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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 330, and 340

[Docket No. 03–002–3]

RIN 0579–AC51

Importation of Nursery Stock

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations on importing nursery stock to eliminate various restrictions on the importation of kenaf seed; to establish programs for the importation of approved plants from the Canary Islands and from Israel; to require an additional declaration on the phytosanitary certificate accompanying blueberry plants imported from Canada; to require that phytosanitary certificates include the genus names of the restricted articles they accompany, and the species names when restrictions apply to species within a genus; to change the phytosanitary certificate requirements for several restricted articles; to reduce the postentry quarantine growing period for *Hydrangea* spp.; and to update the list of ports of entry and Federal plant inspection stations. We are also making several other changes to update and clarify the regulations and improve their effectiveness. These changes are necessary to relieve restrictions that appear unnecessary, update existing provisions, and make the regulations easier to understand and implement.

DATES: *Effective Date:* September 5, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

On December 15, 2005, we published in the **Federal Register** (70 FR 74215–74235, Docket No. 03–002–1) a proposal [1] to make several amendments to the nursery stock regulations. We solicited comments concerning the proposal for 60 days ending February 13, 2006. We reopened and extended the deadline for comments until March 31, 2006, in a document published in the **Federal Register** on February 28, 2006 (71 FR 9978, Docket No. 03–002–2). We received 25 comments by that date, from 23 commenters, including private citizens, State and local governments, industry organizations, individual industry companies, and foreign national plant protection organizations. The comments are discussed below by topic.

General Comments

Two commenters asked how the proposed rule fits into the ongoing revision of the nursery stock regulations, which was first discussed in an advanced notice of proposed rulemaking (ANPR) that was published in the **Federal Register** on December 10, 2004 (69 FR 71736–71744, Docket No. 03–069–1).

We are continuing with our efforts to revise the nursery stock regulations. As the commenters noted, the revision will take several years to fully implement. We anticipate completing the revision in stages. As we implement the revisions, we will continue to enforce the current regulations. The changes in the proposed rule were designed to address specific issues that have arisen as we continue to enforce the regulations.

One commenter expressed concern about the introduction of invasive species into the United States via the importation of nursery stock and stated that any species of nursery stock being imported into the United States should be studied for 1 year prior to importation. The commenter also suggested that a tax be imposed on the importation of nursery stock to help defray the cost of eradicating invasive species.

As discussed in the December 2004 ANPR, we are considering whether to adopt more restrictive regulations for the importation of nursery stock. We may in the future elect to establish regulations that will allow us to take a precautionary approach to the importation of species that have not been imported before. In response to the commenter's second suggestion, APHIS does not have the authority to impose a tax on the importation of nursery stock; we are only authorized to charge user fees for services we provide.

Definition of From

The definition of *from* in § 319.37–1 currently provides that an article is considered to be ''from'' any country or locality in which it was grown. The current regulations also provide that an article imported into Canada from another country or locality shall be considered as being solely ''from'' Canada if it is imported into the United States directly from Canada after having been grown for at least 1 year in Canada; has never been grown in a country from which it would be a prohibited article or from which it would be subject to special foreign inspection, certification, treatment, or other requirements; was not grown in a country or locality from which it would be subject to postentry quarantine requirements, unless it was grown in Canada under postentry growing conditions equivalent to those specified for the article in § 319.37–7; and was not imported into Canada in growing media.

We proposed to replace this definition with a new definition of *from,* in order to remove the language that imposed special restrictions on the importation of regulated articles from Canada. The proposed definition of *from* read: ''An article is considered to be ''from'' an exporting country or area when it was

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2005-0081.*

grown or propagated only in the exporting country or area, or when it was grown in the exporting country or area after it entered the exporting country or area from another country or area under conditions that are equivalent to those that would be required by the United States if the plant were imported into the United States directly from any of the countries or areas where the plant was grown prior to its entry into the exporting country or area.''

We received several comments on our proposed definition. Many of these commenters were concerned that the proposed definition might weaken our protections against the importation of potentially risky nursery stock. Three commenters asked us to clarify whether articles prohibited from another country would continue to be prohibited even after importation to a second country, regardless of the time that the articles remained in that country.

Some commenters expressed concern that the proposed definition would be difficult to enforce, since the national plant protection organization (NPPO) of an exporting country would have to keep track of any plant material that entered its country in case it was reexported at some point in the future. Other commenters expressed general concern about whether the restrictions on the importation of nursery stock in general are adequate to prevent the introduction of plant pests, when it can be difficult to determine what pests a plant has been exposed to.

We agree that these commenters have identified significant issues with our proposed definition of *from.* We are withdrawing that proposed change in this final rule. We will revisit this issue in a separate proposed rule.

Definition of Preclearance

We proposed to add a definition of *preclearance* to § 319.37–1. The definition we proposed to add is consistent with the definition of that term in the International Plant Protection Convention's (IPPC) 2002 Glossary of Phytosanitary Terms (International Standards for Phytosanitary Measures [ISPM] publication number 5).[2] The proposed definition read: ''Phytosanitary certification and/or clearance in the country in which the articles were grown, performed by or under the regular supervision of APHIS.'' Our intention was to clarify the conditions under which sampling and inspection can take place in the country of origin in a preclearance program.

One commenter supported the expression of our intent to provide regular supervision in preclearance and asked whether the word ''regular'' meant that APHIS would supervise at set intervals, rather than a random basis.

