moving air more efficiently. Current technology used in commercial refrigeration equipment is stamped sheet metal or plastic axial fan blades. These fan blades are lightweight and inexpensive. DOE was not able to identify any axial fan blade technology that is significantly more efficient than what is currently used, but did identify one alternative fan blade technology that could potentially improve efficiency: Tangential fan blades. Tangential fan blades can produce a wide, even airflow, and have the potential to allow for increased saturated evaporator temperature (SET) through improved air distribution across the evaporator coil, which would reduce compressor power. However, tangential fan blades in small sizes are themselves less efficient at moving air, and thus require greater motor shaft power. Because of these competing effects, DOE did not consider tangential fan blades as a design option.

Increases in or improvements to insulation thickness reduce the heat load due to conduction and thus reduce compressor power. Increases in the thickness of foam insulation are problematic because they must either borrow volume from the refrigerated space or increase the overall size of the equipment cabinet. Because the outer dimensions of commercial refrigeration equipment are limited, it is often not practical to increase the overall size of the cabinet (*i.e.*, case exterior dimensions are optimized for packing equipment into freight and shipping containers). In addition, reducing the size of the refrigerated space would reduce the utility of the equipment. Therefore, increasing the thickness of foam insulation is not practical. Furthermore, many display cases do not have significant conduction loads, so insulation improvements do not offer large energy savings. Improvements to insulation material include better polyurethane foams and vacuum panels. In consultation with insulation material manufacturers, DOE determined that there are no significant differences in ''grades'' of insulation material, so most equipment manufacturers are already using the best commercially available foam materials in their equipment. Vacuum panels are an alternative form of insulation; however, they may degrade in performance in time as small leaks develop. In addition, vacuum panels cannot be penetrated by fasteners, and do not provide the rigidity of ''foamed-in-place'' panels that polyurethane insulation creates. Therefore, DOE did not consider insulation thickness increases or improvements as a design option. DOE did, however, consider improvements to the efficiency (*e.g.*, thermal conductance) of doors in the design options analysis. Higher efficiency doors reduce the overall heat gain to the case by using better frame materials, more panes of glass and better (or more) insulation in the doorframe.

Low pressure differential evaporators reduce energy consumption by reducing the power of evaporator fan motors. However, in space-constrained equipment such as commercial refrigeration equipment, this reduction usually comes from a decrease in evaporator coil surface area, which generally requires a lower SET to achieve the same discharge air temperature and cooling potential. This, in turn, results in a reduction in compressor efficiency. Because of these competing effects, DOE did not consider

low pressure differential evaporators as a design option.

Defrost cycle control can reduce energy consumption by reducing the frequency and duration of defrost periods. The majority of equipment currently manufactured already uses partial defrost cycle control in the form of cycle termination control. However, defrost cycle initiation is still scheduled at regular intervals. Full defrost cycle control would involve a method of detecting frost buildup and initiating defrost. As described in the market and technology assessment (see chapter 3 of the TSD), this could be accomplished through an optical sensor or sensing the temperature differential across the evaporator coil. However, both of these methods are unreliable due to problems with fouling of the coil due to dust and other surface contaminants. This becomes more of an issue as the display case ages. Because of these issues, DOE did not consider defrost cycle control as a design option.

Defrosting for medium temperature equipment is typically accomplished with off-cycle defrost. Because off-cycle defrost uses no energy (and decreases compressor on-time) there is no defrost design option capable of reducing defrost energy in cases that use off-cycle defrost. Some medium temperature equipment and all low temperature and ice-cream temperature equipment use supplemental heat for defrost. Commonly, electric resistance heating (electric defrost) is used in this equipment. An alternative to electric defrost in equipment that requires supplemental defrost heat is hot-gas defrost. Hot-gas defrost is most often used in remote condensing equipment and involves the use of the hot compressor discharge gas to warm the evaporator from the refrigerant side. The test procedure for commercial refrigeration equipment is not capable of quantifying the energy expenditure of the compressor during a hot-gas defrost cycle. Therefore, DOE did not consider it as a design option.

The design options DOE considered in the engineering analysis are:

- Higher efficiency lighting and ballasts for the VOP, SVO, HZO, and SOC equipment families (horizontal fixtures);
- Higher efficiency lighting and ballasts for the VCT equipment family (vertical fixtures);
- Higher efficiency evaporator fan motors;
- Increased evaporator surface area;
- Improved doors for the VCT equipment family, low temperature;
- Improved doors for the VCT equipment family, medium temperature;
- Improved doors for the HCT equipment family, ice-cream temperature;
- Improved doors for the SOC equipment family, medium temperature;
- Higher efficiency condenser fan motors (for self-contained equipment only);
- Increased condenser surface area (for self-contained equipment only); and
- Higher efficiency compressors (for self-contained equipment only).[20]

In developing the energy consumption model, DOE made certain assumptions including general assumptions about the analysis methodology as well as specific numerical assumptions regarding load components and design options. DOE based its energy consumption estimates on new equipment tested in a controlled-environment chamber subjected to ANSI/ARI Standard 1200–2006, which references the ANSI/ASHRAE Standard 72–2005 test method.[21] Manufacturers that are certifying their equipment to comply with Federal standards will be required to test new units with this test method, which specifies a certain ambient temperature, humidity, light level, and other requirements. One specification which DOE noted was absent from this standard is the operating hours of the display case lighting in a 24-hour period. DOE considered the operating hours to be 24 hours (*i.e.*, that lights are on continuously). Other commercial refrigeration equipment considerations are detailed in chapter 5 of the TSD.

The energy consumption model calculates CDEC as two major components: compressor energy consumption and component energy consumption (expressed as kilowatt hours per day (kWh/day)). Component energy consumption is a sum of the direct electrical energy consumption of fan motors, lighting, defrost and drain heaters, anti-sweat heaters, and pan heaters. Compressor energy consumption is calculated from the total refrigeration load (expressed as British thermal units per hour (Btu/h)) and one of two compressor models: one version for remote condensing equipment and one for self-contained equipment. The total heat load is a sum of the component load and the non-electric load. The component load is a sum of the heat emitted by evaporator fan motors, lighting, defrost and drain heaters, and anti-sweat heaters inside and adjacent to the refrigerated space (condenser fan motors and pan heaters are outside of the refrigerated space and do not contribute to the component heat load). The non-electric load is a sum of the heat contributed by radiation through glass and openings, heat conducted through walls and doors, and sensible and latent loads from warm, moist air infiltration through openings. Details of component energy consumption, compressor energy consumption, and load models are shown in chapter 5 of the TSD.

4. Baseline Models

As mentioned above, the engineering analysis estimates the incremental costs for equipment with efficiency levels above the baseline in each equipment class. DOE was not able to identify a voluntary or industry standard that provided a minimum baseline efficiency requirement for commercial refrigeration equipment. Therefore, it was necessary for DOE to establish baseline specifications for each equipment class to define the energy consumption and cost of the typical baseline equipment. These specifications include dimensions, number of components, temperatures, nominal power ratings, and other case features that affect energy consumption, as well as a basic case cost (the cost of a piece of equipment not including the major efficiency-related components such as lights, fan motors, and evaporator coils).

DOE established baseline specifications for each of the equipment classes modeled in the engineering analysis by reviewing available manufacturer data, selecting several representative units from available manufacturer data, and then aggregating the physical characteristics of the selected units. This process created a representative unit for each equipment class with average characteristics for physical parameters (*e.g.*, volume, TDA), and minimum performance of energy-consuming components (*e.g.*, fans, lighting). The cost model was used to develop the basic case cost for each equipment class. See appendix B of the TSD for these specifications.

5. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of CDEC[22] (in

[20] Improvements to the condensing unit are not considered for remote condensing equipment, since the test procedure and standard apply only to the cabinet and not the condensing unit.

[21] Test procedures are found at 10 CFR 431.64.

[22] The ANSI ARI Standard 1200–2006 test procedure uses CDEC as the metric for remote condensing equipment and total daily energy consumption (TDEC) as the metric for self-contained equipment. In the engineering analysis, DOE used CDEC as the metric for both equipment

Continued

kWh) versus MSP (in dollars), which form the basis for subsequent analyses in the ANOPR. DOE created 15 cost-efficiency curves and received 4 industry aggregated curves from ARI. The industry-supplied curves are in the form of CDEC versus MLP, both normalized by TDA. To compare the analytically derived curves to the industry-supplied curves, DOE discounted the industry data with the list price markup and normalized the analytically derived curves by TDA. For the four equipment classes with the highest shipment volumes DOE used the industry-supplied cost-efficiency curves in the downstream analyses. For the equipment classes where industry-supplied curves were not available, DOE used the analytically derived curves in the downstream analyses. See chapter 5 for additional detail on the engineering analysis and appendix B of the TSD for complete cost-efficiency results.

D. Markups To Determine Equipment Price

This section explains how DOE developed the supply chain markups to determine installed prices for commercial refrigeration equipment (see chapter 6 of the TSD). DOE used the supply chain markups it developed (along with sales taxes and installation costs) in conjunction with the MSPs developed from the engineering analysis to arrive at the final installed equipment prices for baseline and higher efficiency equipment. As shown in Table II.8, DOE defined three distribution channels for commercial refrigeration equipment to describe how the equipment passes from the manufacturer to the customer. In the first distribution channel, the manufacturer sells the equipment directly to the customer through a national account. In the second and third distribution channels, the manufacturer sells the commercial refrigeration equipment to a wholesaler, who in turn may sell it directly to the customer or sell it to a mechanical contractor who may sell it and its installation to the customer. The wholesaler in this case can be a refrigeration wholesaler focusing on commercial refrigeration equipment, or a grocery warehouser (supply chain distributor) who sells food and retail store equipment to the retailer. Table II.8 also gives the estimated distribution channel shares (in percentage of total sales) through each of the three distribution channels.

TABLE II.8.—DISTRIBUTION CHANNELS AND SHARES FOR COMMERCIAL REFRIGERATION EQUIPMENT

Channel 1	Channel 2	Channel 3
Manufacturer	Manufacturer, Wholesaler	Manufacturer, Wholesaler, Contractor.
Customer	Customer	Customer.
86 percent	7 percent	7 percent.

For each of the steps in the distribution channels presented above, DOE estimated a baseline markup and an incremental markup. A baseline markup is applied to the purchase of equipment with the baseline efficiency. An incremental markup is applied to the incremental increase in MSP for the purchase of higher efficiency equipment. The overall baseline or overall incremental markup is then given by the product of all the markups at each step in the distribution channel plus sales tax. Overall baseline or overall incremental markups for the entire commercial refrigeration equipment market can be determined using the shipment weights through each distribution channel and the corresponding overall baseline markup or the corresponding overall incremental markup, respectively, for each distribution channel including the applicable sales tax.

Markups for each step of the distribution channel were developed based on available financial data. DOE based the wholesaler markups on firm balance-sheet data from the Heating, Airconditioning & Refrigeration Distributors International (HARDI), the trade association representing wholesalers of refrigeration and heating, ventilating and air-conditioning (HVAC) equipment. DOE used median financial statistics reported by the controls and refrigeration industry segment of this trade association in HARDI's 2005 Profit Planning Report. DOE based the mechanical contractor markups on U.S. Census Bureau financial data for the plumbing, heating, and air conditioning industry as a whole. Average markups for sales through national accounts were estimated as one-half that of the wholesaler to customer distribution channel.

Baseline markups for wholesalers and for contractors are calculated as total revenue (equal to all expenses paid plus profit) divided by the COGS. Expenses include direct costs for equipment, labor expenses, occupancy expenses, and other operating expenses (*e.g.*, insurance, advertising). Some of these are presumed to be fixed costs (labor, occupancy) that do not change with the distribution of higher efficiency equipment. Other expenses are variable costs that may change in response to changes in COGS. In developing incremental markup, DOE considered the labor and occupancy costs to be fixed, and the other operating costs and profit to scale with the MSP.

The overall markup is the product of all the markups plus sales tax within a distribution channel. Both baseline and incremental overall markups were calculated for each distribution channel. Sales taxes were calculated based on State-by-State sales tax data reported by the Sales Tax Clearinghouse. Both contractor costs and sales tax vary by State, so the markup analysis develops distributions of markups within each distribution channel as a function of State and business type (*e.g.*, supermarket, convenience store, convenience store with gas station, or superstore). Because the State-by-State distribution of commercial refrigeration equipment units varies by business type (*e.g.*, supermarkets may be more prevalent relative to convenience stores in one part of the country than another), a national level distribution of the markups is different for each business type.

Average overall markups in each distribution channel can be calculated using estimates of the shipments of commercial refrigeration equipment units by business type and by State. The ANOPR analysis used estimates of relative total frozen and refrigerated food sales by State and each business type as reported by the U.S. Census Bureau as a proxy for relative shipments of commercial refrigeration equipment. Overall baseline and incremental markups for sales to supermarkets

types, but will refer to each equipment type's specific metric when developing standard equations.

within each distribution channel are shown in Table II.9 and Table II.10.

TABLE II.9.—BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.436	2.182	1.218	1.301
Sales Tax	1.068	1.068	1.068	1.068
Overall Markup	1.533	2.330	1.300	1.389

TABLE II.10.—INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.107	1.362	1.054	1.079
Sales Tax	1.068	1.068	1.068	1.068
Overall Markup	1.182	1.454	1.125	1.152

Additional detail on markups can be found in chapter 6 of the TSD.

E. Energy Use Characterization

The energy use characterization estimates the annual energy consumption of commercial refrigeration equipment systems (including remote condensing units). This estimate is used in the subsequent LCC and PBP analyses (see chapter 8 of the TSD) and NIA (see chapter 10 of the TSD). DOE estimated the energy consumption of the 15 equipment classes analyzed in the engineering analysis (see chapter 5 of the TSD) using the relevant test procedure. These energy consumption estimates were then validated with annual simulation modeling of selected equipment classes and efficiency levels.

ANSI/ARI Standard 1200–2006, which references ANSI/ASHRAE Standard 72–2005, is an industry-developed test procedure for measuring the energy consumption of commercial refrigeration equipment. ANSI/ARI Standard 1200–2006 provides a method for estimating the daily energy consumption for a piece of commercial refrigeration equipment under steady-state conditions. ANSI/ARI Standard 1200–2006 treats remote condensing and self-contained commercial refrigeration equipment differently. In the case of remote condensing equipment, the test procedure measures the energy use of each component (*e.g.*, fans and lights) as well as the total refrigeration load of the equipment. The total refrigeration load is used to calculate compressor energy consumption based on a standardized relationship of evaporator temperature and compressor energy efficiency ratio. In the case of self-contained commercial equipment, the test procedure measures the total energy use of the equipment as a whole, including both component energy use and compressor energy use. The resulting daily energy consumption estimate is either CDEC for remote condensing equipment or TDEC for self-contained equipment. Both metrics represent the sum of compressor energy consumption and the energy consumption of all other energy consuming components in the equipment (*i.e.*, evaporator fan motors, lighting, anti-sweat heaters, defrost and drain heaters, and condensate evaporator pan heaters).

Several options were considered to provide estimates of the energy consumption of commercial refrigeration equipment. These options include: using a whole building simulation which would analyze case, compressor, and HVAC impacts; using an existing simulation program that would analyze display case and compressor energy use on an annual basis; and using estimates of energy consumption for various categories of equipment as developed in the engineering analysis. For the ANOPR, DOE used energy consumption estimates from the engineering analysis directly in the LCC analysis. To validate these estimates, DOE conducted a whole building energy use simulation for seven equipment classes at selected design-option levels.

A whole building simulation was the option first considered by DOE and was discussed during DOE?s Framework public meeting. During that meeting Southern Company and ARI commented that a whole building analysis is the desired approach (Public Meeting Transcript No. 3.4 at p. 151). The Northwest Power Planning Council (NWPPC) and ASAP were concerned about the additional difficulty and complexity of the resulting analysis (Public Meeting Transcript No. 3.4 at p. 161 and Public Meeting Transcript No. 3.4 at p. 155). The approach taken by DOE was to use energy estimates developed from the engineering analysis but to validate those estimates with whole building simulation of supermarkets, which included simulation of the refrigeration system. There were four reasons for adopting this approach.

1. The energy consumption ratings provided by ANSI/ARI Standard 1200–2006 do not distinguish between energy consumption by the compressor (which may vary as a function of environmental conditions) and energy consumption by other components in the case (*e.g.*, lighting), which do not vary as a function of environmental conditions. These two types of energy consumption are roughly similar in magnitude, and it is difficult to assess where the energy savings are coming from or what the impact on a building HVAC load might be.

2. The initial engineering analysis (see chapter 5 of the TSD) did not suggest design options that would provide significant changes to the building load relative to the commercial refrigeration system energy consumption.

3. The net interaction between the refrigeration system and HVAC energy consumption is a function of the variation in HVAC designs. HVAC system designs for food sales buildings, like supermarkets, may incorporate such features as separate dehumidification and refrigerant condenser reheat systems, which make assessing overall HVAC impact complicated. Also, detailed data on the relative prevalence

of different HVAC system designs incorporating these features is not readily available.

4. The interaction between the refrigeration and overall HVAC energy consumption is a function of the ratio of the total heat removed from the space by the display cases relative to the other internal loads (lighting, occupancy, and plug load) and external loads (building envelope and ventilation driven) in the building. This ratio determines the fraction of the year that the building is either in heating or cooling mode. However, the balance of refrigeration-driven space loads to the other space loads is impacted by the efficiency levels for all commercial refrigeration equipment classes, complicating the analysis of each equipment class individually. For the equipment classes with the largest shipment, which make up the largest base of equipment in a typical store and have the biggest overall impact on the space load balance, the industry-supplied efficiency curves do not provide information about changes in equipment design that could be used to assess this change in refrigeration-driven space loads.

In its validation effort, DOE used a modified version of the DOE developed DOE–2 whole-building energy analysis tool, DOE–2.2 refrigeration version (DOE–2.2R), to model whole-building energy use in a typical supermarket in five U.S. climate locations (Baltimore, Chicago, Houston, Los Angeles, and Memphis). Each of these locations has a climate that typifies one of five distinct U.S. climate zones developed by DOE for use in building energy codes development work. These five climate zones taken together encompass approximately three-fourths of the U.S. population. Annual energy use for seven equipment classes was simulated at four representative efficiency levels. Data on refrigeration loads from the engineering analysis supported the development of the energy efficiency levels analyzed. These refrigeration loads included those from internal features (*e.g.*, lighting and fans inside the case), and externally driven loads from radiation, convection/infiltration, and conduction through the case wall. These loads and other direct energy-consuming features (*e.g.*, fan and lights) were mapped to corresponding inputs in DOE–2.2R for the simulation analysis. Pull-down loads from shelving of food are not part of the test procedure and were therefore not considered.