We have always provided regular supervision of inspection and clearance during preclearance according to the terms of the workplan developed between APHIS and the NPPO of the country of origin of the precleared articles.[3] Typically, the workplan requires APHIS' participation in preclearance activities, either at set intervals or at specific points during the production process for the articles.

Two commenters recommended that preclearance sampling and inspection at the production site be one of the main elements of plant protection employed by APHIS. These commenters stated that this would require a greater commitment to assigning trained personnel to work on location, perhaps stationing APHIS employees permanently at foreign sites of production.

We implement preclearance procedures based on the type of restricted articles being precleared for importation and the level of APHIS involvement we believe is warranted. This may involve, as the commenter suggests, stationing APHIS employees permanently at foreign sites of production or treatment facilities, or sending APHIS personnel to production sites for specific tours of duty to survey and inspect at the appropriate times during the production process. It may also involve APHIS employees consulting with employees of the NPPO of the country of origin regarding standards or requirements for phytosanitary certification. For any preclearance program, the details of APHIS supervision are specified in the workplan developed between APHIS and the NPPO of the country of origin.

One commenter was concerned that the proposed definition would not accommodate a bulb export program currently under development in which bulbs would be produced in certified fields in Germany and Poland, thus meeting the requirements in § 319.37–5(a), and then moved to the Netherlands for processing prior to export. In this program, APHIS inspectors would preclear bulbs in the Netherlands, rather than in the country of origin of the articles being exported.

The program the commenter referred to has not yet been approved by the parties that would participate in it. If the program is approved, we will make any changes to our regulations that may be necessary for its implementation.

We are making one change to our proposed definition of *preclearance* in this final rule. The proposed definition, taken directly from the IPPC Glossary of Phytosanitary Terms, referred to APHIS providing phytosanitary certification in the country in which an article of nursery stock to be imported is grown. However, under our arrangements with foreign NPPOs, only the foreign NPPO issues phytosanitary certificates; APHIS preclearance officers instead inspect articles to ensure that they meet the requirements of the regulations. Therefore, in this final rule, we have replaced the reference to phytosanitary certification with a reference to phytosanitary inspection.

Plant Protection Act Definitions

We proposed to add definitions of two terms to the regulations and to revise the definitions of three other terms to make those definitions consistent with the definitions found in title IV of the Agricultural Risk Protection Act of 2000, known as the Plant Protection Act (7 U.S.C. 7701 *et seq.*). One of the terms that we proposed to add to the regulations was *plant,* which we proposed to define, following the Plant Protection Act, as: ''Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.''

One commenter recommended that the definition of *plant* include cell cultures in solution.

The definition includes any plant (including any plant part) for or capable of propagation. This category includes cell cultures in solution, even though cell cultures in solution are not listed as examples of members of the category. (In the definition, the use of the term ''includes'' indicates that the list is not exhaustive.) We are not changing the proposed definition to include cell cultures in solution as an example because we believe it is important for the regulations to be consistent with the Plant Protection Act.

Because the definition of *plant* that we proposed to add to the regulations is broader than the scope of the plants we regulate in the nursery stock regulations, we also proposed to add a definition of *regulated plant* to the regulations that would include only

[2] ISPMs may be viewed on the World Wide Web at *https://www.ippc.int/IPP/En/default.jsp.* Click on the ''Standards'' link on the home page to view the ISPMs.

[3] We published in the **Federal Register** a notice providing background information on bilateral workplans on May 10, 2006 (71 FR 27221–27224, Docket No. APHIS–2005–0085).

those plants regulated in the nursery stock regulations. This proposed definition read: ''Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any flowering plant. Fern allies include club moss, horsetail, whisk fern, spike moss, and quillwort.''

One commenter asked why the term ''regulated'' was used and stated that the proposed definition appeared to be even broader than the proposed definition of *plant.*

We are using the term ''regulated'' to make it clear that the scope of plants included in the nursery stock regulations is limited to the plants included in the definition of *regulated plant.* We believe that the meaning of the term ''regulated'' is apparent to most readers of the regulations. The definition of *regulated plant* is narrower in scope than the definition of *plant;* the former excludes nonvascular plants such as mosses and green algae, to name two examples.

We are making one minor change to the proposed definition of *regulated plant* in this final rule. To make the last sentence of the definition of *regulated plant* consistent with the second sentence of the definition, we are making the examples in that sentence plural rather than singular.

We also proposed to revise the definition of *plant pest* to make it consistent with the definition of that term in the Plant Protection Act. The definition had read: ''The egg, pupal, and larval stages as well as any other living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.'' We proposed to revise it to read: ''Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles.''

One commenter noted that the proposed definition, which included nonhuman animals, was broader in scope than the previous definition, which only included invertebrate animals.

Again, our intention in revising the definition of *plant pest* was to make that definition consistent with the definition of that term in the Plant Protection Act. We have no intention of broadening the scope of the pests we regulate or issue permits for at this time.

We are making one other minor change to the Plant Protection Act-derived definitions we proposed. Like the current definition of *regulated article,* the definition of *regulated article* in the December 2005 proposed rule began: ''Any class of nursery stock or other regulated plant, root, bulb, seed, or other plant product * * *'' The words ''class of nursery stock or other'' are redundant, and we are removing them in this final rule.