To examine the impacts of ambient relative humidity, refrigerant piping heat loss, and climate location on energy consumption of commercial refrigeration equipment, annual simulation data from the DOE 2.2R model was converted to average daily energy consumption and average daily refrigeration load comparison with the engineering analysis estimates. DOE also assessed the magnitude of interactions between the refrigeration system and the building HVAC system.

The results of the whole-building simulation showed that climate location has no influence on energy consumption of the refrigerated case components for the remote condensing equipment classes examined. For a given efficiency level, the energy consumption of case components is the same for the simulation and the engineering analysis. In addition, climate location was shown to have relatively little influence on compressor energy consumption for equipment classes with doors, where display case infiltration levels are relatively low. Climate conditions do have a significant impact on compressor energy consumption for open equipment. Compressor energy consumption is determined by total refrigeration load and compressor efficiency, both of which are affected by climate conditions for remote condensing equipment.

In general, the average daily refrigeration load from the DOE 2.2R simulations was smaller than that predicted by the engineering analysis, due to differences between the building space conditions throughout the year captured by the simulations and the space conditions used for the steady-state rating of equipment used in the engineering analysis. The actual energy consumption of the compressors was, however, generally higher than that predicted by the engineering analysis. The difference in energy consumption is due to the aforementioned differences in refrigeration loads, the fact that the simulation accounts for changes in condensing temperatures over the year for each climate, and the additional superheat loads calculated by the simulation software to bring the return refrigerant return vapor up to the compressor suction temperature conditions, which is estimated to be 65°F (the ARI rating condition used to provide rated compressor performance).

Analysis of the annual refrigeration system energy savings for each of 3 efficiency levels above the baseline level were all within 14 percent of that predicted by the engineering analysis for 6 equipment classes across all efficiency levels and climates examined. Net energy savings averaged 8 percent higher for the highest efficiency level examined. For the remote condensing VOP.RC.L equipment class the annual energy savings deviated by as much as 21 percent. No shipments for this equipment class were reported by ARI. Actual shipments, if any, are expected to be small. This suggests that for the majority of commercial refrigeration equipment, the energy savings predicted by the test procedure agreed reasonably well with the annual simulation results, although the impact of individual design options may differ.

Estimates of whole-building energy consumption and refrigeration energy consumption were examined at selected efficiency levels and climate locations to determine if the design options considered in the engineering analysis would have a significant effect on building HVAC energy use. The influence of refrigeration equipment efficiency changes on HVAC system energy use varies depending on the design option. For example, improved display case lighting efficiency would reduce the energy consumption of the refrigeration system and potentially the air-conditioning system, depending on lighting placement. Reduced conduction and radiation loads in the refrigeration equipment would, by contrast, increase the air-conditioning load and subsequent energy consumption while decreasing the heating load. For all equipment classes and efficiency levels examined, the annual whole-building energy savings was within 10 percent of that calculated for the refrigeration system alone. For the highest efficiency level examined, savings were within 1.4 percent. The simulation results suggest that the collective impact of the design options considered does not significantly affect the HVAC energy consumption.

In the energy use characterization, DOE used whole-building simulation to explore the relative energy savings of refrigeration systems and whole-building energy use for supermarkets. While there were some differences in the annual energy use predicted by the whole-building simulation and that derived in the engineering analysis, DOE concludes that these differences were generally small.

Both the engineering analysis and the whole-building simulation presumed that display case lighting operated 24 hours per day. In many applications, display case lighting may not be required 24 hours per day. DOE conducted a sensitivity analysis to explore how variation in display case lighting operating hours affected the energy savings. This sensitivity analysis was done for all equipment classes using the engineering analysis spreadsheet and the design options considered for each equipment class. No such analysis could be done using the

industry-supplied efficiency curves as details on component energy consumption were not provided with these curves. The sensitivity analysis showed that energy savings were reduced as lighting operating hours were reduced for all equipment classes that used display case lighting. The magnitude of this effect depended upon the equipment class. For a 20-hour lighting time assumption, the reduction in energy savings was between 1 percent and 6 percent. For a 16-hour lighting time assumption, the reduction in energy savings was between 2 percent and 15 percent. DOE's analysis suggests that typical lighting operating hours for most classes of commercial refrigeration equipment would fall within the range of 16 to 24 hours per day, depending on store operating hours, use of lighting during after-hours case stocking, and typical lighting operation or controls used for unoccupied periods. Display case lighting hours may also depend on the business type as convenience stores have distinctly different operating hours than other segments of the food retail industry.

Because of the sensitivity of the annual energy savings to display case lighting hours and the lack of data on actual lighting use, DOE specifically seeks feedback on the assumption of 24 hours for case lighting operation. This is identified as Issue 6 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

Also, DOE specifically seeks feedback on operation and maintenance practices for commercial refrigeration equipment, which may be prevalent in the field and may differ from standardized conditions, such as those represented in a test procedure. Operation and maintenance practices could potentially affect the energy consumption savings experienced in the field as a result of increased energy efficiency as compared to those savings estimated in the TSD's energy consumption analysis under idealized testing conditions. These factors include: compressor operation that is inefficient due to age or some other condition associated with the compressor unit; location of a commercial refrigeration unit adjacent to an outside door or in direct sunlight; operation of a room-cooling fan nearby the commercial refrigeration unit; a unit routinely stocked with products that are significantly under or over the ambient room temperature; overstocking of a unit; frequency and promptness of repair/maintenance of a unit; operation of doors during periods of high volume use; frequency of cooling coil cleaning; maintenance of sufficient space surrounding a unit for proper air circulation or proper operation of air vents; and wear/tear of, or damage to, door seals and hinges on a unit. Such factors may or may not be associated with use of a unit in the field, and thus their impacts would be difficult to analyze in a quantitative manner. Nevertheless, these factors are among those commonly highlighted in energy use reduction guidelines as important to achieving the maximum energy efficiency for the given unit. Therefore, DOE requests comment on the frequency that such factors come in to play in energy use in the field, and whether and how DOE might account for these factors in assessing the overall impacts of the candidate standards levels for commercial refrigeration equipment. This is identified as Issue 7 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

In determining the reduction in energy consumption of commercial refrigeration equipment due to increased efficiency, DOE did not take into account a rebound effect. The rebound effect occurs when a piece of equipment that is made more efficient is used more intensively, so that the expected energy savings from the efficiency improvement do not fully materialize. Because commercial refrigeration equipment is operated 24 hours a day, 7 days a week to maintain adequate conditions for the merchandise being retailed, a rebound effect resulting from increased refrigeration energy consumption seemed unlikely. The engineering estimates of energy use also used a 24-hour lighting schedule; although a sensitivity analysis to a reduced lighting schedule was performed. It is possible that under a reduced lighting schedule, lower lighting power draw resulting from energy conservation standards could lead to equipment operation strategies with increased lighting operating hours; however, DOE has no data with which to examine this impact for the commercial refrigeration equipment market and has not taken it into account in the energy use characterization.

Additional detail on the energy use characterization can be found in chapter 7 of the TSD.

F. Rebuttable Presumption Payback Periods

Section 345(e)(1)(A) of EPCA (42 U.S.C. 6316(e)(1)(A)) establishes a rebuttable presumption for commercial refrigeration equipment. The rebuttable presumption states that a standard is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *.'' (42 U.S.C. 6295(o)(2)(B)(iii))

To evaluate the rebuttable presumption, DOE estimated the additional cost of a more efficient, standard-compliant unit, and compared this cost to the value of the energy saved during the first year of operation of the equipment as determined by ANSI/ARI Standard 1200–2006. DOE interprets that the increased cost of purchasing a standard-compliant unit includes the cost of installing the equipment for use by the purchaser. DOE calculated the rebuttable presumption PBP, or the ratio of the value of the increased installed price above the baseline efficiency level to the first year's energy cost savings. When this PBP is less than three years, the rebuttable presumption is satisfied; when this PBP is equal to or more than three years, the rebuttable presumption is not satisfied.

Rebuttable presumption PBPs were calculated based on a distribution of installed costs and energy prices that included four types of businesses and all 50 States. The rebuttable presumption PBPs differ from the other PBPs calculated in the LCC analysis (see section II.G.14 of this ANOPR) in that they do not include maintenance or repair costs. The baseline efficiency level for the rebuttable presumption calculation is the baseline established in the engineering analysis. From the range of efficiency levels for which cost data was determined in the engineering analysis, DOE selected up to eight efficiency levels in each equipment class, including the baseline efficiency level, for the LCC and subsequent ANOPR analysis. The selection of these efficiency levels is discussed in chapter 8 and appendix F of the TSD. For each equipment class the rebuttable presumption PBP was calculated for each efficiency level higher than the baseline.

Inputs to the PBP calculation are the first seven inputs shown in Table II.12 found in section II.G.2 of this ANOPR.

Table II.11 shows the nationally averaged rebuttable presumption paybacks calculated for all equipment classes and efficiency levels. The highest efficiency level with a rebuttable presumption payback of less than three years is also shown in Table II.11 for each equipment class. For all equipment classes analyzed in the ANOPR analysis with the exception of the SOC.RC.M

equipment class, the rebuttable presumption criteria were satisfied at either the maximum efficiency level examined or the next lower efficiency level examined. However, while DOE has examined the rebuttable presumption PBPs, DOE has not determined economic justification for any of the standard levels analyzed based on the ANOPR rebuttable presumption analysis. The setting of candidate standard levels (CSLs) by DOE will take into account the more detailed analysis of the economic impacts of increased efficiency pursuant to section 325(o)(2)(B)(i) of EPCA. (42 U.S.C. 6295(o)(2)(B)(i))

TABLE II.11.—REBUTTABLE PRESUMPTION PAYBACK PERIODS BY EFFICIENCY LEVEL AND EQUIPMENT CLASS

Equipment type	Rebuttable presumption payback period (years)								Highest level with PBP <3 years
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8	
VOP.RC.M	NA	3.2	2.8	2.6	2.7	2.8	2.9	3.1	Level 7.
VOP.RC.L	NA	0.5	0.8	1.1	1.2	1.9	NA	NA	Level 6.
VOP.SC.M	NA	0.7	0.7	0.8	1.1	1.3	2.0	2.9	Level 8.
VCT.RC.M	NA	0.3	0.4	0.6	0.8	2.6	3.7	NA	Level 6.
VCT.RC.L	NA	1.4	1.6	1.8	2.1	2.2	2.3	2.7	Level 8.
VCT.SC.I	NA	0.2	0.4	0.4	0.6	1.3	1.5	2.0	Level 8.
VCS.SC.I	NA	0.3	0.6	0.6	0.7	0.7	0.8	1.2	Level 8.
SVO.RC.M	NA	3.2	2.8	2.7	2.8	2.9	3.0	NA	Level 6.
SVO.SC.M	NA	0.8	0.8	0.9	1.1	1.3	1.7	2.3	Level 8.
SOC.RC.M	NA	0.6	1.0	1.1	1.3	2.9	3.6	NA	Level 6.
HZO.RC.M	NA	0.8	1.2	1.5	NA	NA	NA	NA	Level 4.
HZO.RC.L	NA	1.2	1.6	1.7	1.8	1.9	NA	NA	Level 6.
HZO.SC.M	NA	0.7	1.0	1.1	1.1	1.2	1.4	1.8	Level 8.
HZO.SC.L	NA	0.6	0.6	0.8	0.8	0.9	1.3	1.3	Level 8.
HCT.SC.I	NA	0.7	0.7	1.3	1.4	1.4	NA	NA	Level 6.

G. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on consumers. The effects of standards on individual commercial consumers include changes in operating expenses (usually lower) and changes in total installed cost (usually higher). DOE analyzed the net effect of these changes for commercial refrigeration equipment, first, by calculating the changes in consumers' LCCs likely to result from a CSL as compared to a base case (no new standards). The LCC calculation considers total installed cost (includes MSP, sales taxes, distribution channel markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE performed the LCC analysis from the perspective of the user of commercial refrigeration equipment.

DOE calculated the LCC for all customers as if each would purchase a new commercial refrigeration equipment unit in the year the standard takes effect. The effective date is the future date when a new standard becomes operative. Section 136(c) of EPACT 2005 amends EPCA to add section 342(c)(4), 42 U.S.C. 6313(c)(4), which directs the Secretary to issue a final rule for commercial refrigeration equipment not later than January 1, 2009, with the energy conservation standards levels effective for equipment manufactured on or after January 1, 2012. Further, the Secretary may issue, by rule, energy conservation standards levels for other types of commercial refrigeration equipment, with the standard levels effective for equipment three or more years after a final rule is published. (42 U.S.C. 6313(c)(4)(B), added by EPACT 2005, section 136(c)) Consistent with EPCA, DOE used these dates in the ANOPR analyses. Further, DOE based the cost of the equipment on projected costs in 2012. However, all dollar values are expressed in 2006 dollars. Annual energy prices are considered for the life of the commercial refrigeration equipment.

DOE also analyzed the effect of changes in operating expenses and installed costs by calculating the PBP of potential standards relative to a base case. The PBP estimates the amount of time it would take the commercial consumer to recover the incrementally higher purchase expense of more energy efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses. However, unlike the LCC, only the first year's operating expenses are considered in the calculation of the PBP. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP. For more details on the LCC and PBP analyses, refer to chapter 8 of the ANOPR TSD.

1. Approach

Recognizing that each commercial building that uses commercial refrigeration equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations for two prototype commercial buildings (stores) and four types of businesses (two types of businesses for each prototype store). The first store prototype is a ''large'' grocery store, which encompasses supermarkets and wholesaler/retailer multi-line stores such as ''big-box'' stores, ''warehouse'' stores, and ''supercenters.'' The second prototype is a ''small'' store, which encompasses convenience stores and small specialty stores such as meat markets, wine, beer, and liquor stores, and convenience stores associated with gasoline stations. Within a given prototype of store, various types of commercial refrigeration equipment can serve the store's refrigeration needs.

Aside from energy, the most important factors influencing the LCC and PBP analyses are related to the State to which each commercial refrigeration equipment unit is shipped. These factors include energy prices, installation cost, markup, and sales tax. The LCC analysis presented here used the predicted energy consumption based on the engineering analysis (see chapter 5 of the TSD) and reviewed in the energy use characterization (see chapter 7 of the TSD). Energy consumption of commercial refrigeration equipment calculated using this approach is not sensitive to climatic conditions, so energy consumption in the LCC analysis does not vary by geographical location.

At the national level, the analysis explicitly modeled both the uncertainty and the variability in the model's inputs using probability distributions based on the shipment of units to different States.

2. Life-Cycle Cost Analysis Inputs

For each efficiency level analyzed, the LCC analysis requires input data for the total installed cost of the equipment, the operating cost, and the discount rate. Table II.12 summarizes the inputs and key assumptions used to calculate the economic impacts of various efficiency levels. A more detailed discussion of the inputs follows.

TABLE II.12.—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LIFE-CYCLE COST ANALYSIS

Input	Description
Baseline Manufacturer Selling Price	Price charged by manufacturer to either a wholesaler or large customer for baseline equipment.
Standard-Level Manufacturer Selling Price Increases.	Incremental change in manufacturer selling price for equipment at each of the higher efficiency standard levels.
Markups and Sales Tax	Associated with converting the manufacturer selling price to a customer price (see chapter 6 of TSD).
Installation Price	Cost to the customer of installing the equipment. This includes labor, overhead, and any miscellaneous materials and parts. The total installed cost equals the customer equipment price plus the installation price.
Equipment Energy Consumption	Site energy use associated with the use of commercial refrigeration equipment, which includes only the use of electricity by the equipment itself.
Electricity Prices	Average commercial electricity price ($/kWh) in each State and for four classes of commercial customers, as determined from Energy Information Administration (EIA) data for 2003 converted to 2006$.
Electricity Price Trends	Used the AEO2006 reference case to forecast future electricity prices.
Maintenance Costs	Labor and material costs associated with maintaining the commercial refrigeration equipment (*e.g.*, cleaning heat exchanger coils, checking refrigerant charge levels, lamp replacement).
Repair Costs	Labor and material costs associated with repairing or replacing components that have failed.
Equipment Lifetime	Age at which the commercial refrigeration equipment is retired from service (estimated to be 10 years).
Discount Rate	Rate at which future costs are discounted to establish their present value to commercial refrigeration equipment users.
Rebound Effect	A rebound effect was not taken into account in the LCC analysis.

3. Baseline Manufacturer Selling Price

The baseline MSP is the price charged by manufacturers to either a wholesaler/distributor or very large customer for equipment meeting existing minimum efficiency (or baseline) standards. The MSP includes a markup that converts the MPC to MSP. DOE obtained the baseline MSPs through industry supplied efficiency-level data supplemented with a design-option analysis. Refer to chapter 5 of the TSD for details. MSPs were developed for equipment classes consisting of eight possible equipment families, two possible condensing unit configurations (remote condensing and self-contained) and three possible rating temperatures. Not all covered equipment classes have significant actual shipments (see chapter 3 of the TSD). The LCC and PBP analyses have been carried out on a set of 15 equipment classes identified earlier.

DOE was not able to identify data on relative shipments for equipment classes by efficiency level, nor were equivalent data found by DOE in the literature or studies examined by DOE. For the equipment for which DOE performed a design option analysis as the basis for the engineering analysis, DOE designated the highest-energy-use equipment as Level 1, and selected this as the baseline equipment.

4. Increase in Selling Price

The standard-level MSP increase is the change in MSP associated with producing equipment at lower energy consumption levels associated with higher standards. DOE developed MSP increases associated with decreasing equipment energy consumption (or higher efficiency) levels through a combination of energy consumption level and design-option analyses. Refer to chapter 5 of the TSD for details. MSP increases as a function of equipment energy consumption were developed for each of the 15 equipment classes. Although the engineering analysis produced up to 11 energy consumption levels, depending on equipment type, only up to 8 selected energy consumption levels were used in the LCC and PBP analyses.

5. Markups

As discussed earlier, overall markups are based on one of three distribution channels, as well as whether the equipment is being purchased for the new construction or the replacement market. Based on input received by DOE, approximately 7 percent of equipment purchased by end-use customers is from wholesaler/distributors, 7 percent is from mechanical contractors, and 86 percent is through national accounts. DOE's understanding is that most equipment replacements are done through store remodels (as opposed to equipment failure), and that the distribution channels and installation process are similar for the new and replacement markets. Available information suggests that the fraction of equipment purchased through the distribution channels is the same for new and replacement equipment.