Plants In Vitro

We proposed to remove several restrictions on plants *in vitro.* The IPPC's 2002 Glossary of Phytosanitary Terms defines plants *in vitro* as ''plants in an aseptic medium in a closed container.'' Specifically:

- We proposed to amend § 319.37–3(a)(5) of the regulations to exempt shipments of plants *in vitro* from the requirement that lots of 13 or more articles offered for importation into the United States must be accompanied by a written permit issued by a Plant Protection and Quarantine (PPQ) inspector. This exemption would not apply if importation of the plants is restricted or prohibited elsewhere in the nursery stock regulations. This would also mean that plants *in vitro* could enter the United States at any port of entry authorized in 7 CFR part 330 for articles not required to be imported under a written permit.
- We also proposed to amend § 319.37–4(a) of the regulations to exempt plants *in vitro* from the requirement that restricted articles offered for importation into the United States be accompanied by a phytosanitary certificate from the country of origin, unless their importation is restricted or prohibited elsewhere in the nursery stock regulations. These changes would make plants *in vitro* whose importation is not otherwise restricted or prohibited generally admissible into the United States.

To accomplish these changes, we proposed to add a definition of *plants in vitro* to the regulations in § 319.37–1. The proposed definition was identical to the IPPC definition quoted above.

Six commenters recommended that we not proceed with these proposed changes. The commenters focused on the fact that plants *in vitro* pose an extremely low risk only if they are produced from plants that have been determined to be free of plant pests and carefully monitored throughout the production process to ensure their continued freedom from plant pests. Along these lines, one commenter stated that some fastidious and cryptic organisms can survive the process if the source plant is infected. The commenter cited Odontoglossum ring spot virus and Cymbidium mosaic virus in orchids as good examples. This commenter further stated that the fact that a plant is growing in aseptic conditions does not imply that it is free of foliar nematodes. Other commenters noted that the proposed regulations placed no conditions on the importation of plants *in vitro* other than being imported in an aseptic medium; under the proposed regulations, there would be no way to verify that the proper production practices had been followed, or to trace the plants back to their production site if they proved to be affected by plant pests. Two commenters stated that plants *in vitro* should be generally admissible, but only if they are produced in accordance with a general clean stock program, as described in the December 2004 ANPR.

Based on these comments, we are withdrawing the proposed changes that would have made plants *in vitro* generally admissible. They will continue to be subject to the permit and phytosanitary certificate requirements. We agree with the commenters who stated that plants *in vitro* produced in a program designed to ensure pest freedom would pose an extremely low risk of introducing a quarantine pest into the United States. We are considering developing such a program and adding it to the regulations. However, in order to verify that producers of plants *in vitro* comply with the requirements of such a program, we would need to require that articles produced in such a program be accompanied by a phytosanitary certificate.

One commenter recommended that APHIS allow the importation of plants *in vitro* even if the importation of their genus or species is otherwise prohibited.

This may be possible if the plants are produced in accordance with a program of the type described above. We will consider this issue as part of our deliberation on whether to develop such a program.

In a related matter, we proposed to amend § 319.37–8(c) of the regulations, which had stated: ''A restricted article growing solely in agar or in other transparent or translucent tissue culture medium may be imported established in

such growing media.'' We proposed to remove the requirement that the growing medium be transparent or translucent in order to allow the use of charcoal in the growing medium. Charcoal is commonly used by importers of plants *in vitro* as a detoxifying agent; if it is used as an additive in growing media, it will still be easy to determine whether the growing media meets the aseptic standard prescribed in the definition of *plants in vitro,* because any bacteria in the growing media would quickly reproduce and form a large mass. Therefore, we proposed to revise this paragraph to read: ''Plants *in vitro* may be imported in their growing media.''

Two commenters specifically addressed this issue, noting that our statement that bacteria in media would ''quickly reproduce and form a large mass'' assumes that the growing requirements in the regulations related to plant-associated bacteria are met when plants are produced in *in vitro* media. The commenters stated that this is not the case.

The regulations do not contain any general requirements for plants produced in *in vitro* media. The previous requirement was intended to aid inspection of plants grown and imported in their growing media. If we become aware of any specific risks related to the importation of certain plants in growing media, we will amend the regulations accordingly to address those specific risks. However, as a general requirement, we believe the use of growing media with a charcoal additive will still allow for effective inspection of the growing media upon importation, for the reasons stated in the proposed rule. We are making no changes to the proposed rule in response to this comment.

Because we are not adding a definition of plants *in vitro* to the regulations at this time, we need to revise our proposed wording. This final rule therefore modifies paragraph (c) of § 319.37–8 to read: '' A restricted article growing solely in agar or in other tissue culture medium may be imported established in such growing media.''

Genus and Species Name on Phytosanitary Certificates

The regulations in § 319.37–4(a) currently require that any restricted article offered for importation into the United States be accompanied by a phytosanitary certificate of inspection, with certain exceptions. We proposed to additionally require that the phytosanitary certificate include the genus and species name of the restricted article that it accompanies.

Several commenters stated that the proposed requirement did not make any allowance for plants gathered on plant exploration research expeditions, where species data may not be available; unnamed, recently discovered species; or interspecific or intergeneric hybrids, including naturally occurring seedlings from unknown parents. One of these commenters suggested that instead we use the language in the IPPC's ISPM No. 12, ''Guidelines for Phytosanitary Certificates,'' which recommends that plants and plant products be identified on a phytosanitary certificate using accepted scientific names, at least to genus level but preferably to the species level. Another commenter suggested allowing the cultivar name of a plant to be provided as an alternative to the species name. One commenter suggested establishing a system through which plants whose taxonomic information was unknown could be imported under permit, with monitoring of the destination and disposal of the material.