6. Installation Costs

DOE derived installation costs for commercial refrigeration equipment from data provided in RS Means Mechanical Cost Data.[23] RS Means provides estimates on the person-hours required to install commercial refrigeration equipment and the labor rates associated with the type of crew required to install the equipment. The installation cost was calculated by multiplying the number of person-hours by the corresponding labor rate. RS Means provides specific person-hour and labor rate data for the installation of so-called ''mercantile equipment'' (CSI Masterformat Number 11100), which includes commercial refrigeration equipment. Labor rates vary significantly from region to region of the

[23] R.S. Means Company, Inc. 2005. Mechanical Cost Data 28th Annual Edition. Kingston, Massachusetts.

country and the RS Means data provide the necessary information to capture this regional variability. RS Means provides cost indices that reflect the labor rates for 295 cities in the United States. Several cities in all 50 States and the District of Columbia are identified in the RS Means data. These cost indices were incorporated into the analysis to capture variation in installation cost, depending on the location of the customer. To arrive at an average index for each State, the city indices in each State were weighted by their population. Population weights for the year 2000 from the U.S. Census Bureau were used to calculate a weighted-average index for each State. Further, since data was not available to indicate how installation costs vary with the commercial refrigeration equipment type or its efficiency, DOE considered the installation costs to be fixed, independent of the cost or efficiency of the equipment. Even though the LCC spreadsheet allows for alternative scenarios, DOE did not find a basis for changing its basic premise for the ANOPR analysis.

As described earlier, the total installed cost is the sum of the equipment price and the installation cost. DOE derived the customer equipment price for any given standard level by multiplying the baseline MSP by the baseline markup and adding to it the product of the incremental MSP and the incremental markup. Because MSPs, markups, and the sales tax can all take on a variety of values depending on location, the resulting total installed cost for a particular standard level will not be a single-point value, but rather a distribution of values.

7. Energy Consumption

The electricity consumed by the commercial refrigeration equipment was based on the engineering analysis estimates as described previously in section II.C.1 after the whole-building simulations validation described in section II.E.

8. Electricity Prices

Electricity prices are necessary to convert the electric energy savings into energy cost savings. DOE received several comments on the development of electricity prices for its life cycle cost analysis. In its Framework Document, DOE suggested the use of average commercial electric prices. Comments received from Southern Company suggested that due to high load factors, the price of electricity for commercial refrigeration customers would be lower than the commercial average. (Southern Company No. 3.4 at p. 170) Pacific Gas & Electric Company (PG&E) commented it has a heavy ratcheting charge and is converting customers to time-of-use metering. The very high coincident demand for commercial refrigeration units could result in DOE underestimating the cost of electricity. (PG&E No. 3.4 at p. 171) PG&E also questioned how DOE would handle the time dependent valuation of energy. (PG&E No. 3.4 at p. 191) Southern Company responded that customers in its region were not exposed to marginal rates because it has cost-based rates. (Southern Company No. 3.4 at p. 193) Both groups supported the use of a sensitivity analysis by DOE in this area. In another area of discussion, ACEEE also commented that *AEO* electricity price forecasts might require revision. (Public Meeting Transcript No. 3.4 at p. 174; Joint Comment, No. 9 at p. 2) In the latter comment received, the Joint Comment also suggested that DOE adopt the load profile and rate schedule-(tariff-) based approach to electricity prices that DOE used in the commercial unitary air conditioner rulemaking. (Joint comment, No. 9 at p. 2)

DOE decided to use average electricity prices for four classes of commercial refrigeration equipment customers on a State-by-State basis. This approach will include the regional variations in energy prices and provide for estimated electricity prices suitable for the target market, yet reduce the analysis complexity. An effort to build tariff-based costs would have significantly increased the complexity and time needed for the analysis and it is not clear whether the results of the analysis will be improved. The development and use of State-average electricity prices by building type is described below and in more detail in chapter 8 of the TSD.

9. Electricity Price Trends

Because of the wide variation in electricity consumption patterns, wholesale costs, and retail rates across the country, it is important to consider regional differences in electricity prices. DOE used average effective commercial electricity prices at the State level from the Energy Information Administration (EIA) publication, *State Energy Consumption, Price, and Expenditure Estimates*. The latest available prices from this source are for the calendar year 2003. These were adjusted to represent 2006$ prices in two steps. First, national data on the reported average commercial electricity prices from the EIA website, *Average Retail Price of Electricity to Ultimate Customers by End-Use Sector*, were used to adjust the 2003 prices to 2005 prices. Next, because actual prices were not yet available for the entire year of 2006, the forecasted ratio between 2006 and 2005 national commercial retail electricity prices from AEO2006 was used to adjust the 2005 State-level prices to 2006$. Furthermore, DOE recognized that different kinds of businesses typically use electricity in different amounts at different times of the day, week, and year, and therefore face different effective prices. To make this adjustment, DOE used the 2003 *Commercial Building Energy Consumption Survey* (CBECS) data set to identify the average prices paid by the four kinds of businesses in this analysis compared with the average prices paid by all commercial customers. The ratios of prices paid by the four types of businesses to the national average commercial prices seen in the 2003 CBECS were used as multiplying factors to increase or decrease the average commercial 2006 price data previously developed as necessary for each of the four kinds of businesses. Once the electricity prices for the four types of businesses have been adjusted, the resulting prices are used in the analysis. To obtain a weighted-average national electricity price, the prices paid by each business in each State is weighted by the estimated sales of frozen and refrigerated food products, which also serves as the distribution of commercial refrigeration equipment units in each state, to each prototype building. The State/business type weights are the probabilities that a given commercial refrigeration equipment unit shipped will be operated with a given electricity price. For evaluation purposes, the prices and weights can be depicted as a cumulative probability distribution. The effective electricity prices range from approximately 5 cents per kWh to approximately 14 cents per kWh.

The electricity price trend provides the relative change in electricity prices for future years out to the year 2030. Estimating future electricity prices is difficult, especially considering that there are efforts in many States throughout the country to restructure the electricity supply industry. DOE applied the *AEO2006* reference case as the default scenario and extrapolated the trend in values from the years 2020 to 2030 of the forecast to establish prices in the years 2030 to 2042. This method of extrapolation is in line with methods currently being used by the EIA to forecast fuel prices for the Federal Energy Management Program (FEMP). DOE provides a sensitivity analysis of the life cycle costs saving and PBP results to future electricity price

scenarios using both the *AEO2006* high-growth and low-growth forecasts in chapter 8 of the TSD.

10. Repair Costs

The equipment repair cost is the cost to the consumer for replacing or repairing components in the commercial refrigeration equipment that have failed. DOE based the annualized repair cost for baseline efficiency equipment on the following expression:

RC = kx EQP/LIFE

Where:
RC = repair cost in dollars
k = fraction of equipment price (estimated to be 0.5)
EQP = baseline equipment price in dollars, and
LIFE = average lifetime of the equipment in years (estimated to be 10 years)

Because data were not available for how the repair costs vary with equipment efficiency, DOE held repair costs constant as the default scenario for the LCC and PBP analyses.

11. Maintenance Costs

DOE estimated the annualized maintenance costs for commercial refrigeration equipment from data in RS Means Facilities Maintenance & Repair Cost Data. RS Means provides estimates on the person-hours, labor rates and materials required to maintain commercial refrigeration equipment on a semi-annual basis. DOE used a single figure of $156/year (2006$) for preventative maintenance for all classes of commercial refrigeration equipment. Because data were not available for how the maintenance costs vary with equipment efficiency, DOE held maintenance costs constant even as equipment efficiency increased. Lamp replacement and other lighting maintenance activities are required maintenance for commercial refrigeration equipment, which DOE considered to be separate from preventative maintenance, and were not itemized in the preventative maintenance activities described by RS Means. Different commercial refrigeration equipment classes have different numbers of lamps (and ballasts) and many of the efficiency options considered in DOE's engineering analysis involved changes to the lighting configuration (lamp, ballast, or use of light emitting diode (LED) lighting systems). Because the lighting configurations can vary by energy consumption level, DOE estimated the relative maintenance costs for lighting by each case type for which a design-option analysis was performed. The methodology used was to estimate the frequency of failure and replacement of individual lighting components, to estimate the cost of replacement in the field, and to develop an annualized maintenance cost based on the sum of the total lighting maintenance costs (in 2006$) over the estimated life of the equipment divided by the estimated life of the equipment.

Costs for fluorescent lamp and ballast replacements were based on review of the original equipment manufacturer (OEM) costs used in the engineering analysis, RS Means estimates and cost data from Grainger, Inc., and previous studies. DOE estimated the costs of field replacement using labor cost hours from RS Means Electrical Cost Data for typical lamp or ballast replacement for other lighting fixtures, using a 150 percent multiplier on OEM costs for lamps and ballasts (provided in the engineering analysis spreadsheets) to reflect retail pricing.

Fluorescent lamp and ballast technology is mature, so DOE made no change in inflation-adjusted costs for these components. However, because of rapid technological improvement, costs for LED lamps are declining. DOE estimated that costs for replacing LED lighting fixtures (believed to occur 6 years after the effective date of the standard) are 140 percent of the OEM installed cost of LED lighting fixtures today (in 2006$). These LED fixture replacement costs represent a 30 percent reduction to the current costs for in-the-field replacement. DOE recognizes that both life and cost estimates for LED replacement are speculative and believes it has taken a conservative approach to estimating price reduction over time for this technology. Overhead and profit factors from RS Means were not considered.

12. Lifetime

DOE defines lifetime as the age when a commercial refrigeration equipment unit is retired from service. DOE based equipment lifetime on discussions with industry experts and other stakeholders, and concluded that a typical lifetime of 10 years is appropriate for commercial refrigeration equipment. Commercial refrigeration equipment units are typically replaced when stores are renovated—about every 10 years—which is before the commercial refrigeration equipment units would have physically worn out. Because of this, there is a used-equipment market for commercial refrigeration equipment. DOE understands, however, that the salvage value to the original purchaser is very low and thus this has not been taken into account in the LCC. Chapter 3 of the TSD, Market and Technology Assessment, contains a discussion of equipment life data and the sources of such data.

DOE understands that the actual lifetime of a commercial refrigeration equipment unit in the field might vary from the estimated average 10-year lifetime, to some degree, by equipment class, variations associated with components and manufacturing methods, as well as store type where the unit is placed in service. Nevertheless, the 10-year lifetime estimate is an important benchmark for testing to a standard level of performance, making comparisons of different units for purchasing decisions, and making a reasonable quantitative analysis of the impacts that could result from different standard levels of efficiency. Therefore, DOE specifically requests feedback on the lifetime of commercial refrigeration equipment and whether, in fact, this is a significant issue. Where the lifetime data indicate a substantial variation from the assumed 10-year lifetime, DOE will perform a sensitivity analysis of this variable in the LCC and NES analyses and may adjust the best estimate of equipment lifetime as well. In particular, DOE seeks comment on how long these units are typically maintained in service, on average, either for all equipment covered under this rulemaking or by equipment class and store type. Also, DOE seeks comment on the existence of used-equipment markets for commercial refrigeration equipment, and the importance of considering such markets in its analysis. This is identified as Issue 8 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

13. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE received comments on the development of discount rates at the Framework Public Meeting. FPA suggested that DOE's analysis should consider discount rates for convenience stores separately from other food stores, but considered superstores in the same general market as the traditional grocery store. (FPA No. 3.4 at p. 179) ARI suggested that DOE consider developing discount rates explicitly for supercenters. (ARI No. 3.4 at p. 179)

DOE derived the discount rates for the LCC analysis by estimating the cost of capital for companies that purchase commercial refrigeration equipment. The cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is

the weighted average of the cost to the company of equity and debt financing. DOE estimated the cost of equity financing by using the Capital Asset Pricing Model (CAPM). The CAPM, among the most widely used models to estimate the cost of equity financing, considers the cost of equity to be proportional to the amount of systematic risk associated with a company. The cost of equity financing tends to be high when a company faces a large degree of systematic risk and it tends to be low when the company faces a small degree of systematic risk. To estimate the weighted average cost of capital (WACC) (including the weighted average cost of debt and equity financing) of commercial refrigeration equipment purchasers, DOE used a sample of companies involved in groceries and multi-line retailing drawn from a database of 7,319 U.S. companies on the Damodaran Online website. The WACC approach taken for the determination of the discount rates takes into account the current tax status of the individual firms on an overall corporate basis. The marginal effects of increased costs and thus depreciation due to higher cost equipment on the overall tax status was not evaluated.

DOE used a sample of 23 companies to represent the purchasers of commercial refrigeration equipment. For each company in the sample, DOE derived the cost of debt, percent debt financing, and systematic company risk from information provided at the Damodaran Online Web site. It estimated the cost of debt financing from the long-term government bond rate (4.39 percent) and the standard deviation of the stock price. The cost of capital for small, independent grocers, convenience store franchisees, gasoline station owner-operators, and others with more limited access to capital is more difficult to determine. Individual credit-worthiness varies considerably, and some franchisees have access to the financial resources of the franchising corporation. However, personal contacts with a sample of commercial bankers yielded an estimate for the small operator weighted cost of capital of about 200 to 300 basis points (2 percent to 3 percent) above the rates for large grocery chains. A central value equal to the weighted average of large grocery chains, plus 2.5 percent, was used for small operators. Deducting expected inflation from the cost of capital provides the estimates of the real discount rate by ownership category. The average after-tax discount rate, weighted by the percentage shares of total purchases of commercial refrigeration equipment, is 4.76 percent for large grocery stores, 5.66 percent for multi-line retailers, and 7.26 percent for convenience stores and convenience stores associated with gasoline stations.

14. Payback Period

The PBP is the amount of time it takes the customer to recover the incrementally higher purchase cost of more energy efficient equipment as a result of lower operating costs. Numerically, the PBP is the ratio of the increase in purchase cost (i.e., from a less efficient design to a more efficient design) to the decrease in annual operating expenditures. This type of calculation is known as a ''simple'' PBP, because it does not take into account changes in operating cost over time or the time value of money, that is, the calculation is done at an effective discount rate of zero percent.

The equation for PBP is:

$$PBP = \Delta IC / \Delta OC$$

Where:

PBP = payback period in years,

ΔIC = difference in the total installed cost between the more efficient standard level equipment (energy consumption levels 2, 3, etc.) and the baseline (energy consumption level 1) equipment, and

ΔOC = difference in annual operating costs.

PBPs are expressed in years. PBPs greater than the life of the equipment means that the increased total installed cost of the more efficient equipment is not recovered in reduced operating costs for the more efficient equipment.

The data inputs to PBP analysis are the total installed cost of the equipment to the customer for each energy consumption level and the annual (first year) operating costs for each energy consumption level. The inputs to the total installed cost are the equipment price and the installation cost. The inputs to the operating costs are the annual energy cost, the annual repair cost, and the annual maintenance cost. The PBP uses the same inputs as the LCC analysis, except that electricity price trends and discount rates are not required. Since the PBP is a ''simple'' (undiscounted) payback, the required electricity cost is only for the year in which a new energy conservation standard is to take effect—in this case, the year 2012. The electricity price used in the PBP calculation of electricity cost was the price projected for 2012, expressed in 2006$, but not discounted to 2006. Discount rates are not used in the PBP calculation.

15. Life-Cycle Cost and Payback Period Results

This section presents the LCC and PBP results for the energy consumption levels analyzed. Because the values of most inputs to the LCC analysis are uncertain, DOE represents them as a distribution of values rather than a single-point value. Thus, DOE derived the LCC results also as a distribution of values.

DOE provides a summary of the change in LCC from the baseline by percentile groupings of the distribution of results for each of the equipment classes in chapter 8 and appendix G of the TSD. A sample for one equipment class (VOP.RC.M) is shown in Table II.13. Table II.13 also shows the mean LCC savings and the percent of units with LCC savings at each of the efficiency levels.

TABLE II.13.—DISTRIBUTION OF LIFE-CYCLE COST SAVINGS FROM A BASELINE LEVEL (LEVEL 1) BY EFFICIENCY LEVEL FOR THE VERTICAL OPEN, REMOTE CONDENSING, MEDIUM TEMPERATURE (VOP.RC.M) EQUIPMENT CLASS

Efficiency level	Decrease in LCC from baseline (Level 1) shown by percentiles of the distribution of results (2006$)											Mean savings	Percent of units with LCC savings
	0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%		
Level 2	$145	$238	$301	$340	$361	$398	$425	$509	$711	$878	$1,285	$485	100
Level 3	317	471	569	634	665	730	775	911	1,238	1,512	2,169	871	100
Level 4	473	686	822	911	952	1,044	1,106	1,294	1,748	2,127	3,036	1,239	100
Level 5	717	1,048	1,260	1,399	1,464	1,606	1,703	1,995	2,701	3,290	4,704	1,910	100
Level 6	797	1,186	1,435	1,600	1,681	1,845	1,958	2,303	3,135	3,828	5,497	2,203	100
Level 7	842	1,288	1,576	1,769	1,863	2,047	2,177	2,574	3,533	4,330	6,255	2,459	100
Level 8	835	1,349	1,694	1,911	2,021	2,230	2,379	2,839	3,950	4,871	7,105	2,707	100

As an example of how to interpret the information in Table II.13, here is a review of the results for the VOP.RC.M equipment class. The efficiency Level 4 in Table II.13 (row 3) shows that the change in LCC (zero percentile column) is a minimum saving of $473. For 90 percent of the cases studied (90th percentile), the change in LCC is a reduction of $2,127 or less. The largest reduction in LCC is $3,036 (100th percentile). The mean change in LCC is a net savings of $1,239. The last column shows that 100 percent of the sample have LCC savings (*i.e.*, reductions in LCC greater than zero) when compared to the baseline efficiency level.

Table II.14 provides the national average life cycle cost savings calculated for each efficiency level when compared to the baseline efficiency (Level 1) for all equipment classes. Review of Table II.14 shows that every efficiency level analyzed generated national average life-cycle cost savings compared with the baseline efficiency level. It should be pointed out that 100 percent of the units analyzed have positive LCC savings.