Other commenters opposed the change entirely. Two commenters asked why it was necessary to require species information to be listed in cases when our restrictions are applied at the genus level. Two other commenters stated that many genera of certain plant types can have dozens of species. These commenters expressed concern that the need for NPPO inspection staff to verify all plants in a consignment to the species level will cause unnecessary delays in the inspection and consequently the shipping process and will detract from the inspector's primary objective to detect and identify diseases and insect pests. One of these commenters also expressed concern that use of the species name might cause identification errors that could result in delays when restricted articles are offered for importation. The commenters requested that the proposal be amended to require that only those species that have special requirements or are regulated by the Convention of International Trade in Endangered Species should be identified on the phytosanitary certificates by both genus and species.

We agree with the commenters who stated that we need to provide for situations in which the species name is not known, and we understand the burden that listing species names can impose. However, some requirements in the regulations place restrictions on specific species or cultivars within a genus; for example, the regulations in § 319.37–5(b) restrict the importation of certain species within the genus *Prunus* based on whether they are immune to plum pox virus, and the regulations in § 319.37–2(a) prohibit the importation of *Berberis* spp. except for species and cultivars that have been designated as resistant to black stem rust. Inspectors enforcing such regulations need to be able to quickly distinguish what species or cultivar is being offered for importation in order to determine whether the plants meet the requirements in the regulations.

To ensure that inspectors have the information they need while accommodating the need for exceptions when species data are not available, we have changed the proposed requirement in this final rule. Instead of requiring that the genus and species name of a restricted article offered for importation be included on the phytosanitary certificate accompanying that article, this final rule requires that, when the regulations place restrictions on individual species or cultivars within a genus, the phytosanitary certificate must also identify the species or cultivar of the article it accompanies. Otherwise, identification of the species is strongly preferred, but not required. In cases in which species is not known, the phytosanitary certificate may identify the cultivar name of the restricted article it accompanies, except where the regulations place restrictions on individual species.

Further, we are requiring that intergeneric and interspecific hybrids be designated by placing the multiplication sign ''×'' between the names of the parent taxa. If the hybrid is named, the multiplication sign may instead be placed before the name of an intergeneric hybrid or before the epithet in the name of an interspecific hybrid.

We are not making an exception in the phytosanitary certificate regulations for unnamed or unknown articles, as the information we have indicates that they have been imported extremely infrequently. Persons wishing to import unnamed or unknown articles into the United States are encouraged to contact PPQ's Permit Unit for information about importing such articles through a departmental permit. This would allow the unnamed or unknown articles to be imported for identification or research purposes, similar to the conditions described by one of the commenters.

The regulations in this final rule indicate that we strongly prefer that species be listed on the phytosanitary certificate, even when listing species is not required. We continue to request this information for data-gathering purposes. We need to know the number, size, and volume of imports of nursery stock in order to better assess what overall risks presented by plants for

planting need to be better addressed. This effort is part of the Q–37 revision mentioned earlier in this document. In addition, requesting that species information be entered where known is consistent with IPPC guidelines, as discussed earlier.

In discussing this change, the preamble of the proposed rule stated that ''having the genus and species name available would allow inspectors to easily identify restricted articles presented for importation and thus better assess any risks that may be associated with their importation.'' One commenter stated that a risk assessment should be performed prior to importation of the articles in question, unless it is meant to give the individual inspector a management tool to make a selection of the products presented for importation.

As the commenter stated, our inspectors are not conducting risk assessments at the ports; rather, they make decisions about how to apply the regulations, which are the result of risk assessments. The phytosanitary certificates that have accompanied restricted articles may not have enough information to allow an inspector to determine what restrictions apply to its importation in cases where restrictions apply to species or cultivars within a genus. The proposed change was intended to address this problem. We appreciate the opportunity to clarify this point.

One commenter, addressing the fact that we need data on which species are imported to further our efforts to revise the nursery stock regulations, stated that the data should be obtained from forms other than the phytosanitary certificate.

The Paperwork Reduction Act obligates us to minimize paperwork burden on stakeholders; requiring genus and species data to be submitted on a different form would be an unjustifiable duplicate paperwork burden. We are making no further changes to the proposed rule in response to these comments.

Phytosanitary Certificates for Bulbs From the Netherlands

We proposed to amend paragraph § 319.37–4(a) of the regulations, which requires that most restricted articles imported into the United States be accompanied by a phytosanitary certificate, to allow small individual shipments of bulbs from the Netherlands to enter with a special certificate related to a phytosanitary certificate. The special certificate would list a serial number that would refer to a phytosanitary certificate held by the NPPO of the Netherlands. The special certificate would also list the scientific name of the bulb, the bulbs' country of origin, and an expiration date after which the special certificate could no longer be used in lieu of a phytosanitary certificate. We proposed that the expiration date for the special certificates would be 4 weeks after the issuance of the phytosanitary certificate held by the NPPO of the Netherlands.

Commercial shipments of bulbs from the Netherlands must be precleared for entry into the United States by a PPQ inspector. In addition, under § 319.37–5(a), all bulbs imported from the Netherlands must be accompanied by a phytosanitary certificate with an additional declaration that the bulbs offered for importation were grown on land that has been sampled and microscopically inspected by the plant protection organization of the Netherlands and found to be free from the potato cyst nematodes *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens within the past 12 months.

The proposed special certificate would accompany small individual shipments of bulbs imported into the United States in passenger baggage; the special certificate would be easier for individuals to obtain than a full phytosanitary certificate. The clearance process at the port of entry would continue to serve as an additional mitigation against the risk of introduction of nematodes into the United States.