TABLE II.14.—AVERAGE LIFE-CYCLE COST SAVINGS FROM A BASELINE LEVEL (LEVEL 1) BY EFFICIENCY LEVEL AND EQUIPMENT CLASS

Equipment class	National average LCC savings (2006$)							
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
VOP.RC.M	0	485	871	1239	1910	2203	2459	2707
VOP.RC.L	0	1209	2604	3512	3470	3443	NA	NA
VOP.SC.M	0	759	883	1006	1265	1328	1487	1482
VCT.RC.M	0	1046	1309	1596	1750	2362	1925	NA
VCT.RC.L	0	1179	1650	2105	2949	3333	3684	4272
VCT.SC.I	0	1371	2581	3020	3285	5313	5613	5398
VCS.SC.I	0	398	961	1383	1451	1559	1619	1609
SVO.RC.M	0	227	500	758	1000	1223	1458	NA
SVO.SC.M	0	552	588	644	824	841	1200	1186
SOC.RC.M	0	835	1779	1718	1901	1868	1540	NA
HZO.RC.M	0	208	435	490	NA	NA	NA	NA
HZO.RC.L	0	234	591	935	1267	1459	NA	NA
HZO.SC.M	0	66	286	354	381	445	466	543
HZO.SC.L	0	68	555	1071	1136	1155	1448	1457
HCT.SC.I	0	250	315	731	809	835	NA	NA

DOE specifically seeks feedback on the validity of selecting Level 1 as the baseline in the LCC analysis. Since higher efficiency equipment are known to be sold into the market, the LCC savings estimates presented above represent overestimates with respect to the life-cycle savings anticipated for base case efficiencies higher than Level 1. DOE seeks input on whether a distribution of efficiencies should be used for the LCC analysis baseline (instead of a single efficiency level), and if so, what data could be used to populate this distribution. This is identified as Issue 9 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

Table II.15 summarizes the PBP results for each of the efficiency levels for the VOP.RC.M equipment class. Results are summarized for PBP by percentile groupings of the distribution of results. The chart also shows the mean PBP for each efficiency level.

TABLE II.15.—SUMMARY OF PAYBACK PERIOD RESULTS FOR THE VERTICAL OPEN, REMOTE CONDENSING, MEDIUM TEMPERATURE (VOP.RC.M) EQUIPMENT CLASS

Efficiency level	Payback period in years shown by percentiles of the distribution of results											Mean PBP
	0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	
Level 2	1.4	2.1	2.3	2.8	3.1	3.3	3.5	3.6	3.8	4.1	4.7	3.2
Level 3	1.2	1.8	2.0	2.4	2.7	2.9	3.0	3.1	3.3	3.6	4.1	2.8
Level 4	1.1	1.8	1.9	2.3	2.5	2.7	2.9	3.0	3.2	3.4	3.9	2.6
Level 5	1.2	1.8	1.9	2.3	2.6	2.8	2.9	3.0	3.2	3.5	4.0	2.7
Level 6	1.2	1.8	2.0	2.4	2.7	2.9	3.0	3.1	3.3	3.6	4.1	2.8
Level 7	1.3	1.9	2.1	2.5	2.8	3.0	3.2	3.3	3.5	3.8	4.3	2.9
Level 8	1.4	2.1	2.2	2.7	3.0	3.2	3.4	3.5	3.8	4.0	4.6	3.1

Table II.16 provides the national average payback calculated for each efficiency level when compared to the baseline efficiency level (Level 1) for all equipment classes. Table II.16 also shows the percentage of units reporting PBPs of less than three years. The results of the analysis shows that purchases of higher efficiency levels resulted in PBPs (with respect to purchase of baseline efficiency units) of less than four years for any of the efficiency levels considered for any equipment class.

TABLE II.16.—NATIONAL AVERAGE PAYBACK PERIODS BY EFFICIENCY LEVEL AND EQUIPMENT CLASS

Equipment class	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
	National Average Payback Period (Years)							
VOP.RC.M	NA	3.2	2.8	2.6	2.7	2.8	2.9	3.1
VOP.RC.L	NA	0.5	0.8	1.1	1.2	2.0	NA	NA
VOP.SC.M	NA	0.7	0.7	0.8	1.1	1.4	2.0	3.1
VCT.RC.M	NA	0.3	0.4	0.7	0.9	2.7	3.9	NA
VCT.RC.L	NA	1.4	1.6	1.8	2.1	2.2	2.3	2.7
VCT.SC.I	NA	0.3	0.4	0.5	0.6	1.3	1.5	2.1
VCS.SC.I	NA	0.3	0.6	0.6	0.7	0.7	0.8	1.2
SVO.RC.M	NA	3.2	2.8	2.7	2.8	2.9	3.0	NA
SVO.SC.M	NA	0.8	0.8	0.9	1.1	1.3	1.8	2.4
SOC.RC.M	NA	0.6	1.0	1.2	1.4	3.1	3.9	NA
HZO.RC.M	NA	0.8	1.2	1.5	NA	NA	NA	NA
HZO.RC.L	NA	1.2	1.6	1.7	1.8	1.9	NA	NA
HZO.SC.M	NA	0.7	1.0	1.1	1.1	1.2	1.4	1.8
HZO.SC.L	NA	0.6	0.6	0.8	0.8	0.9	1.3	1.3
HCT.SC.I	NA	0.7	0.7	1.3	1.4	1.4	NA	NA
	Percent of Units With Payback Period of Less Than 3 Years							
VOP.RC.M	0	38	58	74	64	58	50	40
VOP.RC.L	0	100	100	100	100	100	NA	NA
VOP.SC.M	0	100	100	100	100	100	98	41
VCT.RC.M	0	100	100	100	100	60	24	NA
VCT.RC.L	0	100	100	100	98	94	88	64
VCT.SC.I	0	100	100	100	100	100	100	98
VCS.SC.I	0	100	100	100	100	100	100	100
SVO.RC.M	0	38	57	60	58	50	42	NA
SVO.SC.M	0	100	100	100	100	100	100	87
SOC.RC.M	0	100	100	100	100	40	25	NA
HZO.RC.M	0	100	100	100	NA	NA	NA	NA
HZO.RC.L	0	100	100	100	100	100	NA	NA
HZO.SC.M	0	100	100	100	100	100	100	100
HZO.SC.L	0	100	100	100	100	100	100	100
HCT.SC.I	0	100	100	100	100	100	NA	NA

DOE emphasizes that the PBPs shown in Table II.16 as well as the rebuttable PBPs shown in Table II.11 take into account the cumulative impact of all technologies used in a design option to reach a specific energy efficiency level when compared to the baseline equipment. Shorter PBP resulting from the most cost-effective technologies can offset longer PBP from less cost-effective technologies to yield a low overall PBP for the design option. For this reason, the choice of baseline efficiency level affects the PBP for higher efficiency levels. The LCC spreadsheet allows the user to select alternate baseline efficiency levels for each equipment class and calculate the LCC savings and PBP for all higher levels compared to the selected baseline.

Table II.17 illustrates the impact of the selection of baseline level on the VCT.RC.M equipment class for the supermarket business type and using national average energy prices. Note that the values shown in Table II.17 differ from the values shown in Table II.14 since the values in Table II.17 do not represent a national average developed through the weighting of all business types and fuel costs. Nevertheless, they serve to illustrate the impact of the selected baseline efficiency level on LCC savings and PBP. The LCC savings and PBP are shown for four alternate baseline efficiency levels: Level 1, Level 2, Level 3 and Level 4. As the baseline efficiency is moved from Level 1 to Level 4, the life-cycle-cost savings are correspondingly reduced for each of the higher efficiency levels. The efficiency level with the maximum life-cycle-cost savings (level 6) is, however, the same regardless of choice of baseline level. Selection of the baseline level at level 6 would show no life-cycle-cost savings for higher levels.

The calculated PBP also changes with selection of alternate baseline efficiency levels. As the baseline efficiency is moved from Level 1 to Level 4, the PBP for each of the higher efficiency levels, relative to the selected baseline, increases, with the Level 7 PBP moving from 3.9 years—using Level 1 as the baseline efficiency level—to 6.2 years using Level 4 as the baseline efficiency level.

TABLE II.17.—SENSITIVITY OF AVERAGE LIFE-CYCLE COST SAVINGS AND PAYBACK PERIOD TO SELECTION OF BASELINE EFFICIENCY LEVEL FOR THE VERTICAL TRANSPARENT DOOR, REMOTE CONDENSING, MEDIUM TEMPERATURE (VCT.RC.M) EQUIPMENT CLASS

Baseline level	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
	Average LCC Savings (2006$)							
Level 1	0	983	1232	1503	1646	2175	1709	NA
Level 2	NA	0	249	520	664	1193	726	NA

TABLE II.17.—SENSITIVITY OF AVERAGE LIFE-CYCLE COST SAVINGS AND PAYBACK PERIOD TO SELECTION OF BASELINE EFFICIENCY LEVEL FOR THE VERTICAL TRANSPARENT DOOR, REMOTE CONDENSING, MEDIUM TEMPERATURE (VCT.RC.M) EQUIPMENT CLASS—Continued

Baseline level	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
Level 3	NA	NA	0	271	414	944	477	NA
Level 4	NA	NA	NA	0	144	673	206	NA
	Average Payback Period (Years)							
Level 1	NA	0.3	0.4	0.7	0.9	2.7	3.9	NA
Level 2	NA	NA	0.8	1.2	1.5	3.7	5.2	NA
Level 3	NA	NA	NA	1.6	1.9	4.0	5.6	NA
Level 4	NA	NA	NA	NA	2.4	4.5	6.2	NA

DOE provided a sensitivity analysis of the life-cycle-cost savings as well as the PBP to the choice of baseline efficiency level in Chapter 8 of the TSD. DOE presents these findings to facilitate stakeholder review of the LCC and PBP analyses. DOE seeks information and comments relevant to the assumptions, methodology, and results of this analysis. See chapter 8 of the TSD for additional detail on the LCC and PBP analyses.

H. Shipments Analysis

This section presents DOE's shipments analysis, which is an input to the NIA (section II.I) and MIA (section II.K). DOE will undertake the MIA after the ANOPR is published, and will report the results of the MIA in the NOPR.

The results of the shipments analysis are driven primarily by historical shipments data for the 15 equipment classes of commercial refrigeration equipment under consideration. The model estimates that, in each year, the existing stock of commercial refrigeration equipment either ages by one year or is worn out and replaced. In addition, new equipment can be shipped into new commercial floor space, and old equipment can be removed through demolitions. DOE chose to analyze all efficiency levels analyzed in the LCC in the NIA. Because DOE is assessing impacts presuming each level analyzed represents a possible standard level, DOE refers to the efficiency levels analyzed in the NIA as ''candidate standard levels'' (CSLs). Shipments forecasts were determined for all of the CSLs analyzed in the NIA and NPV analysis.

The shipments analysis is a description of commercial refrigeration equipment stock flows as a function of year and age. While there are 15 equipment classes, the shipment analysis treats each category of equipment independently and without coupling between them. DOE formulated the equations used in the analysis as updates of the distribution of stock in any given year, as a function of age, to the following year using the following steps: (1) DOE first converted the equipment units to linear feet of display space cooled by those units by taking the national statistics on sales of equipment and calculating equipment capacity per linear foot of retail grocery building display space; (2) DOE used this calculation of existing stock, and the average age of the equipment, as a basis for calculating replacement sales; (3) DOE subtracted replacement sales from historical total sales statistics to calculate new sales of commercial refrigeration equipment; (4) DOE forecast new sales as a function of new construction of retail food sales space; (5) DOE recorded sales of new and replacement equipment by the year sold, and depreciated each annual vintage over the estimated life of the equipment; and (6) DOE allocated sales in each year to the 15 equipment classes in proportion to their relative historical sales.

Table II.18 shows the results of the shipments analysis for the 15 commercial refrigeration equipment classes for the base case (baseline efficiency level or Level 1). As equipment purchase price increases with higher efficiency levels, a drop in shipments could be expected relative to the base case. However, as annual energy consumption is reduced, there is potentially a countering effect of increased equipment sales due to more frequent installations and use of commercial refrigeration equipment by retailers (a potential rebound effect). Although there is a provision in the spreadsheet for a change in projected shipments in response to efficiency level increases (or energy consumption level decreases), DOE has no information with which to calibrate such a relationship. Therefore, for the ANOPR analysis, DOE presumed that the shipments do not change in response to the changing CSLs.

TABLE II.18.—FORECASTED SHIPMENTS FOR COMMERCIAL REFRIGERATION EQUIPMENT, 2012–2042, LEVEL 1 (BASE CASE)

Equipment class	Thousands of linear feet shipped by year and equipment class								
	2012	2015	2020	2025	2030	2035	2040	2042	Cumulative
VOP.RC.M	423	446	490	538	591	649	714	742	17574
VOP.RC.L*	0	0	0	0	0	0	0	0	0
VOP.SC.M	28	30	33	36	40	44	48	50	1182
VCT.RC.M	30	32	35	38	42	46	51	53	1255
VCT.RC.L	420	443	487	535	587	645	709	737	17456
VCT.SC.I	10	11	12	13	14	16	17	18	430
VCS.SC.I	3	3	3	3	4	4	4	5	107
SVO.RC.M	323	340	374	411	451	495	545	566	13405
SVO.SC.M	43	45	49	54	59	65	72	75	1769
SOC.RC.M	81	86	94	104	114	125	137	143	3379

TABLE II.18.—FORECASTED SHIPMENTS FOR COMMERCIAL REFRIGERATION EQUIPMENT, 2012–2042, LEVEL 1 (BASE CASE)—Continued

Equipment class	Thousands of linear feet shipped by year and equipment class								
	2012	2015	2020	2025	2030	2035	2040	2042	Cumulative
HZO.RC.M	50	52	57	63	69	76	84	87	2060
HZO.RC.L	156	164	181	198	218	239	263	273	6476
HZO.SC.M	4	4	4	5	5	6	6	6	152
HZO.SC.L	8	8	9	10	11	12	13	13	315
HCT.SC.I	34	35	39	43	47	52	57	59	1397

* Estimated shipments of this equipment class were zero. The industry requested that this equipment class be included in the rulemaking.

Additional details on the shipments analysis can be found in chapter 9 of the TSD.

I. National Impact Analysis

The NIA assesses future NES and the national economic impacts of CSLs. The analysis measures economic impacts using the NPV metric (*i.e.*, future amounts discounted to the present) of total commercial customer costs and savings expected to result from new standards at specific efficiency levels. For a given CSL, DOE calculated the NPV, as well as the NES, as the difference between a base case forecast and the standards case. Additional details on the national impacts analysis for commercial refrigeration equipment are found in chapter 10 of the TSD.

DOE determined national annual energy consumption as the product of the annual energy consumption per commercial refrigeration equipment unit and the number of commercial refrigeration equipment units of each vintage. This approach accounts for differences in unit energy consumption from year to year. Cumulative energy savings are the sum of the annual NES determined over the period of analysis. DOE calculated net economic savings each year as the difference between total operating cost savings and increases in total installed costs. Cumulative savings are the sum of the annual NPV.

1. Approach

Over time, in the standards case, more efficient equipment gradually replaces less efficient equipment. This affects the calculation of both the NES and NPV, both of which are a function of the total number of units in use and their efficiencies, and thus are dependent upon annual shipments and the lifetime of equipment. Both calculations start by using the estimate of shipments and the quantity of units in service, which are derived from the shipments model. With regard to the estimation of NES, because more efficient commercial refrigeration equipment units gradually replace less efficient ones, the energy per unit of capacity used by the commercial refrigeration equipment in service gradually decreases in the standards case relative to the base case. To estimate the total energy savings for each candidate efficiency level, DOE first calculated the national site energy consumption (site energy is the energy directly consumed by the units in operation) for commercial refrigeration equipment each year, beginning with the expected effective date of the standards (2012). This calculation was done for the base case forecast and the standards case forecast. Second, DOE determined the annual site energy savings, which is the difference between site energy consumption in the base case and in the standards case. Third, DOE converted the annual site energy savings into the annual amount of energy saved at the source of electricity generation (the source energy). Finally, DOE summed the annual source energy savings from 2012 to 2042 to calculate the total NES for that period. DOE performed these calculations for each CSL.

2. Base Case and Standards Case Forecasted Efficiencies

A key component of DOE's estimates of NES and NPV are the energy efficiencies for shipped equipment that it forecasts over time for the base case (without new standards) and for each of the standards cases. The forecasted efficiencies represent the distribution of energy efficiency of the equipment under consideration that is shipped over the forecast period (*i.e.*, from the assumed effective date of a new standard to 30 years after the standard becomes effective). Because key inputs to the calculation of the NES and NPV are dependent on the estimated efficiencies, they are of great importance to the analysis. In the case of the NES, the per-unit annual energy consumption is a direct function of efficiency. With regard to the NPV, two inputs, the per-unit total installed cost and the per-unit annual operating cost, both depend on efficiency. The per-unit total installed cost is a direct function of efficiency while the per-unit annual operating cost, because it is a direct function of the per-unit energy consumption, is indirectly dependent on equipment efficiency.

The annual per-unit energy consumption is the site energy consumed by a commercial refrigeration equipment unit per year. The annual energy consumption is directly tied to the efficiency of the unit. Thus, knowing the efficiency of a commercial refrigeration equipment unit determines the corresponding annual energy consumption. DOE determined annual forecasted market shares by efficiency level that, in turn, enabled a determination of shipment-weighted annual energy consumption values.

Because no data were available on market shares broken down by efficiency level, DOE determined market shares by efficiency level for commercial refrigeration equipment based on its own analysis. First, DOE converted 2005 shipment information by equipment class into market shares by equipment class, and then adapted a cost-based method similar to that used in the NEMS to estimate market shares for each equipment class by efficiency level. This cost-based method relied on cost data developed in the engineering and life-cycle cost analyses as well as economic purchase criteria data taken directly from NEMS. Then, from those market shares and projections of shipments by equipment class, DOE developed the future efficiency scenarios for a base case (*i.e.*, without new standards) and for various standards cases (*i.e.*, with new standards). DOE did not have data to calibrate this approach to actual market shipments by efficiency level. Therefore, DOE specifically seeks feedback on this economic-based approach to estimating market shares. This is identified as Issue 10 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

DOE developed base case efficiency forecasts based on the estimated market

shares by equipment class and efficiency level. Because there are no historical data to indicate how equipment efficiencies or relative equipment class preferences have changed over time, DOE predicted that forecasted market shares would remain frozen at the 2012 efficiency level until the end of the forecast period (30 years after the effective date—the year 2042). Realizing that this prediction very likely has the effect of causing the estimates of savings associated with these efficiency standards to be overstated, DOE seeks comment on this prediction and the potential significance of the over-estimate of savings. In particular, DOE requests data that would enable it to better characterize the likely increases in efficiency that would occur over the 30-year modeling period in absence of this rule.

For its determination of standards case forecasted efficiencies, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that standards become effective (*i.e.*, 2012). Information available to DOE suggests that equipment shipments with efficiencies in the base case that did not meet the standard level under consideration would ''roll-up'' to meet the new standard level. Also, available information suggests that all equipment efficiencies in the base case that were above the standard level under consideration would not be affected.