One commenter was concerned that, while the special certificate would be linked to a phytosanitary certificate issued, held, and retrievable upon request by the NPPO of the Netherlands, the proposed regulations did not contain any provisions linking the bulbs imported under the special certificate to the requirements of § 319.37–5(a). Thus, the commenter stated, bulbs imported under the proposed special certificate might have originated in someone's backyard. Two other commenters stated that the proliferation of special certificates could allow these documents to be misused and thus increase the risk of introduction of potato cyst nematodes into the United States.

All bulbs imported from the Netherlands are subject to the requirements in § 319.37–5(a). Special certificates would be assigned to lots of bulbs inspected and certified under the phytosanitary certificate issued for that particular lot as part of the preclearance process. A phytosanitary certificate would not be issued for a lot of bulbs unless the bulbs in the lot meet all the requirements in the regulations for importation into the United States. The special certificates will serve as an indication that the bulbs have been inspected and certified, and they will be related to a specific phytosanitary certificate in all cases. Any fraud committed using the special certificates would be investigated by APHIS' Investigation and Enforcement Services.

We do not believe it would be prudent to specifically refer to § 319.37–5(a) in the regulations governing the issuance and use of the special certificates, as the phytosanitary certification requirements for bulbs from the Netherlands may change over time and thus may be contained in different sections of the regulations. We are making no changes to the proposed rule in response to these comments.

One commenter cited high rejection rates in recent years for shipments of bulbs from the Netherlands and stated that using special certificates would not be advisable if the phytosanitary certificates were already suspect.

Our records do not indicate high rejection rates either for bulbs that are inspected and precleared in the Netherlands or for bulbs from the Netherlands that have been inspected and released at a U.S. port of entry. Bulbs entering the United States with a special certificate would have been inspected by the NPPO of the Netherlands. The special certificate indicates that the bulbs have been inspected and a phytosanitary certificate was issued for the lot of bulbs. The special certificate is traceable to the actual phytosanitary certificate on file in the Netherlands. These bulbs would also be subject to inspection when the passenger arrives at a United States port of entry. If there are phytosanitary problems with bulbs under the special certificate, we would notify the NPPO of the Netherlands for corrective action.

One commenter, the Netherlands NPPO, stated that the proposed program agreed to by APHIS and the Netherlands NPPO had specified that the special certificates would be valid for 6 weeks, rather than 4.

The commenter is correct, and we have made that change in this final rule.

The Netherlands NPPO also stated that it and APHIS had agreed to a workplan that states that no phytosanitary certificates, either originals or copies, will accompany shipments of bulbs that have been precleared in the Netherlands; they are given to the APHIS inspector in the Netherlands or mailed to APHIS offices. However, the language in § 319.37–5(a) states that the phytosanitary certificate must accompany the bulbs ''at the time of arrival at the port of first arrival in the

United States,'' which contradicts the workplan.

The commenter is correct that the specific language ''at the time of arrival at the port of first arrival in the United States'' would not allow the program to work as proposed. We are removing that language from § 319.37–5(a) in this final rule. The phytosanitary requirements in § 319.37–5(a) will remain otherwise unchanged.

One commenter expressed concern that the current preclearance program for bulbs from the Netherlands only addresses the specific nematode pests cited earlier. The commenter stated that imported bulbs can carry other pests that are of concern to nurseries, commercial flower growers, State departments of agriculture, and industries other than the nursery industry. The commenter cited *Ditylenchus dipsaci* and *D. destructor* as two pests that are of concern to the potato industry and that are regulated by some State departments of agriculture. The commenter urged APHIS to expend more effort on ensuring that regulated nonquarantine pests are not imported into the United States via bulbs and other nursery stock.

At this time, APHIS has not identified any regulated nonquarantine pests and has not established regulations for their official control. In order for APHIS to restrict the importation of regulated nonquarantine pests under the IPPC, we would have to identify regulated nonquarantine pests (including providing scientific justification for regulating them) and establish official control mechanisms. We have not yet done so. We are considering whether to develop procedures for identifying such pests and whether to establish regulations to control their importation. We cannot take any action against regulated nonquarantine pests in this final rule.

Importation of Certain Seeds From Canada

We proposed to add a new paragraph (d) to § 319.37–4 of the regulations to allow seed exported from Canada that meets certain conditions to be imported into the United States without a phytosanitary certificate. To be eligible for this exemption, Canadian exporters of seed would have to register with and participate in a seed export program that would be established by the Canadian Food Inspection Agency (CFIA).

One commenter asked whether Canada would establish a similar program to allow U.S. seed to be exported to Canada without a phytosanitary certificate.

We evaluated the Canadian request for a seed export program on the basis of whether such importation would increase the risk of introducing a seed-borne plant pest into the United States. Our evaluation concluded that, under the conditions specified in the proposal, the absence of a phytosanitary certificate would not increase that risk. Whether Canada would reciprocate was not a subject of our evaluation.

One commenter asked whether imposing these requirements on the importation of Canadian seed was unlawful discrimination against Canadian seed exports.

This change liberalizes trade by removing the requirement for a phytosanitary certificate while providing other conditions that maintain phytosanitary security. We proposed this change at the request of the Canadian NPPO, so we are assuming that they do not believe that this change discriminates against seed exports from their country. Canadian seed exporters still have the option of obtaining a phytosanitary certificate for each shipment they export to the United States.