DOE specifically seeks feedback on its basis for the forecasted base case and standards case efficiencies and its prediction on how standards impact efficiency distributions in the year that standards take effect. This is identified as Issue 11 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR. In addition, DOE specifically seeks feedback on whether higher standard levels in specific equipment classes are likely to cause commercial refrigeration equipment customers to shift to using other, less-efficient equipment classes for displaying merchandise. This is identified as Issue 12 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

3. National Impact Analysis Inputs

The difference in shipments by equipment efficiency level between the base and standards cases was the basis for determining the reduction in per-unit annual energy consumption that could result from new standards. The commercial refrigeration equipment stock in a given year is the total linear footage of commercial refrigeration equipment shipped from earlier years that survive in the given year. The NES spreadsheet model keeps track of the total linear footage of commercial refrigeration equipment units shipped each year. For purposes of the ANOPR NES and NPV analyses, DOE estimated that approximately 10 percent of the existing commercial refrigeration equipment units are retired each year (based on a 10-year average lifetime) and that for units shipped in 2042, any units still remaining at the end of 2052 are replaced.

The site-to-source conversion factor is the multiplicative factor used for converting site energy consumption, expressed in kWh, into primary or source energy consumption, expressed in quads (quadrillion Btu). DOE used annual site-to-source conversion factors based on U.S. average values for the commercial sector, calculated from *AEO2006*, Table A5. The average conversion factors vary over time, due to projected changes in electricity generation sources (*i.e.*, the power plant types projected to provide electricity to the country).

To estimate NPV, DOE calculated the net impact each year as the difference between total operating cost savings (including electricity, repair, and maintenance cost savings) and increases in total installed costs (which consists of MSP, sales taxes, distribution channel markups, and installation cost). DOE calculated the NPV of each CSL over the life of the equipment, using three steps. First, DOE determined the difference between the equipment costs under the CSL case and the base case, to get the net equipment cost increase resulting from the CSL. Second, DOE determined the difference between the base case operating costs and the CSL operating costs, to get the net operating cost savings from the CSL. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase to get the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) for commercial refrigeration equipment purchased on or after 2012 to the year 2007, and summed the discounted values to provide the NPV of a CSL. An NPV greater than zero shows net savings (*i.e.*, the CSL would reduce overall customer expenditures relative to the base case in present value terms). An NPV that is less than zero indicates that the candidate energy standard level would result in a net increase in customer expenditures in present value terms.

Table II.19 summarizes the NES and NPV inputs to the NES spreadsheet model. For each input a brief description of the data source is given.

TABLE II.19.—NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUTS

Input data	Description
Shipments	Annual shipments from shipments model (see chapter 9 Shipments Analysis).
Effective Date of Standard	2012.
Base-Case Efficiencies	Distribution of base-case shipments by efficiency level.
Standards-Case Efficiencies	Distribution of shipments by efficiency level for each standards case. Standards case annual market shares by efficiency level remain constant over time for the base-case and each standards case.
Annual Energy Consumption per Linear Foot.	Annual weighted-average values are a function of energy consumption level, which are established in the Engineering Analysis (see chapter 5 of the TSD). Converted to a per linear foot basis.
Total Installed Cost per Linear Foot	Annual weighted-average values are a function of energy consumption level (see chapter 8 of the TSD). Converted to a per linear foot basis.
Repair Cost per Linear Foot	Annual weighted-average values are constant with energy consumption level (see chapter 8 of the TSD). Converted to a per linear foot basis.
Maintenance Cost per Linear Foot	Annual weighted-average value equals $156 (see chapter 8 of the TSD), plus lighting maintenance cost. Converted to a per linear foot basis.
Escalation of Electricity Prices	EIA *AEO2006* forecasts (to 2030) and extrapolation for beyond 2030 (see chapter 8 of the TSD).
Electricity Site-to-Source Conversion.	Conversion varies yearly and is generated by DOE/EIA's NEMS* program (a time series conversion factor; includes electric generation, transmission, and distribution losses).
Discount Rate	3 and 7 percent real.
Present Year	Future costs are discounted to year 2007.

TABLE II.19.—NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUTS—Continued

Input data	Description
Rebound Effect	A rebound effect (due to changes in shipments resulting from standards) was not considered in the National Impact Analysis.

* Chapter 13 (utility impact analysis) and chapter 14 (environmental assessment) provide more detail on NEMS.

4. National Impact Analysis Results

Below are the NES results for each efficiency level considered for the 15 equipment classes of commercial refrigeration equipment analyzed. Results are cumulative to 2042 and are shown as primary energy savings in quads. Inputs to the NES spreadsheet model are based on weighted-average values, yielding results that are discrete point values, rather than a distribution of values as in the LCC analysis.

Table II.20 shows the NES results for the CSLs analyzed for each equipment class of commercial refrigeration equipment. DOE based all the results on electricity price forecasts from the *AEO2006* reference case. The range of overall cumulative energy impacts for establishing standards above the baseline level (Level 1) for all equipment classes is from 0.12 quad for a standard at Level 2 to 1.73 quads with all equipment at the highest efficiency level.

TABLE II.20.—CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL REFRIGERATION EQUIPMENT (2012–2042) (QUADS)

Equipment class	National energy savings (quads*,**) by standard level						
	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
VOP.RC.M	0.04	0.07	0.13	0.26	0.33	0.41	0.52
VOP.RC.L†	0.00	0.00	0.00	0.00	0.00	0.00	NA
VOP.SC.M	0.00	0.01	0.01	0.02	0.02	0.04	0.06
VCT.RC.M	0.00	0.00	0.01	0.01	0.03	0.03	NA
VCT.RC.L	0.04	0.08	0.13	0.27	0.36	0.45	0.66
VCT.SC.I	0.00	0.00	0.01	0.01	0.02	0.02	0.03
VCS.SC.I	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SVO.RC.M	0.01	0.03	0.06	0.10	0.14	0.20	NA
SVO.SC.M	0.00	0.01	0.01	0.01	0.02	0.04	0.05
SOC.RC.M	0.01	0.02	0.02	0.03	0.06	0.06	NA
HZO.RC.M	0.00	0.00	0.01	NA	NA	NA	NA
HZO.RC.L	0.00	0.01	0.03	0.05	0.07	NA	NA
HZO.SC.M	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HZO.SC.L	0.00	0.00	0.00	0.00	0.00	0.01	0.01
HCT.SC.I	0.00	0.00	0.02	0.02	0.02	NA	NA

* A value of NA means that no energy savings were calculated for this level of efficiency. For example, a vertical open, remote condensing, low temperature unit (VOP.RC.L) had only six possible energy consumption levels and, therefore, only six possible standards. Level 1 = Baseline, so there would be no savings at Level 1 and it has been omitted from the table.

** 0.00 indicates savings are less than 0.005 quadrillion Btu.

† The VOP.RC.L equipment class had no projected shipments. It was included in the analysis at the request of the industry.

Below are the NPV results for the CSLs considered for the 15 equipment classes of commercial refrigeration equipment. Results are cumulative and are shown as the discounted value of these savings in dollar terms. The present value of increased total installed costs is the total installed cost increase (*i.e.*, the difference between the standards case and base case), discounted to 2007, and summed over the time period in which DOE evaluates the impact of standards (*i.e.*, from the effective date of standards, 2012, to the year 2052 when the last commercial refrigeration equipment unit is retired).

Savings are decreases in operating costs (including electricity, repair, and maintenance) associated with the higher energy efficiency of commercial refrigeration equipment units purchased in the standards case compared to the base case. Total operating cost savings are the savings per unit multiplied by the number of units of each vintage (*i.e.*, the year of manufacture) surviving in a particular year. Commercial refrigeration equipment consumes energy and must be maintained over its entire lifetime. For units purchased in 2042, the operating cost includes energy consumed and maintenance and repair costs incurred until the last unit is retired from service in 2052.

Table II.21 shows the NPV results for the standard levels considered for commercial refrigeration equipment based upon a seven percent discount rate. DOE based all results on electricity price forecasts from the *AEO2006* reference case. Detailed results showing the breakdown of the NPV into national equipment costs and national operating costs are provided in appendix I of the TSD. At a seven percent discount rate, the range of overall national NPV benefits calculated for different CSL scenarios above the baseline was from $120 million to $1.4 billion. The present value of the installed cost increase varied from a low of $70 million to a high of $1.82 billion. The present value of the operating cost savings for higher standards varied from a low of $210 million to a high of $3.14 billion.

TABLE II.21.—CUMULATIVE NET PRESENT VALUE RESULTS BASED ON A SEVEN PERCENT DISCOUNT RATE (BILLION 2006$)

Equipment class	Standard level (billion 2006$) * **						
	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
VOP.RC.M	0.03	0.07	0.12	0.25	0.31	0.36	0.40
VOP.RC.L†	0.00	0.00	0.00	0.00	0.00	NA	NA
VOP.SC.M	0.01	0.01	0.01	0.02	0.02	0.03	0.02
VCT.RC.M	0.00	0.01	0.01	0.01	0.02	0.00	NA
VCT.RC.L	0.06	0.10	0.16	0.30	0.37	0.44	0.55
VCT.SC.I	0.00	0.01	0.01	0.01	0.02	0.03	0.02
VCS.SC.I	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SVO.RC.M	0.01	0.03	0.06	0.09	0.13	0.17	NA
SVO.SC.M	0.01	0.01	0.01	0.02	0.02	0.04	0.04
SOC.RC.M	0.01	0.03	0.02	0.03	0.02	−0.01	NA
HZO.RC.M	0.00	0.01	0.01	NA	NA	NA	NA
HZO.RC.L	0.00	0.02	0.04	0.06	0.08	NA	NA
HZO.SC.M	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HZO.SC.L	0.00	0.00	0.01	0.01	0.01	0.01	0.01
HCT.SC.I	0.00	0.01	0.02	0.03	0.03	NA	NA

* A value of NA means that no energy savings were calculated for this level of efficiency. For example, a vertical open, remote condensing, low temperature unit (VOP.RC.L) had only six possible energy consumption levels and, therefore, only six possible standards. Level 1 = Baseline, so there would be no savings at Level 1 and it has been omitted from the table.
** 0.00 indicates savings are less than 0.005 quadrillion Btu.
† The VOP.RC.L equipment class had no projected shipments. It was included in the analysis at the request of the industry.

Table II.22 provides the NPV results based on the three percent discount rate and electricity price forecasts from the *AEO2006* reference case. As with the NPV results based upon a seven percent discount rate, detailed results showing the breakdown of the NPV into national equipment costs and national operating costs based upon a three percent discount rate are provided in appendix I of the TSD. At a three percent discount rate, the range of overall NPV benefits calculated for different CSL scenarios above the assumed baseline was from $360 million to $4.03 billion. The present value of the installed cost varied from a low of $150 million to a high of $3.57 billion. The present value of the operating cost savings for higher standards varied from a low of $510 million to a high of $7.51 billion.

TABLE II.22.—CUMULATIVE NET PRESENT VALUE RESULTS BASED ON A THREE PERCENT DISCOUNT RATE (BILLION 2006$)

Equipment class	Standard level (billion 2006$) * **						
	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8
VOP.RC.M	0.09	0.20	0.35	0.69	0.86	1.03	1.20
VOP.RC.L†	0.00	0.00	0.00	0.00	0.00	NA	NA
VOP.SC.M	0.02	0.02	0.03	0.06	0.06	0.08	0.08
VCT.RC.M	0.01	0.01	0.02	0.03	0.05	0.03	NA
VCT.RC.L	0.15	0.27	0.42	0.80	1.00	1.21	1.59
VCT.SC.I	0.01	0.01	0.02	0.02	0.07	0.07	0.07
VCS.SC.I	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SVO.RC.M	0.03	0.09	0.17	0.26	0.36	0.49	NA
SVO.SC.M	0.02	0.02	0.03	0.05	0.05	0.12	0.12
SOC.RC.M	0.02	0.07	0.06	0.08	0.07	0.03	NA
HZO.RC.M	0.00	0.02	0.02	NA	NA	NA	NA
HZO.RC.L	0.01	0.05	0.10	0.17	0.21	NA	NA
HZO.SC.M	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HZO.SC.L	0.00	0.01	0.01	0.01	0.02	0.02	0.02
HCT.SC.I	0.01	0.01	0.06	0.07	0.08	NA	NA

* A value of NA means that no energy savings were calculated for this level of efficiency. For example, a vertical open, remote condensing, low temperature unit (VOP.RC.L) had only six possible energy consumption levels and, therefore, only six possible standards. Level 1 = Baseline, so there would be no savings at Level 1 and it has been omitted from the table.
** 0.00 indicates savings are less than 0.005 quadrillion Btu.
† The VOP.RC.L equipment class had no projected shipments. It was included in the analysis at the request of the industry.

J. Life-Cycle Cost Sub-Group Analysis

The LCC sub-group analysis evaluates impacts of standards on identifiable groups of customers, such as customers of different business types, which may be disproportionately affected by standards. In the NOPR phase of this rulemaking, DOE will analyze the LCCs and PBPs for customers that fall into those groups. The analysis will determine whether any particular group of commercial consumers would be adversely affected by any of the CSLs.

Also, DOE plans to examine variations in energy prices and energy use that might affect the NPV of a standard to customer sub-populations. To the extent possible, DOE will obtain estimates of the variability of each input parameter and consider this variability

in the calculation of customer impacts. Variations in energy use for a particular equipment type may depend on factors such as climate and type of business.

DOE will determine the effect on customer sub-groups using the LCC spreadsheet model. The spreadsheet model used for the LCC analysis can be used with different data inputs. The standard LCC analysis includes various customer types that use commercial refrigeration equipment. DOE can analyze the LCC for any sub-group, such as a convenience store, by using the LCC spreadsheet model and sampling only that sub-group. Details of this model are explained in section II.G, which describes the LCC and PBP analyses. DOE will be especially sensitive to purchase price increases (''first-cost'' increases) to avoid negative impacts on identifiable population groups such as small businesses (*i.e.*, those with low annual revenues), which may not be able to afford a significant increase in the price of commercial refrigeration equipment. For such customers that are sensitive to price increases, increases in first costs of equipment can preclude the purchase of a new model. As a result, some customers may retain equipment past its useful life. This older equipment is generally less efficient to begin with, and its efficiency may deteriorate further if it is retained beyond its useful life. Large increases in first cost also can possibly preclude the purchase and use of equipment altogether, resulting in a potentially large loss of utility to the customer.

Although business income and annual revenues are not known for the types of businesses analyzed in the LCC analysis, the floor space occupied by a business may be an indicator of its annual income. If this is generally true, then DOE will be able to perform sub-group analyses on smaller businesses. As stated earlier, DOE can also use SBA data for businesses with 750 or fewer employees as a proxy for ''smaller businesses.''

K. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis is to identify the likely impacts of energy conservation standards on manufacturers. DOE will conduct this analysis with input from manufacturers and other interested parties and will apply this methodology to its evaluation of standards. DOE will also consider financial impacts and a wide range of quantitative and qualitative industry impacts that might occur following the adoption of a standard. For example, a particular standard level, if adopted by DOE, could require changes to commercial refrigeration equipment manufacturing practices. DOE will identify and understand these impacts through interviews with manufacturers and other stakeholders during the NOPR stage of its analysis.

Recently, DOE announced changes to the format of the manufacturer impact analysis through a report submitted to Congress on January 31, 2006 (as required by section 141 of EPACT 2005), entitled ''Energy Conservation Standards Activities.'' Previously, DOE did not report any manufacturer impact analysis results during the ANOPR phase; however, under this new format, DOE has collected, evaluated, and reported preliminary information and data in the ANOPR (see section II.K.6 of this ANOPR). Such preliminary information includes the anticipated conversion capital expenditures by efficiency level and the corresponding anticipated impacts on jobs. DOE solicited this information during the ANOPR engineering analysis manufacturer interviews and reported the results in the preliminary manufacturer impact analysis (see chapter 12 of the TSD).

DOE conducts the manufacturer impact analysis in three phases, and further tailors the analytical framework based on stakeholder comments. In Phase I, an industry profile is created to characterize the industry, and a preliminary manufacturer impact analysis is conducted to identify important issues that require consideration. Results of the Phase I analysis are presented in the ANOPR TSD. In Phase II, an industry cash flow model and an interview questionnaire are prepared to guide subsequent discussions. In Phase III, manufacturers are interviewed, and the impacts of standards are assessed both quantitatively and qualitatively. Industry and sub-group cash flow and net present value are assessed through use of the Government Regulatory Impact Model (GRIM). Then impacts on competition, manufacturing capacity, employment, and regulatory burden are assessed based on manufacturer interview feedback and discussions. Results of the Phase II and Phase III analyses are presented in the NOPR TSD. For more detail on the manufacturer impact analysis, refer to chapter 12 of the TSD.

1. Sources of Information for the Manufacturer Impact Analysis

Many of the analyses described above provide important information applicable to the MIA. Such information includes manufacturing costs and prices from the engineering analysis, retail price forecasts, and shipments forecasts. DOE will supplement this information with company financial data and other information gathered during interviews its contractor conducts with manufacturers. This interview process plays a key role in the manufacturer impact analysis because it allows interested parties to privately express their views on important issues. To preserve confidentiality, DOE aggregates these perspectives across manufacturers, creating a combined opinion or estimate for DOE. This process enables DOE to incorporate sensitive information from manufacturers in the rulemaking process without specifying precisely which manufacturer provided a certain set of data.

DOE conducts detailed interviews with manufacturers to gain insight into the range of potential impacts of standards. During the interviews, DOE typically solicits both quantitative and qualitative information on the potential impacts of efficiency levels on sales, direct employment, capital assets, and industrial competitiveness. DOE prefers an interactive interview process, rather than a written response to a questionnaire, because it helps clarify responses and identify additional issues. Before the interviews, DOE will circulate a draft document showing the estimates of the financial parameters based on publicly available information. DOE will solicit comments and suggestions on these estimates during the interviews.

DOE will ask interview participants to identify any confidential information that they have provided, either orally or in writing. DOE will consider all information collected, as appropriate, in its decision-making process. However, DOE will not make confidential information available in the public record. DOE also will ask participants to identify all information that they wish to have included in the public record, but that they do not want to have associated with their interview. DOE will incorporate this information into the public record, but will report it without attribution.

DOE will collate the completed interview questionnaires and prepare a summary of the major issues. For more detail on the methodology used in the manufacturer impact analysis, refer to chapter 12 of the TSD.

2. Industry Cash Flow Analysis

The industry cash flow analysis relies primarily on the GRIM. DOE uses the GRIM to analyze the financial impacts of more stringent energy conservation standards on the industry.