One commenter, the Canadian NPPO, requested that the United States exempt small shipments of commercially packaged seed from all phytosanitary requirements to facilitate their export to the United States. The commenter stated that the risk presented by such packages should be minimal due to the small quantity of seeds being shipped under such an exemption.

We have not previously received a proposal for such an exemption, and we cannot make such a change without giving the public an opportunity to comment on it. We are making no changes in response to this comment. We will note that such a change would be inconsistent with the regulations that set out conditions for importing small lots of seed without a phytosanitary certificate, which we established in a final rule published in the **Federal Register** on April 13, 2006 (71 FR 19097–19102, Docket No. 02–119–2).

Related to the rule establishing conditions for the importation of small lots of seed without a phytosanitary certificate, we are making one change to the proposed rule text in this final rule. We had proposed to add the Canadian seed program in a new paragraph (d) in § 319.37–4. Since the publication of the proposed rule, the final rule establishing conditions under which small lots of seed may be imported without a phytosanitary certificate added a new paragraph (d) to § 319.37–4 that sets out those conditions. Accordingly, this final rule adds the Canadian seed program in a new paragraph (e). We have also made minor adjustments to the language in proposed paragraph (a) to reflect this change.

Blueberry Plants From Canada

We proposed to add a new paragraph § 319.37–5(t) to the regulations to require that phytosanitary certificates that accompany *Vaccinium corymbosum* (blueberry) plants that are imported from Canada must contain an additional declaration stating that the plants are free of blueberry scorch carlavirus.

Blueberry scorch carlavirus causes blueberry scorch disease, the primary symptom of which is blighting of both flowers and new vegetative growth at peak bloom. Blighted blossoms fail to produce fruit, and infected plants in general are less vigorous than healthy plants. Bushes, once infected, may show symptoms each year. Initially, only one or few branches may have blighted flowers and leaves, but after a few years the entire bush may show symptoms.

We proposed to require this additional declaration on the phytosanitary certificate accompanying *V. corymbosum* plants because virulent strains of blueberry scorch carlavirus have been found that exist only in Canada.

One commenter stated that other plants can serve as hosts of blueberry scorch carlavirus, including huckleberry and cranberry plants.

We agree with this commenter. In this final rule, we are expanding the scope of the additional declaration requirement to include all *Vaccinium* spp., not just *V. corymbosum.*

One commenter asked us to change the proposed regulations so that they stated that the declaration of freedom has to be based on annual testing of the ''mother'' plants used for propagation rather than just visual inspection. Another commenter addressed the same issue in noting that the virus has a 2-year latent period.

We agree with these commenters. In this final rule, we are requiring that *Vaccinium* spp. from Canada be grown in an approved certification program for blueberry scorch carlavirus. APHIS would evaluate certification programs for blueberry scorch carlavirus upon request.

One commenter pointed out an inconsistency in our proposal: The proposed declaration applied broadly to all strains of blueberry scorch carlavirus, but the preamble to the proposed rule expressed concern about specific virulent strains of blueberry scorch carlavirus that have been found only in Canada. The commenter

asserted that restricting importation for all strains of the virus is not justified, as some strains of the virus are also found in the United States and are not under official control.

We agree with this comment. In this final rule, we are requiring that *Vaccinium* spp. imported into the United States be grown in an approved certification program and tested free of only the BC–1 and BC–2 strains of blueberry scorch carlavirus. Canadian government information indicates that these strains are distinct from the Northwest strain (present in the States of Oregon and Washington) and the East Coast strain (first identified in New Jersey and present in that and some surrounding States).[4] To our knowledge, the BC–1 and BC–2 strains are not present in the United States. These strains are more aggressive than the strains that are present in the United States, having infected approximately 30 percent of blueberry production fields in British Columbia since 2000.

With these changes, paragraph (t) of § 319.37–5 reads as follows in this final rule: ''For any *Vaccinium* spp. plants from Canada, the phytosanitary certificate of inspection required by § 319.37–4 must contain an additional declaration that the articles were produced in an approved certification program and found by the national plant protection organization of Canada to be free of the BC–1 and BC–2 strains of blueberry scorch carlavirus.''

In practice, these requirements will likely mean that *Vaccinium* spp. imported from Canada will be free of all strains of blueberry scorch carlavirus, not just the BC–1 and BC–2 strains, as testing for specific strains of blueberry scorch carlavirus is time- and resource-intensive. However, if *Vaccinium* spp. from Canada were tested for specific strains and found to be infected with strains of blueberry scorch carlavirus other than BC–1 and BC–2, we would allow their importation.

Two commenters stated that the movement of blueberry plants between Canada and the United States, in both directions, is common and has occurred for many years. The commenters stated that the fields of blueberry in the Canadian province of British Columbia that are known to be infected are just one-quarter mile north of the Canada-United States border. Because the virus is spread through the movement of virus-carrying aphids as well as through the movement of propagative materials, these commenters asserted that any regulations to restrict movement are unwarranted.

[4] See *http://www.agf.gov.bc.ca/cropprot/blsv.htm.*

One of these commenters stated that the CFIA has conducted extensive surveying in the province of British Columbia; additional surveying would be required in suspect U.S. States to determine the true range of these new strains of the virus. The other stated that the commenter's organization was unaware of a risk assessment or national survey having been conducted by the United States to determine whether the strains of blueberry scorch carlavirus that are of concern are present in the United States.

While blueberry plants have moved between Canada and the United States, their importation into the United States has also been subject in many cases to State regulations that require them to be free of blueberry scorch carlavirus. (As one of these commenters noted, the British Columbia Ministry of Agriculture and Lands has worked with the State departments of agriculture in Oregon and Washington to develop a certification program for the propagation of blueberry plants based on testing and isolation.) Surveys that have been conducted at the State level in the United States have not detected the BC–1 or BC–2 strains of blueberry scorch carlavirus. We will continue to survey for these strains of blueberry scorch carlavirus, and we will revisit our regulations if either of the BC–1 or BC–2 strains is detected in the United States. We recognize that aphids can transport the virus across the U.S.-Canada border, but this transport is only in the immediate area of the border. Infected *Vaccinium* spp. plants are the principal means of long-distance spread to the major U.S. blueberry-producing areas. We believe restrictions on the importation of *Vaccinium* spp. from Canada are justified to prevent the introduction of the BC–1 and BC–2 strains of blueberry scorch carlavirus into the United States. We are making no changes in response to these comments.

One commenter noted that *Vaccinium* spp. can serve as hosts for *Phytophthora ramorum* (sudden oak death) and asked that we not overlook *P. ramorum* in promulgating restrictions on the importation of *Vaccinium* spp.

We are developing a separate interim rule that will place restrictions on the importation of *Vaccinium* spp. due to the presence of *P. ramorum* in certain countries. Temporary, emergency restrictions are already in place to prevent the introduction of *P. ramorum* in imported host plants.

One commenter asked that APHIS expand the regulations to include restrictions to prevent the introduction of other blueberry diseases, such as blueberry shock virus.

Blueberry shock virus is present in the United States, and we do not have an official program to control its spread; therefore, we would not be justified in placing restrictions on the importation of blueberries to prevent its introduction. We are not currently aware of any blueberry diseases that are not present in the United States and that are present in other countries from which the United States imports blueberries that are not already addressed in the regulations. We welcome suggestions regarding other blueberry diseases that may be appropriate for us to address in the regulations.

Programs for Importation of Approved Plants From the Canary Islands and From Israel

We proposed to add new paragraphs (u) and (v) to § 319.37–5 to establish programs to govern the importation of approved plants from the Canary Islands of Spain and from Israel, respectively. Under this proposal, the NPPO of the country of origin, the growers in the country of origin, and APHIS would jointly implement safeguards to ensure that the relevant quarantine pests are not present in shipments of approved plants. In the case of the Canary Islands, the approved plants would be *Pelargonium* (geranium) spp., and the pests of concern are *Helicoverpa armigera,* the cotton bollworm; *Chrysodeixis chalcites,* the tomato looper; and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*).[5] In the case of Israel, all plants except bulbs, dormant perennials, and seeds that are imported into the United States would be required to be imported under this program. The main pest of concern in Israel is *Spodoptera littoralis,* the Egyptian cotton leafworm, although other quarantine pests are found in Israel and must be excluded from shipments of plants imported under this program.

Four commenters were concerned that the pests listed in these proposed programs did not include *Ralstonia solanacearum* race 3 biovar 2 (potato brown rot), a bacterial disease for which APHIS has established regulations in § 319.37–5(r). One of these commenters asked APHIS to amend the proposed regulations to indicate that the *R. solanacearum* race 3 biovar 2 regulations in § 319.37–5(r) superseded

[5] The proposed rule referred to this pest as *Cornutiplusia circumflexa.* We have since determined that its proper name is *Syngrapha circumflexa,* and we have updated the final rule accordingly.

the proposed regulations. Two of these commenters also stated that quarantine-significant potato cyst nematodes and other exotic cyst-forming nematodes occur in the Canary Islands and Israel. These commenters expressed hope that the phytosanitary requirements for export of *Pelargonium* spp. and other plants to the United States also include rigorous exclusionary measures to prevent the contamination of plants and packing material with cysts of these nematode pests. Another commenter asked if there were any other pests of concern associated with the importation of these plants from the Canary Islands and Israel.

The importation of *Pelargonium* spp. from the Canary Islands and from Israel is subject to all requirements in the nursery stock regulations; none of the regulations in the nursery stock subpart supersede each other, and all must be complied with in order to import nursery stock into the United States. The proposed regulatory text stated that the importation of plants from the Canary Islands and from Israel would be subject to the requirements of ''this section,'' i.e., § 319.37–5, which includes the requirements in paragraph (r) of § 319.37–5 as well as the proposed requirements.

Both Spain and Israel are countries where *R. solanacearum* race 3 biovar 2 is not known to occur. If *R. solanacearum* race 3 biovar 2 was detected in these countries, we would enforce the regulations in § 319.37–5(r)(3) as well as the relevant regulations elsewhere in § 319.37–5. Similarly, plants imported from the Canary Islands and Israel would have to meet all other applicable requirements in the regulations, including any restrictions based on the presence of potato cyst nematodes in those countries. We would ensure that all relevant requirements would be met in the workplan that APHIS develops with the NPPO of the country of origin and, if necessary, the grower. All nursery stock imported under these programs will be inspected at a USDA plant inspection station, and appropriate action will be taken if a quarantine pest is found.

One commenter was concerned about the level of APHIS involvement in the proposed programs. The commenter cited proposed provisions in which APHIS would inspect and approve production sites and packing materials and proposed provisions in which APHIS, along with the NPPO of the country of origin, would monitor compliance with the program requirements and decide whether to reinstate growers who had violated those requirements. The commenter referred to the text of the IPPC[6] and stated that Articles IV and V.2 of that document grant responsibility for performing such tasks solely to the NPPO of the country in which production of the exported articles takes place. The commenter stated that, apart from very specific risk situations, the monitoring of programs in the exporting country should solely be the responsibility of the exporting country's NPPO. The commenter considered the proposed involvement of APHIS to present an unnecessary and unjustified interference with the exporting countries' responsibilities.