The GRIM analysis uses several factors to determine annual cash flows from a new standard: Annual expected revenues; manufacturer costs (including COGS, depreciation, research and development, selling, general and administrative expenses); taxes; and conversion capital expenditures. DOE compares the results against base case projections that involve no new standards. The financial impact of new standards is the difference between the two sets of discounted annual cash flows. For more information on the industry cash flow analysis, refer to chapter 12 of the TSD.

3. Manufacturer Sub-Group Analysis

Industry cost estimates are not adequate to assess differential impacts among sub-groups of manufacturers. For example, small and niche manufacturers, or manufacturers whose cost structure differs significantly from the industry average, could experience a more negative impact. Ideally, DOE would consider the impact on every firm individually; however, it typically uses the results of the industry characterization to group manufacturers exhibiting similar characteristics.

During the interview process, DOE will discuss the potential sub-groups and sub-group members it has identified for the analysis. DOE will encourage the manufacturers to recommend sub-groups or characteristics that are appropriate for the sub-group analysis. For more detail on the manufacturer sub-group analysis, refer to chapter 12 of the TSD.

4. Competitive Impacts Assessment

DOE must also consider whether a new standard is likely to reduce industry competition, and the Attorney General must determine the impacts, if any, of any reduced competition. DOE will make a determined effort to gather and report firm-specific financial information and impacts. The competitive analysis will focus on assessing the impacts on smaller manufacturers. DOE will base this assessment on manufacturing cost data and on information collected from interviews with manufacturers. The manufacturer interviews will focus on gathering information to help assess asymmetrical cost increases to some manufacturers, increased proportions of fixed costs that could increase business risks, and potential barriers to market entry (*e.g.*, proprietary technologies).

5. Cumulative Regulatory Burden

DOE recognizes and seeks to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same equipment. DOE will analyze and consider the impact on manufacturers of multiple, equipment-specific regulatory actions.

Based on its own research and discussions with manufacturers, DOE identified several regulations relevant to commercial refrigeration equipment, including: existing or new standards for commercial refrigeration equipment, phaseout of hydrochlorofluorocarbons and foam insulation blowing agents, standards for other equipment made by commercial refrigeration equipment manufacturers, State energy conservation standards, and international energy conservation standards. DOE will study the potential impacts of these cumulative burdens in greater detail during the MIA conducted during the NOPR phase.

6. Preliminary Results for the Manufacturer Impact Analysis

DOE received views from manufacturers about what they perceived to be the possible impact of potential new standards on their future profitability. As stated by manufacturers, a new energy conservation standard has the potential to impact financial performance in several different ways. The capital investment needed to upgrade or redesign equipment and equipment platforms before they have reached the end of their useful life can require conversion costs that otherwise would not be expended, resulting in stranded investments. In addition, more stringent standards can result in higher per-unit costs that may deter some customers from buying higher-margin units with more features, thereby decreasing manufacturer profitability.

DOE estimates that a commercial refrigeration equipment production line would have a life cycle of approximately 15 to 20 years in the absence of standards. During that period, manufacturers would not make major changes that altered the underlying platforms. Thus, a standard that took effect and resulted in a major equipment platform redesign before the end of the platform's life would strand a portion of the earlier capital investments.

DOE asked manufacturers what level of conversion costs they anticipated if energy conservation standards were to take effect. In general, manufacturers expected only conversion costs associated with redesigning of insulation foaming fixtures. One manufacturer estimated this to be approximately $10 million in new fixtures, research, and testing. Manufacturers indicated there would not be a significant amount of stranded assets because of standards, but any stranded assets that did exist would be primarily in the insulation foaming fixtures. The manufacturers also indicated that standards would have little effect on capacity and utilization.

The impact of new energy conservation standards on employment is an important consideration in the rulemaking process. To assess how domestic employment patterns might be affected by new energy conservation standards for commercial refrigeration equipment, DOE posed several questions related to this topic to manufacturers.

Over the past several years, some commercial refrigeration equipment manufacturers have moved a portion of their production out of the United States, primarily driven by concerns about profitability and the opportunity for lower labor costs. Mexico is the most common location for U.S. manufacturers to establish new production capacity, since it offers low labor rates relative to the United States and proximity to the U.S. market. Manufacturers indicated that they anticipate new standards will accelerate the trend to manufacture commercial refrigeration equipment outside of the United States. Further, new standards may accelerate the rate at which commercial refrigeration equipment production is moved to Mexico because if manufacturers need to make large capital investments to produce redesigned equipment platforms, they have strong financial incentives to invest in a location with lower labor costs.

Manufacturers indicated that new standards could cause them to exit one or more portions of the markets affected by the standards. Thus, standards could affect the degree of industry consolidation, that is, the degree to which a limited number of companies dominate a market. At present, four companies account for a large majority of commercial refrigeration equipment sales.

DOE asked manufacturers to what degree they expected industry consolidation to occur in the absence of standards. In general, manufacturers felt that there would be little industry consolidation in the future. Historically, the commercial refrigeration equipment industry has not seen extensive consolidation, although several manufacturers have been bought and sold by parent companies in the past.

For more preliminary results for the manufacturer impact analysis such as other impacts on financial performance, impacts on utility and performance, and

additional details on the impacts of cumulative regulatory burden, refer to chapter 12 of the TSD.

L. Utility Impact Analysis

The utility impact analysis estimates the effects on the utility industry of reduced energy consumption due to improved appliance efficiency. The analysis compares modeling results for the base case with results for each candidate standards case. It consists of forecasted differences between the base and standards cases for electricity generation, installed capacity, sales, and prices.

To estimate these effects of proposed commercial refrigeration equipment standard levels on the electric utility industry, DOE intends to use a variant of the EIA's NEMS.[24] EIA uses NEMS to produce the *2007 Annual Energy Outlook (AEO).* DOE will use a variant known as NEMS–Building Technologies (BT) to provide key inputs to the analysis. NEMS–BT produces a widely recognized reference case forecast for the United States and is available in the public domain.

The use of NEMS–BT for the utility impact analysis offers several advantages. As the official DOE energy forecasting model, it relies on a set of assumptions that are transparent and have received wide exposure and commentary. NEMS–BT allows an estimate of the interactions between the various energy supply and demand sectors and the economy as a whole. The utility impact analysis will determine the changes in installed capacity and generation by fuel type produced by each CSL, as well as changes in electricity sales to the commercial sector.

DOE conducts the utility analysis as a policy deviation from the *AEO2007,* applying the same basic set of premises. For example, the operating characteristics (*e.g.*, energy conversion efficiency, emissions rates) of future electricity generating plants are as specified in the *AEO2007* reference case, as are the prospects for natural gas supply. DOE also will explore deviations from some of the reference case premises, to represent alternative futures. Two alternative scenarios use the high and low economic growth cases of *AEO2007.* (The reference case corresponds to medium growth.) The high economic growth case projects higher growth rates for population, labor force, and labor productivity, resulting in lower predicted inflation and interest rates relative to the reference case and higher overall aggregate economic growth. The opposite is true for the low growth case. Starting in 2012, the high growth case predicts growth in per capita gross domestic product of 3.5 percent per year, compared with 3.0 percent per year in the reference case and 2.5 percent per year in the low growth case. While supply-side growth determinants are varied in these cases, *AEO2007* uses the same reference case energy prices for all three economic growth cases. Different economic growth scenarios will affect the rate of growth of electricity demand.

The electric utility industry analysis will consist of NEMS–BT forecasts for generation, installed capacity, sales, and prices. The NEMS–BT provides reference case load shapes for several end uses, including commercial refrigeration. The model uses predicted growth in demand for each end use to build up a projection of the total electric system load growth for each region, which it uses in turn to predict the necessary additions to capacity. The NEMS–BT accounts for the implementation of energy conservation standards by decrementing the appropriate reference case load shape. DOE determines the size of the decrement using data for the per-unit energy savings developed in the LCC and PBP analyses (see chapter 8 of the TSD) and the forecast of shipments developed for the NIA (see chapter 9 of the TSD).

The predicted reduction in capacity additions is sensitive to the peak load impacts of the standard. DOE will investigate the need to adjust the hourly load profiles that include this end use in NEMS–BT. Since the *AEO2007* version of NEMS–BT forecasts only to the year 2030, DOE must extrapolate the results to 2042. DOE will use the approach developed by EIA to forecast fuel prices for the FEMP. FEMP uses these prices to estimate LCCs of Federal equipment procurements. For petroleum products, EIA uses the average growth rate for the world oil price over the years 2010 to 2025, in combination with the refinery and distribution markups from the year 2025, to determine the regional price forecasts. Similarly, EIA derives natural gas prices from an average growth rate figure in combination with regional price margins from the year 2025. Results of the analysis will include changes in commercial electricity sales, and installed capacity and generation by fuel type, for each trial standard level, in five-year, forecasted increments extrapolated to the year 2040.

M. Employment Impact Analysis

DOE estimates the impacts of standards on employment for equipment manufacturers, relevant service industries, energy suppliers, and the economy in general. Both indirect and direct employment impacts are covered. Direct employment impacts would result if standards led to a change in the number of employees at manufacturing plants and related supply and service firms. Direct impact estimates are covered in the MIA.

Indirect employment impacts are impacts on the national economy other than in the manufacturing sector being regulated. Indirect impacts may result both from expenditures shifting among goods (substitution effect) and changes in income which lead to a change in overall expenditure levels (income effect). DOE defines indirect employment impacts from standards as net jobs eliminated or created in the general economy as a result of increased spending driven by the increased equipment prices and reduced spending on energy.

DOE expects new standards to increase the total installed cost of equipment (includes MSP, sales taxes, distribution channel markups, and installation cost). DOE also expects the new standards to decrease energy consumption, and thus expenditures on energy. Over time, increased total installed cost is paid back through energy savings. The savings in energy expenditures may be spent on new commercial investment and other items.

Using an input/output model of the U.S. economy, this analysis seeks to estimate the effects on different sectors and the net impact on jobs. DOE will estimate national employment impacts for major sectors of the U.S. economy in the NOPR, using public and commercially available data sources and software. DOE will make all methods and documentation available for review.

DOE developed Impact of Sector Energy Technologies (ImSET), a spreadsheet model of the U.S. economy that focuses on 188 sectors most relevant to industrial, commercial, and residential building energy use.[25] ImSET is a special-purpose version of

[24] For more information on NEMS, please refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview 2000,* DOE/EIA–0581(2000), March 2000. DOE/EIA approves use of the name NEMS to describe only an official version of the model without any modification to code or data. Because this analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, in this analysis, DOE refers to it by the name NEMS–BT.

[25] Roop, J. M., M. J. Scott, and R. W. Schultz. 2005. ImSET: Impact of Sector Energy Technologies. PNNL–15273. Pacific Northwest National Laboratory, Richland, WA.

the U.S. Benchmark National Input-Output (I–O) model, which has been designed to estimate the national employment and income effects of energy saving technologies that are deployed by the DOE Office of Energy Efficiency and Renewable Energy. In comparison with previous versions of the model used in earlier rulemakings, the current version allows for more complete and automated analysis of the essential features of energy efficiency investments in buildings, industry, transportation, and the electric power sectors.

The ImSET software includes a personal computer-based I–O model with structural coefficients to characterize economic flows among the 188 sectors. ImSET's national economic I–O structure is based on the 1997 Benchmark U.S. table (Lawson, et al. 2002),[26] specially aggregated to 188 sectors. The time scale of the model is 50 years.

The model is a static I–O model, which allows a great deal of flexibility concerning the types of energy efficiency effects that can be accommodated. For example, certain economic effects of energy efficiency improvements require an assessment of inter-industry purchases, which is handled in the model. Some energy efficiency investments will not only reduce the costs of energy in the economy but the costs of labor and other goods and services as well, which is accommodated through a recalculation of the I–O structure in the model. Output from the ImSET model can be used to estimate changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in the various sectors of the economy.

Although DOE intends to use ImSET for its analysis of employment impacts, it welcomes input on other tools and factors it might consider. For more information on the employment impacts analysis, refer to chapter 14 of the TSD.

N. Environmental Assessment

DOE will assess the impacts of proposed commercial refrigeration equipment standard levels on certain environmental indicators, using NEMS–BT to provide key inputs to the analysis. The environmental assessment produces results in a manner similar to those provided in the *AEO.*

The intent of the environmental assessment is to provide estimates of reduced powerplant emissions and to fulfill requirements to properly quantify and consider the environmental effects of all new Federal rules. The environmental assessment that will be produced by NEMS–BT considers two pollutants (sulfur dioxide (SO_2) and nitrogen oxides (NO_X)) and one other emission (carbon). The only form of carbon the NEMS–BT model tracks is carbon dioxide (CO_2). Therefore, the only carbon discussed in this analysis is in the form of CO_2. For each of the CSLs, DOE will calculate total undiscounted and discounted emissions using NEMS–BT and will use external analysis as needed.

DOE will conduct the environmental assessment as an incremental policy impact (i.e., a commercial refrigeration equipment standard) of the *AEO2007* forecast, applying the same basic set of assumptions used in *AEO2007.* For example, the emissions characteristics of an electricity generating plant will be exactly those used in *AEO2007.* Also, forecasts conducted with NEMS–BT consider the supply-side and demand-side effects on the electric utility industry. Thus, DOE's analysis will account for any factors affecting the type of electricity generation and, in turn, the type and amount of airborne emissions generated by the utility industry. The NEMS–BT model tracks carbon emissions with a specialized carbon emissions estimation subroutine, producing reasonably accurate results due to the broad coverage of all sectors and inclusion of interactive effects. Past experience with carbon results from NEMS–BT suggests that emissions estimates are somewhat lower than emissions based on simple average factors. One of the reasons for this divergence is that NEMS–BT tends to predict that conservation displaces generating capacity in future years. On the whole, NEMS–BT provides carbon emissions results of reasonable accuracy, at a level consistent with other Federal published results.

NEMS–BT also reports SO_2 and NO_X, which DOE has reported in past analyses. The Clean Air Act Amendments of 1990 set an SO_2 emissions cap on all power generation. The attainment of this target, however, is flexible among generators through the use of emissions allowances and tradable permits. Although NEMS–BT includes a module for SO2 allowance trading and delivers a forecast of SO_2 allowance prices, accurate simulation of SO_2 trading implies that the effect of energy conservation standards on physical emissions will be zero because emissions will always be at or near the ceiling. This fact has caused considerable confusion in the past. However, there may be an SO_2 benefit from energy conservation, in the form of a lower SO_2 allowance price. Since the impact of any one standard on the allowance price is likely small and highly uncertain, DOE does not plan to monetize any potential SO_2 benefit.

NEMS also has an algorithm for estimating NO_X emissions from power generation. The impact of these emissions, however, will be affected by the Clean Air Interstate Rule (CAIR), which the U.S. Environmental Protection Agency issued on March 10, 2005.[27] CAIR will permanently cap emissions of NO_X in 28 eastern States and the District of Columbia. 70 FR 25162 (May 12, 2005). As with SO_2 emissions, a cap on NO_X emissions means that equipment energy conservation standards may have no physical effect on these emissions. When NO_X emissions are subject to emissions caps, DOE's emissions reduction estimate corresponds to incremental changes in the prices of emissions allowances in cap-and-trade emissions markets rather than physical emissions reductions. Therefore, while the emissions cap may mean that physical emissions reductions will not result from standards, standards could produce an environmental-related economic benefit in the form of lower prices for emissions allowances. However, as with SO_2 allowance prices, DOE does not plan to monetize this benefit because the impact on the NO_X allowance price from any single energy conservation standard is likely small and highly uncertain.

The results for the environmental assessment are similar to a complete NEMS run as published in the *AEO2007.* These results include power sector emissions for SO2, NOX, and carbon in five-year forecasted increments extrapolated to 2042. The outcome of the analysis for each CSL is reported as a deviation from the *AEO2007* reference (base) case.

For more detail on the environmental assessment, refer to the environmental assessment report of the TSD.

O. Regulatory Impact Analysis

DOE will prepare a draft regulatory impact analysis in compliance with Executive Order 12866, ''Regulatory Planning and Review,'' which will be subject to review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). 58 FR 51735 (September 30, 1993).

[26] Lawson, Ann M., Kurt S. Bersani, Mahnaz Fahim-Nader, and Jiemin Guo. 2002. ''Benchmark Input-Output Accounts of the U.S. Economy, 1997,'' Survey of Current Business, December, pp. 19–117.

[27] See *http://www.epa.gov/cleanairinterstaterule/.*

As part of the regulatory impact analysis (and as discussed in section II.K of this ANOPR), DOE will identify and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same equipment. Through manufacturer interviews and literature searches, DOE will compile information on burdens from existing and impending regulations affecting commercial refrigeration equipment. DOE also seeks input from stakeholders about regulations it should consider.

The regulatory impact analysis also will address the potential for non-regulatory approaches to supplant or augment energy conservation standards to improve the efficiency of commercial refrigeration equipment. The following list includes non-regulatory means of achieving energy savings that DOE can consider.

- No new regulatory action
- Consumer tax credits
- Manufacturer tax credits
- Performance standards
- Rebates
- Voluntary energy efficiency targets
- Early replacement
- Bulk government purchases

The TSD, in support of DOE's NOPR, will include an analysis of each alternative, the methodology for which is discussed briefly below.

DOE will use the NES spreadsheet model (as discussed in sections I.B.5 and II.I of this ANOPR) to calculate the NES and the NPV corresponding to each alternative to the proposed standards. The details of NES spreadsheet model are discussed in chapter 10 of the TSD. To compare each alternative quantitatively to the proposed conservation standards, it will be necessary to quantify the effect of each alternative on the purchase and use of energy efficient commercial equipment. Once each alternative is properly quantified, DOE will make the appropriate revisions to the inputs in the NES spreadsheet model. The following are key inputs that DOE may revise in the NES spreadsheet model.

- Energy prices and escalation factors
- Implicit market discount rates for trading off purchase price against operating expense when choosing equipment efficiency
- Customer purchase price, operating cost, and income elasticities
- Customer price versus efficiency relationships
- Equipment stock data (purchase of new equipment or turnover rates for inventories)

The following are the key measures of the impact of each alternative.

- Commercial energy use (EJ = 10^{18} joule) is the cumulative energy use of the equipment from the effective date of the new standard to the year 2035. DOE will report electricity consumption as primary energy.
- NES is the cumulative national energy use from the base case projection less the alternative policy case projection.
- NPV is the value of future operating cost savings from commercial refrigeration equipment bought in the period from the effective date of the new standard to the year 2035. DOE calculates the NPV as the difference between the present value of equipment and operating expenditures (including energy) in the base case, and the present value of expenditures in each alternative policy case. DOE discounts future operating and equipment expenditures to 2006 using a seven percent real discount rate. It calculates operating expenses (including energy) for the life of the equipment.

For more information on the regulatory impact analysis, refer to the regulatory impact analysis report in the TSD.

III. Candidate Energy Conservation Standards Levels

DOE will specify CSLs in the ANOPR, but will not propose a particular standard. DOE selected between four and eight energy consumption levels for each commercial refrigeration equipment class for use in the LCC and NIA. Based on the results of the ANOPR analysis, DOE selects from the CSLs analyzed in the ANOPR a subset for a more detailed analysis for the NOPR stage of the rulemaking. The range of CSLs selected includes: the most energy efficient level or most energy efficient combination of design options, the combination of design options or efficiency level with the minimum LCC, and a combination of design options or efficiency level with a PBP of not more than three years. Additionally, CSLs that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other CSLs may be selected.

DOE will include the most energy efficient level analyzed as a CSL. The level with the maximum LCC savings was identified for each equipment category. In some instances this was identical to the most efficient level analyzed. In other cases it was the next most efficient level analyzed. The calculated national average PBPs from the LCC analysis suggested that many of the energy efficiency levels analyzed provided a national average payback of less than three years when compared with the baseline equipment. DOE opted to designate as a CSL the maximum energy efficiency level that provided for a payback of less than three years. These three selection criteria provided only one or two CSLs selections per equipment class. Therefore, DOE selected two or three lower energy consumption levels for each equipment class in order to provide greater variation in CSLs for its future analysis. The selection of these additional levels reflects DOE review of the relative cost effectiveness of the levels when compared with the baseline equipment and when compared with other efficiency levels. Four CSLs were selected for each equipment class. Table III.1 shows the selected CSLs based on the energy consumption for the specific equipment analyzed in the engineering analysis. DOE specifically seeks feedback on its selection of specific candidate standard levels for the post ANOPR analysis phase. This is identified as Issue 13 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

DOE will refine its final selection of CSLs for further analysis after receiving input from stakeholders on the ANOPR and after any revision of the ANOPR analyses. At that point, the CSLs will be recast as Trial Standard Levels (TSLs). DOE will analyze specific TSLs during the post-ANOPR analysis and will report the results of that analysis in the NOPR.

TABLE III.1.—CANDIDATE STANDARD LEVELS AND FACTORS CONSIDERED IN THEIR SELECTION FOR FUTURE ANALYSIS

Equipment class	Candidate standard level selection considerations						
	Maximum efficiency level	Maximum efficiency level with positive LCC savings	Efficiency level with minimum LCC	Highest efficiency level with PBP <3 years	Additional candidate standard level selected for future analysis		
VOP.RC.M	Level 8	Level 8	Level 8	Level 7	Level 6	Level 4.	
VOP.RC.L	Level 6	Level 6	Level 4	Level 6	Level 5	Level 3.	
VOP.SC.M	Level 8	Level 8	Level 7	Level 7	Level 5	Level 3.	
VCT.RC.M	Level 7	Level 7	Level 6	Level 6	Level 5	Level 3.	
VCT.RC.L	Level 8	Level 8	Level 8	Level 8	Level 7	Level 5	Level 3.
VCT.SC.I	Level 8	Level 8	Level 7	Level 8	Level 6	Level 3.	
VCS.SC.I	Level 8	Level 8	Level 7	Level 8	Level 6	Level 5.	
SVO.RC.M	Level 7	Level 7	Level 7	Level 6	Level 4	Level 2.	
SVO.SC.M	Level 8	Level 8	Level 7	Level 8	Level 5	Level 3.	
SOC.RC.M	Level 7	Level 7	Level 5	Level 5	Level 4	Level 3.	
HZO.RC.M	Level 4	Level 4	Level 4	Level 4	Level 3	Level 2.	
HZO.RC.L	Level 6	Level 6	Level 6	Level 6	Level 5	Level 4	Level 3.
HZO.SC.M	Level 8	Level 8	Level 8	Level 8	Level 7	Level 6	Level 4.
HZO.SC.L	Level 8	Level 8	Level 8	Level 8	Level 7	Level 6	Level 3.
HCT.SC.I	Level 6	Level 6	Level 6	Level 6	Level 5	Level 4	Level 3.

Because the equipment classes cover a variety of equipment sizes, DOE has suggested defining the standard in terms of upper limits on daily energy consumption (CDEC or TDEC as provided for remote condensing and self-contained equipment, respectively) normalized by TDA for remote condensing commercial equipment with transparent doors or without doors, commercial ice-cream freezers with transparent doors, and self-contained commercial equipment without doors. DOE has suggested defining the standard levels in terms of maximum rated daily energy consumption (CDEC or TDEC as provided for remote condensing and self-contained equipment, respectively) normalized by refrigerated volume (V, as measured by ANSI/AHAM Standard HRF–1–2004) for remote condensing commercial refrigerators, commercial freezers, and commercial refrigerators-freezers with solid doors and for commercial ice-cream freezers with solid doors. The industry supplied cost-efficiency curves are in the form of CDEC normalized by TDA (kWh/day/ft^2). In the engineering analysis, DOE normalized the CDEC for each efficiency level by TDA or refrigerated volume. Table III.2 presents the CSLs for the analyzed equipment classes in terms of these normalized metrics.

TABLE III.2.—CANDIDATE STANDARD LEVELS FOR ANALYZED EQUIPMENT CLASSES EXPRESSED IN TERMS OF THE NORMALIZED TEST METRICS

Equipment class	Test metric	Candidate standard level in order of efficiency					Candidate standard levels for equipment analyzed expressed in terms of the test metric				
		Baseline	CSL1	CSL2	CSL3	CSL4	Baseline	CSL1	CSL2	CSL3	CSL4
VOP.RC.M	CDEC/TDA kWh/day/ft^2	Level 1	Level 4	Level 6	Level 7	Level 8	1.08	0.90	0.75	0.70	0.64
VOP.RC.L	CDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 4	Level 5	Level 6	2.93	2.61	2.47	2.46	2.39
VOP.SC.M	TDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 5	Level 7	Level 8	2.55	2.23	2.07	1.84	1.65
VCT.RC.M	CDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 5	Level 6	Level 7	0.54	0.42	0.38	0.24	0.19
VCT.RC.L	CDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 5	Level 7	Level 8	1.06	0.90	0.75	0.65	0.55
VCT.SC.I	TDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 6	Level 7	Level 8	1.58	1.24	0.77	0.69	0.63
VCS.SC.I	TDEC/V kWh/day/ft^3	Level 1	Level 5	Level 6	Level 7	Level 8	0.27	0.19	0.18	0.17	0.17
SVO.RC.M	CDEC/TDA kWh/day/ft^2	Level 1	Level 2	Level 4	Level 6	Level 7	1.05	1.00	0.90	0.80	0.74
SVO.SC.M	TDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 5	Level 7	Level 8	2.24	1.99	1.87	1.62	1.54
SOC.RC.M	CDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 4	Level 5	Level 7	0.95	0.76	0.74	0.71	0.60
HZO.RC.M	CDEC/TDA kWh/day/ft^2	Level 1	Level 1	Level 2	Level 3	Level 4	0.16	0.16	0.14	0.11	0.10
HZO.RC.L	CDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 4	Level 5	Level 6	0.83	0.75	0.70	0.65	0.62
HZO.SC.M	TDEC/TDA kWh/day/ft^2	Level 1	Level 4	Level 6	Level 7	Level 8	0.78	0.61	0.56	0.54	0.48
HZO.SC.L	TDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 6	Level 7	Level 8	2.05	1.80	1.52	1.33	1.32
HCT.SC.I	TDEC/TDA kWh/day/ft^2	Level 1	Level 3	Level 4	Level 5	Level 6	1.63	1.28	0.73	0.61	0.57

When an energy conservation standard is defined for an equipment class, DOE must consider how to express the level in a manner suitable for all equipment within that class. This is of particular concern when the rating is in terms of energy consumption and there is variation of energy consumption within a class due to variation in equipment size or capacity. DOE believes that TDA captures the most significant driver behind capacity-related energy consumption differences between like equipment designs within an equipment class (see section II.A.2 of the ANOPR). For this reason, DOE has suggested that the maximum energy consumption standards for this equipment be expressed as:

$MEC_{SC} = A_{SC} \times TDA$ (self-contained equipment)

$MEC_{RC} = A_{RC} \times TDA$ (remote condensing equipment)

Where:

MEC_{SC} = maximum TDEC (kWh/day) from ANSI/ARI Standard 1200–2006,

MEC_{RC} = maximum CDEC (kWh/day) from ANSI/ARI Standard 1200–2006,
A_{RC} = a minimum normalized energy consumption factor (expressed in kWh/day/ft² TDA),
A_{SC} = a minimum normalized TDEC factor (expressed in kWh/day/ft² TDA), and
TDA = Total Display Area (ft²).

Commercial refrigerators, commercial freezers and commercial refrigerator-freezers with a self-contained condensing unit designed for holding temperature applications manufactured on or after January 1, 2010, will have energy conservation standards in terms of:

Maximum energy consumption M (kWh/yr) = $B \times V + K$

Where:
B is expressed in terms of kWh/yr/ft³ of rated volume,
V is the adjusted volume (ft³) calculated for the equipment class, and
K is an offset factor expressed in kWh/yr.

In similar fashion, DOE has suggested that the energy conservation standards for remote condensing refrigerators, commercial freezers, and commercial refrigerators-freezers with solid doors and for commercial ice-cream freezers with solid doors, respectively, be expressed as:

$MEC_{RC} = B_{RC} \times V + K_{RC}$ (remote condensing equipment)
$MEC_{SC} = B_{SC} \times V + K_{SC}$ (self-contained equipment)

Where:
MEC_{RC} = maximum CDEC (kWh/day) from ANSI/ARI Standard 1200–2006,
MEC_{SC} = maximum TDEC (kWh/day) from ANSI/ARI Standard 1200–2006,
B_{RC} = a minimum normalized energy consumption factor (expressed in kWh/day/ft³ gross refrigerated volume) calculated using the CDEC rating from the DOE adopted test procedure (ANSI/ARI Standard 1200–2006),
B_{SC} = a minimum normalized TDEC factor (expressed in kWh/day/ft³ gross refrigerated volume) and calculated using the TDEC rating from the DOE adopted test procedure (ANSI/ARI Standard 1200),
V = Gross Refrigerated Volume (ft³),
K_{RC} = an offset factor in kWh/day for remote condensing equipment, and
K_{SC} = an offset factor in kWh/day for self-contained equipment.

DOE is concerned that V may not completely capture the most significant driver behind capacity- or size-related energy consumption differences between equipment designs within these equipment classes. In particular, for these equipment classes, the surface area for heat gain may not vary linearly with volume. The VCS.SC.I equipment class falls under this category.

DOE specifically seeks feedback on its approach for characterizing energy conservation standards for commercial refrigeration equipment. If the approach to characterizing standards for remote condensing commercial refrigerators, commercials freezers, and commercial refrigerators-freezers with solid doors and for commercial ice-cream freezers with solid doors is acceptable, DOE seeks comments on how it could develop appropriate offset factors (K_{SC} and K_{RC}) for these classes of equipment. This is identified as Issue 14 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

Commercial refrigerator-freezers (also called dual temperature units) are equipment that have two or more compartments that operate at different temperatures. During the Framework public meeting, Hill Phoenix stated that shipments of this equipment are very low. (Public Meeting Transcript, No. 3.4 at p. 52) In the engineering analysis (section II.C of this ANOPR), DOE only analyzed those equipment classes with the highest shipment volumes, and therefore did not include an analysis of commercial refrigerator-freezers. However, DOE explained in the market and technology assessment (section II.A of this ANOPR) that it intended to adapt the analytical results for commercial refrigerators and commercial freezers to commercial refrigerator-freezers.

DOE understands that remote condensing commercial refrigerator-freezers (with and without doors) and self-contained commercial refrigerator-freezers without doors may operate in one of two ways. First, they may operate as separate chilled and frozen compartments with evaporators fed by two sets of refrigerant lines or two compressors. Second, they may operate as separate chilled and frozen compartments fed by one set of low temperature refrigerant lines (with evaporator pressure regulator (EPR) valves or similar devices used to raise the evaporator pressure, and thus the temperature of one or more compartments) or one compressor. Accordingly, for the purposes of implementing standards, DOE is considering the following method for implementing standards for commercial refrigerator-freezers.

- For remote condensing commercial refrigerator-freezers where two or more chilled and frozen compartments are cooled by independent remote condensing units, each compartment should have its total refrigeration load measured separately according to the ANSI/ASHRAE Standard 72–2005 test procedure. Compressor energy consumption (CEC) for each compartment shall be calculated using Table 1 in ANSI/ARI Standard 1200–2006 using the evaporator temperature for that compartment. The CDEC for the entire case shall be the sum of the CEC for each compartment, fan energy consumption (FEC), lighting energy consumption (LEC), anti-condensate energy consumption (AEC), defrost energy consumption (DEC), and condensate evaporator pan energy consumption (PEC) (as measured in ANSI/ARI Standard 1200–2006). Determine the maximum limit on CDEC for each compartment, based on that compartment's respective equipment class and TDA or volume. The maximum limit on CDEC for the entire case is the sum of all the maximum limits on CDEC of all compartments.
- For remote condensing commercial refrigerator-freezers where two or more chilled and frozen compartments are cooled by one condensing unit (with EPR valves or similar devices used to raise the evaporator pressure, and thus the temperature of one or more compartments), the total case shall have its total refrigeration load measured according to the ANSI/ASHRAE Standard 72–2005 test procedure. CEC for the entire case shall be calculated using Table 1 in ANSI/ARI Standard 1200–2006 using the lowest evaporator temperature of all compartments. The CDEC for the entire case shall be the sum of the CEC, FEC, LEC, AEC, DEC, and PEC. Determine the maximum limit on CDEC for the compartment with the lowest integrated average temperature (IAT), based on that compartment's respective equipment class and the total TDA or volume of all compartments. This value is the maximum limit on CDEC for the entire case.
- For self-contained commercial refrigerator-freezers without doors where two or more chilled and frozen compartments are cooled by independent self-contained condensing units, the CDEC for the entire case shall be measured according to the ANSI/ASHRAE Standard 72–2005 test procedure. Determine the maximum limit on CDEC for each compartment, based on that compartment's respective equipment class and TDA. The maximum limit on CDEC for the entire case is the sum of all the maximum limits on CDEC of all compartments.
- For self-contained commercial refrigerator-freezers without doors where two or more chilled and frozen compartments are cooled by one condensing unit (with EPR valves or similar devices used to raise the evaporator pressure, and thus the temperature of one or more compartments), the daily energy consumption for the entire case shall be measured according to the ANSI/

ASHRAE Standard 72–2005 test procedure. Determine the maximum limit on CDEC for the compartment with the lowest IAT, based on that compartment's respective equipment class and the total TDA of all compartments. This value is the maximum limit on CDEC for the entire case.

DOE specifically seeks feedback on its approach for setting standards for remote condensing commercial refrigerator-freezers. Additionally, DOE seeks feedback on how to implement standards for self-contained commercial refrigerator-freezers without doors. These are identified as Issue 15 under ''Issues on Which DOE Seeks Comment'' in section IV.E of this ANOPR.

IV. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are set forth in the DATES and **ADDRESSES** sections at the beginning of this document. Anyone who wants to attend the public meeting must notify Ms. Brenda Edwards-Jones at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Please hand-deliver requests to speak to the address shown under the heading ''Hand Delivery/Courier'' in the **ADDRESSES** section of this ANOPR, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Also, requests may be sent by mail to the address shown under the heading ''Postal Mail'' in the **ADDRESSES** section of this ANOPR, or by e-mail to *Brenda.Edwards-Jones@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE asks persons selected to be heard to submit a copy of their statements at least two weeks before the public meeting, either in person, by postal mail, or by e-mail as described in the preceding paragraph. Please include an electronic copy of your statement on a computer diskette or compact disk when delivery is by postal mail or in person. Electronic copies must be in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format. At its discretion, DOE may permit any person who cannot supply an advance copy of his or her statement to participate, if that person has made alternative arrangements with the Building Technologies Program. In such situations, the request to give an oral presentation should ask for alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record and transcribe the proceedings. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings, and any other aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to the public meeting. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding all aspects of this ANOPR before or after the public meeting, but no later than October 9, 2007. Please submit comments, data, and information electronically to the following e-mail address: *commercialrefrigeration.rulemaking@ee.doe.gov.* Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE–2006-STD–0126 and/or RIN 1904–AB59, and whenever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document. No telefacsimiles (faxes) will be accepted.

Under 10 CFR Part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is interested in receiving comments on all aspects of this ANOPR. DOE particularly invites comments or data to improve DOE's analysis, including data or information that will respond to the following questions or concerns that were addressed in this ANOPR:

1. Equipment Class Prioritization and Extending Analyses

Because of the large number of equipment classes included in this rulemaking, DOE focused on conducting a thorough examination of the equipment classes with the greatest energy-savings potential. To address low-shipment equipment classes, DOE could either conduct a full technical analysis of these equipment classes or develop correlations to extend analyses or standard levels in the NOPR phase of the rulemaking. DOE requests feedback on the approach to equipment type prioritization and its approach to address low-shipment volume equipment classes, and of extending EPCA standards to equipment classes in this rulemaking. (See section I.D.3.c and II.A.2 of this ANOPR and chapter 5 of the TSD for further details.)

2. Air-Curtain Angle

For equipment without doors, DOE believes that the orientation of the air curtain affects the energy consumption (both remote condensing and self-contained equipment) and that equipment without doors can be broadly categorized by the angle of the air curtain that divides the refrigerated compartment from the ambient space. DOE is considering defining air-curtain angle as ''the angle between a vertical line and the line formed by the points at the center of the discharge air grille and the center of the return air grille, when viewed in cross-section.'' DOE requests feedback on this definition of air-curtain angle. (See section II.A.2 of this ANOPR for further details.)

3. Door Angle

For equipment with doors, DOE believes that the orientation of doors affects the energy consumption and that equipment with doors can be broadly categorized by the angle of the door. DOE is considering defining door angle as ''the angle between a vertical line and the line formed by the plane of the door, when viewed in cross-section.'' DOE requests feedback on this on this definition of door angle. (See section II.A.2 of this ANOPR for further details.)

4. Equipment Classes for Equipment With Doors

DOE is proposing to define two equipment families each for equipment with solid and transparent doors, based on door angles of 0° to 45° (vertical) and 45° to 90° (horizontal). DOE requests comments on these ranges of door angles in defining equipment classes with doors. (See section II.A.2 of this ANOPR for further details.)

5. Equipment Classes

In accordance with EPCA section 325(p)(1)(A), DOE identified the equipment classes covered under this rulemaking in Table II.6. (42 U.S.C. 6295(p)(1)(A)) Pursuant to EPCA section 325(p)(1)(B), DOE requests comments on these equipment classes and invites interested persons to submit written presentations of data, views, and arguments. (42 U.S.C. 6295(p)(1)(B)) (See section II.A.2 of this ANOPR for further details.)

6. Case Lighting Operating Hours

DOE's analysis suggests that typical lighting operating hours for most classes of commercial refrigeration equipment would fall in the range of 16 to 24 hours per day, depending on store operating hours, use of lighting during after-hours case stocking, and typical lighting operation or controls used for unoccupied periods. Display case lighting hours may also depend on business type as convenience stores have distinctly different operating hours than other segments of the food retail industry. DOE requests comments on whether the 24-hour basis for case lighting operating hours is valid for DOE's continued analysis, and if not, what changes should be made to better characterize the case lighting operating hours? (See section II.E of this ANOPR for further details.)

7. Operation and Maintenance Practices

DOE requests comments on operation and maintenance practices for commercial refrigeration equipment that may be prevalent in the field which may differ from standardized conditions, such as those represented in a test procedure. These field conditions could potentially affect the energy consumption savings experienced in the field as a result of increased energy efficiency as compared to those savings estimated in the TSD's energy consumption analysis under idealized conditions. DOE requests comment on the frequency to which such factors come in to play in energy use in the field, and whether and how DOE could account for these factors in assessing the overall impacts of the candidate standards levels for commercial refrigeration equipment. (See section II.E of this ANOPR for further details.)

8. Equipment Lifetime

DOE requests comments on the lifetime of commercial refrigeration equipment and whether, in fact, this is a significant issue and whether DOE should perform a sensitivity analysis of this variable in the LCC and NES analyses. In particular, DOE seeks comment on how long these units are typically maintained in service by equipment class and store type. Also, DOE seeks comment on the existence and importance of a used-equipment market for commercial refrigeration equipment, and the importance of considering such a market in its analysis. (See section II.E of this ANOPR for further details.)

9. Life-Cycle Cost Baseline Level

DOE did not receive data from industry concerning the average energy efficiency of commercial refrigeration equipment currently being shipped, nor was data provided in further discussion with manufacturers. An analysis of the literature suggests little data on the energy characteristics of display cases in the general market is available. Based on this, DOE used the Level 1 (minimum energy efficiency level) established in the engineering analysis as the baseline for the LCC analysis.

The selection of baseline level has two impacts in the LCC and PBP analyses. It can affect the PBP calculated since payback is calculated from the baseline level, and it can affect the maximum level showing LCC savings. It can also affect the fraction of users on the market who experience LCC savings at any level. The selection of the baseline level does not generally affect the level identified as having the maximum LCC savings. DOE requests feedback on whether the Level 1 baseline selected by DOE is valid for the LCC analysis, and if not, what changes should be made to provide a more realistic baseline level. Since higher efficiency equipment is known to be sold into the market, DOE also seeks input on whether a distribution of efficiencies should be used for the LCC analysis baseline, and if so, what data could be used to populate this distribution. If more detailed data to develop a distribution of efficiencies in the baseline cannot be provided, DOE seeks input on how a sensitivity analysis to alternative baselines could best be used to inform the LCC and NES analyses supporting the rulemaking. (See section II.G.15 of this ANOPR for further details.)

10. Characterizing the National Impact Analysis Base Case

No data have been found on the market shares of various commercial refrigeration equipment classes by energy consumption level. Therefore, for the National Impact Analysis base case, DOE adapted a cost-based method used in the NEMS to estimate market shares for each equipment class by efficiency level. DOE did not have data to calibrate this approach to actual market shipments. Does the economic-based approach DOE used to establish base case shipments by efficiency level provide a valid base case assumption for the NIA and future analyses? If not, what should DOE do to improve the base case efficiency forecast? (See section II.I.2 of this ANOPR for further details.)

11. Base Case and Standards Case Forecasts

Because key inputs to the calculation of the NES and NPV are dependent on the estimated efficiencies under the base case (without standards) and the standards case (with standards), forecasted efficiencies are of great importance to the analysis. Information available to DOE suggests that forecasted market shares would remain frozen throughout the analysis period (*i.e.*, 2012–2042). For its determination of standards case forecasted efficiencies, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that standards become effective (*i.e.*, 2012). Available information suggests that equipment shipments with efficiencies in the base case that did not meet the standard level under consideration would ''roll-up'' to meet the new standard level. Also, available information suggests that all equipment efficiencies in the base case that were above the standard level under consideration would not be affected. DOE requests feedback on its development of standards case efficiency forecasts from the base case efficiency forecast and its basis for how standards would impact efficiency distributions in the year that standards are to take effect. (See section II.I.2 of this ANOPR for further details.)

12. Differential Impact of New Standards on Future Shipments by Equipment Classes

The shipment models used in the NES and NIA presume that the relative market share of the different classes of commercial refrigeration equipment remains constant over the time period analyzed. While DOE is aware that market preferences for certain types of products may change in the future, DOE has no data with which to predict or characterize those changes. DOE is however particularly concerned whether higher standards for certain classes of commercial refrigeration equipment are likely to generate significant market shifts to other equipment that may have higher energy consumption. By developing standards for all classes of commercial refrigeration equipment within the scope of this rulemaking using the same economic criteria, DOE hopes to mitigate this concern. However, DOE specifically requests stakeholder input on the potential for standards-driven market shifts between equipment classes that could reduce national energy savings as well as stakeholder input on how the standards setting process can reduce or eliminate these shifts. (See section II.I.2 of this ANOPR for further details.

13. Selection of Candidate Standard Levels for Post-Advance Notice of Proposed Rulemaking Analysis

DOE is required to examine specific criteria for the selection of CSLs for further analysis. Some of these criteria are economic based and the resulting CSLs selected may be impacted by updates to the ANOPR analysis after input from stakeholders. DOE has discretion in the selection of additional standard levels it may choose to analyze. DOE seeks input on the candidate standard levels selected for future analysis shown in Table III.1 (See section III of this ANOPR for further details.)

14. Approach to Characterizing Energy Conservation Standards

When an efficiency or energy consumption standard is defined for a class of equipment, DOE must consider how to express the level in a manner suitable for all equipment within that class. DOE seeks input on its approach for characterizing energy conservation standards for commercial refrigeration equipment as discussed in section III. If the approach to characterizing standards for remote condensing commercial refrigerators, commercial freezers, and commercial refrigerators-freezers with solid doors and for commercial ice-cream freezers with solid doors is acceptable, DOE seeks comments on how it could develop appropriate offset factors (K_{SC} and K_{RC}) for these classes of equipment. (See section III of this ANOPR for further details.)

15. Standards for Commercial Refrigerator-Freezers

DOE is addressing standards for commercial refrigerator-freezers (both remote condensing and self-contained). For equipment served by independent condensing units, the maximum limit on CDEC for the entire case is the sum of the maximum limits on CDEC of all compartments, based on each compartment's respective equipment class and TDA or volume. For equipment served by one condensing unit, the maximum limit on CDEC for the entire case is the maximum limit on CDEC for the compartment with the lowest IAT, based on the equipment class of that compartment and the total TDA or volume of all compartments. DOE requests feedback on this approach to implementing standards for commercial refrigerator-freezers. (See section III of this ANOPR for further details.)

V. Regulatory Review and Procedural Requirements: Executive Order 12866

DOE submitted this ANOPR for review to the Office of Management and Budget, under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). If DOE later proposes energy conservation standards for certain commercial refrigeration equipment, and if the proposed rule constitutes a significant regulatory action, DOE would prepare and submit to OMB for review the assessment of costs and benefits required under section 6(a)(3) of the Executive Order. The Executive Order requires agencies to identify the specific market failure or other specific problem that it intends to address that warrant new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted. (Executive Order 12866, § 1(b)(1)). Without a market failure, a regulation cannot result in net benefits.

DOE's preliminary analysis suggests that accounting for the market value of energy savings alone (*i.e.*, excluding any possible ''externality'' benefits such as those noted below) would produce enough benefits to yield net benefits across a wide array of equipment and circumstances. These results, if correct, imply the existence of a market failure in the commercial refrigeration equipment market. DOE requests data on, and suggestions for testing the existence and extent of, these potential market failures to complete an assessment in the proposed rule of the significance of these failures and thus the net benefits of regulation.

First, DOE believes that there is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the commercial refrigeration equipment market. If this is in fact the case, DOE would expect the energy efficiency for commercial refrigeration equipment to be randomly distributed across key variables such as energy prices and usage levels. DOE seeks data on the efficiency levels of existing commercial refrigeration equipment in use by store type (*e.g.*, large grocery, multi-line retailer, small grocery/convenience store) and electricity price (and/or geographic region of the country). DOE plans to use these data to test the extent to which purchasers of this equipment behave as if they are unaware of the costs associated with their energy consumption. Also, DOE seeks comment on knowledge of the Federal ENERGYSTAR program, and it's penetration into the commercial refrigeration equipment consumer market as a resource for knowledge of the availability and benefits of energy efficient refrigeration units.

Second, for small businesses in particular, DOE believes there may be ''split incentives'' for more energy efficient equipment. The commercial space owner may not invest in efficient equipment because the owner of the space does not pay the energy bill, and the retail establishment owner (building tenant) does not want to invest so as not to risk losing the capital investment at the end of the lease. If this is in fact the case, DOE would expect that, other things equal, establishments that own the equipment purchase higher efficiency commercial refrigeration equipment on average than those who rent the equipment through building lease arrangements. DOE seeks data on owner-occupied buildings versus leased/non-owner occupied buildings for given store types (*e.g.*, large grocery) and their associated use of high-efficiency units. With these data, DOE plans to assess the significance of this market failure by comparing the energy efficiencies of the units in place by building occupancy status.

Of course, there are likely to be certain ''external'' benefits resulting from the improved efficiency of units that are not captured by the users of such equipment. These include both environmental and energy security-related externalities that are not already reflected in energy prices such as reduced emissions of greenhouse gases and reduced use of natural gas (and oil) for electricity generation. DOE invites comments on the weight that should be given to these factors in DOE's determination of the maximum efficiency level at which the total benefits are likely to exceed the total burdens resulting from a DOE standard.

In addition, various other analyses and procedures may apply to such future rulemaking action, including those required by the National Environmental Policy Act, Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*; the Unfunded Mandates Act of 1995, Pub. L. 104–4; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; and certain Executive Orders.

The draft of today's action and any other documents submitted to OIRA for review are part of the rulemaking record and are available for public review at the U.S. Department of Energy, Forrestal Building, Room 1J–018, (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's ANOPR.

Issued in Washington, DC, on July 19, 2007.

John Mizroch,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 07–3640 Filed 7–25–07; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Thursday,
July 26, 2007

Part V

Department of Housing and Urban Development

24 CFR Part 1000

Indian Housing Block Grant Program—Extension of Annual Performance Report Due Date; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–5109–F–02]

RIN 2577–AC74

Indian Housing Block Grant Program—Extension of Annual Performance Report Due Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule extends the due date, by an additional 30 days, for Indian Housing Block Grant (IHBG) recipients to submit annual performance reports (APRs). Through the IHBG program, HUD provides housing assistance to Indian tribes and tribally designated housing entities (TDHEs). Currently, HUD's regulations require IHBG recipients to submit APRs 60 days after the end of the recipient's program year. This rule follows publication of a March 29, 2007, proposed rule and takes into consideration the comments received on the proposed rule. Because all of the comments offered support for extending this deadline by an additional 30 days, HUD adopts the proposed rule without change.

DATES: *Effective Date:* August 27, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Bullough, Director of Grants Evaluation, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5156, Washington, DC 20410–5000; telephone number (202) 402–4274 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The March 29, 2007, Proposed Rule

Through the IHBG program, HUD provides housing assistance to Indian tribes and TDHEs. HUD's regulations for the IHBG program are codified at 24 CFR part 1000. Section 1000.512 of the regulations requires that IHBG recipients, on an annual basis, prepare and submit an APR that provides a self-assessment of their IHBG-funded activities. The APR includes a description of the use of grant funds, a comparison of accomplishments, an analysis and explanation of cost overruns or high unit costs, and any information regarding the recipients' performance in accordance with HUD's performance measures, as set forth in 24 CFR 1000.524. The current regulations at § 1000.514 require IHBG recipients to submit APRs within 60 days of the end of their program year.

On March 29, 2007, HUD published a proposed rule (72 FR 15001), to extend the APR deadline by 30 days. As proposed, the revised 24 CFR 1000.514 would require IHBG recipients to submit their APRs within 90 days of the end of their program year. HUD proposed the extension to provide additional time to IHBG recipients to obtain, review, and analyze accurate financial and programmatic data, and allow for community consideration, before submission of the completed APR to HUD. A conforming change was also proposed to § 1000.524(d), to clarify that the timely submission of an accurate APR is an IHBG program performance measure.

For a detailed discussion of the proposed regulations, please see the preamble to the proposed rule, at 72 FR 15001.

II. This Final Rule

This final rule follows publication of the March 29, 2007, proposed rule and takes into consideration the ten public comments received on the proposed rule. After careful consideration of the public comments, which all offered support for the rule, HUD has decided to adopt the proposed rule's 90-day deadline, without change.

The public comment period closed on May 29, 2007, and the commenters included Indian tribes and their TDHEs. All of the commenters supported the APR due date extension that will provide IHBG recipients with 30 additional days during which they can complete and submit the APR. Several of the commenters explained that the additional time will improve the accuracy of the APR, as well as ensure timeliness of submission. One commenter stated that because of the number and diversity of its housing activities, the current 60-day deadline is often insufficient to prepare a detailed and comprehensive APR. The commenters all supported the additional 30 days as adequate to meet their needs.

III. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the rulemaking process on matters that have tribal implications. Accordingly, prior to publication of the March 29, 2007, proposed rule, HUD held nine consultation meetings which were attended by more than 500 tribal representatives. During these meetings, attendees expressed support for extending the due date for the APR to 90 days after the end of the recipient's program year. Further, tribes had the opportunity to submit comments on the proposed rule. As noted above in this preamble, all of the tribes submitting comments offered support for the proposed regulatory changes.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0218. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, review, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The final rule extends the period of time, by 30 days, for IHBG funding recipients to submit their APRs. In the past, many IHBG recipients have reported that they need additional time to prepare their APRs and, as a result, request extensions to the current requirement. By extending the due date, IHBG recipients will have the additional time they need to prepare thorough APRs without the added burden of requesting additional time. The regulatory change is procedural and does not revise or establish new binding requirements on owners. Accordingly,

the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on state, local, or tribal governments or the private sector within the meaning of UMRA.

Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of that Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments, nor does it preempt state law within the meaning of Executive Order 13132.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 1000, as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 2. Revise § 1000.514 to read as follows:

§ 1000.514 When must the annual performance report be submitted?

The annual performance report must be submitted within 90 days of the end of the recipient's program year. If a justified request is submitted by the recipient, the Area ONAP may extend the due date for submission of the annual performance report.

■ 3. Revise § 1000.524(d) to read as follows:

§ 1000.524 What are HUD's performance measures for the review?

* * * * *

(d) Accurate annual performance reports were submitted to HUD in accordance with § 1000.514.

* * * * *

Dated: July 20, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–14478 Filed 7–25–07; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 26, 2007

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Federal Aviation Administration

Standard instrument approach procedures; published 7-26-07

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Internal Revenue Service

Income taxes:

Tax-sheltered annuity contracts; published 7-26-07

Procedure and administration:

Taxpayers who have participated in listed transactions or undisclosed reportable transactions; suspension provisions; cross-reference

Correction; published 7-26-07

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Honey packers and importers research, promotion, consumer education, and industry information order:

Establishment; old honey research, promotion, and consumer information order terminated; comments due by 8-3-07; published 6-4-07 [FR 07-02737]

Referendum procedures; comments due by 8-3-07; published 6-4-07 [FR 07-02736]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Emerald ash borer; comments due by 7-31-07; published 6-1-07 [FR E7-10560]

Plant-related quarantine, foreign:

Emerald ash borer material from Canada; comments due by 7-31-07; published 6-1-07 [FR E7-10562]

Wood packaging material; treatment modification; comments due by 7-31-07; published 6-1-07 [FR E7-10559]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Cook Inlet beluga whale; comments due by 8-3-07; published 6-1-07 [FR E7-10587]

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Hearing; comments due by 8-3-07; published 7-11-07 [FR E7-13481]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands king and tanner crabs and groundfish; comments due by 7-30-07; published 6-29-07 [FR 07-03117]

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Coastal pelagic species; comments due by 7-30-07; published 6-28-07 [FR E7-12566]

DEFENSE DEPARTMENT

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Acquisition regulations:

Commercially available off-the-shelf items; specialty metals restriction waiver; comments due by 8-1-07; published 7-2-07 [FR E7-12763]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):

Land owner notification and noise survey requirements; comments due by 7-30-07; published 6-29-07 [FR E7-12557]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Primary and secondary copper smelting area sources; comments due by 8-2-07; published 7-3-07 [FR E7-12848]

Air pollution control:

Nonroad spark-ignition engines and equipment; emissions control; comments due by 8-3-07; published 5-18-07 [FR 07-01998]

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Stratospheric ozone protection—

N-propyl bromide in adhesives, coatings, and aerosols; listing of substitutes for ozone-depleting substances; comments due by 7-30-07; published 5-30-07 [FR E7-09706]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

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Virginia; comments due by 8-2-07; published 7-3-07 [FR E7-12838]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 7-30-07; published 6-28-07 [FR E7-12537]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Local telecommunications markets; competitive networks promotion; comments due by 7-30-07; published 5-30-07 [FR E7-10078]

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Lower Colorado River, Laughlin, NV; comments due by 7-31-07; published 5-1-07 [FR E7-08307]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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Migratory bird hunting:

Seasons, limits, and shooting hours, establishment, etc.; comments due by 8-2-07; published 7-23-07 [FR E7-14071]

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National Park Service

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Cape Hatteras National Seashore, NC; off-road vehicle management; comments due by 7-30-07; published 6-28-07 [FR E7-12012]

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Occupational Safety and Health Administration

Occupational safety and health standards:

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NUCLEAR REGULATORY COMMISSION

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TREASURY DEPARTMENT

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Personal securities transactions; officer and employee reporting requirements; comments due by 7-31-07; published 6-1-07 [FR E7-10401]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1701/P.L. 110–48

To provide for the extension of transitional medical assistance (TMA) and the abstinence education program through the end of the fiscal year 2007, and for other purposes. (July 18, 2007; 121 Stat. 244; 2 pages)

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