Both the Canary Islands program and the Israel program have been proposed because the high-risk plant pests addressed by these programs were frequently intercepted at U.S. ports of entry in shipments of plants from the Canary Islands and Israel. Because these programs have been agreed to by the relevant parties, and specifically because the foreign NPPOs involved have agreed that APHIS labor is necessary to help administer the programs, we do not believe that it would be appropriate to change the programs at this point. If, in the future, the foreign NPPOs wish to assume a more active role, we will entertain discussions with them regarding roles and responsibilities.

We received three comments specifically addressing the trust funds that we proposed to require as a means of funding APHIS involvement in these programs. One commenter supported our proposed use of the trust funds. Another commenter was concerned that other countries have begun requiring similar trust funds for commodities exported from the United States to those countries, and suggested that we think about other cost recovery mechanisms. A third commenter stated that the proposed rule may lead to substantial increase in the costs for the export of plant material to the United States, as there would be additional expenses for bilateral cooperation and the involvement of APHIS experts. As a consequence, this commenter stated, only large companies that can afford the additional financial and administrative burden for such a program may be able to export plant material to the United States in the future. This development would be in contrast to the IPPC requirement that importing countries take the least restrictive measures possible in order to reach a minimum impediment to the international movement of commodities. In addition, the commenter questioned why the costs would have to be paid in advance.

The trust fund requirement is common practice under many other APHIS import regulations that require APHIS to assist in certification (*e.g.*, importing *Pelargonium* spp. and *Solanum* spp. from areas where *R. solanacearum* race 3 biovar 2 is known to exist under § 319.37–5(r), or importing Hass avocados from Mexico for consumption under § 319.56–2ff). The trust fund is intended to ensure that the government of the country in which the articles are produced or its designated representative bears the costs of monitoring and inspection, rather than U.S. taxpayers. (The government of the country in which the articles are produced is, of course, free to pass this cost on to production sites producing plants for export to the United States.)

Given that the NPPOs for the Canary Islands and Israel have agreed that APHIS involvement is necessary to ensure that plants exported from those countries are free of quarantine pests, we believe that we are in fact requiring the least restrictive measures possible. Requiring that APHIS subsidize the production of plants grown in foreign countries for export to the United States by providing its labor free of charge would, we believe, be a misallocation of APHIS' limited resources.

The commenter asking us to consider other cost recovery mechanisms did not suggest any alternatives. Of the options for cost recovery we have considered, we have determined that the trust fund is the simplest and most direct means of cost recovery. We are making no changes to the proposed rule in response to these comments.

Kenaf Seed From Mexico

We proposed to allow kenaf seed from Mexico to be imported into pink bollworm generally infested areas in the United States without treatment. Under the current regulations in § 319.37–6(a), seeds of *Hibiscus* spp. (hibiscus, rose mallow) from any foreign country or locality, at the time of importation into the United States, must be treated for possible infestation with *Pectinophora gossypiella* (Saunders) (pink bollworm) in accordance with the applicable provisions of 7 CFR part 305.

However, the movement of untreated kenaf (*Hibiscus cannabinus*) seed from Mexico into pink bollworm generally infested areas of the United States (listed under our domestic pink bollworm quarantine and regulations in 7 CFR 301.52–2a, and currently the States of Arizona, New Mexico, and

[6] The text of the IPPC may be viewed on the Internet at *https://www.ippc.int/IPP/En/default.jsp*. Click on the ''Convention text'' link under ''Convention'' on the home page to view the IPPC.

Texas, and several counties in California) would pose little or no risk of increasing the area of pink bollworm infestation. Under our domestic pink bollworm quarantine regulations in § 301.52, these generally infested areas are quarantined to prevent the spread of pink bollworm, and kenaf seed is a regulated article under § 301.52(b) that may not be moved interstate from any quarantined area except under the conditions described in § 301.52–3.

We proposed that kenaf seed from Mexico imported into pink bollworm generally infested areas would be subject to inspection, and, immediately upon release, would be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, Subpart—Pink Bollworm.

Two commenters asked whether APHIS could allow Mexican kenaf seed to be imported into pink bollworm generally infested areas without allowing other kenaf seed from other countries to be imported into those areas as well.

As we stated in the proposal, we have reviewed the pests associated with kenaf seed in Mexico and found that the pink bollworm is the only pest of concern. We would provide similar treatment for kenaf seed imports from other countries only if it could be determined that the pink bollworm is the only pest of concern associated with kenaf seed in those countries as well and that the seed could be imported directly into the generally infested areas.

Two commenters stated that the proposal appeared to indicate that APHIS has domestic regulations that could allow the distribution of pink bollworm on kenaf seed. These commenters suggest that we first correct what appeared to them to be permissive domestic regulations prior to allowing the importation of kenaf seed into the United States from Mexico. The commenters asserted that there is no guarantee that potentially infested kenaf seed would not be moved to areas free of the pink bollworm.

We would only allow the importation of untreated kenaf seed from Mexico into generally infested areas for pink bollworm. In the generally infested areas, we are not pursuing eradication of pink bollworm. Instead, we have placed restrictions on the interstate movement of commodities whose movement could spread pink bollworm from generally infested areas to areas where we are pursuing eradication of pink bollworm or areas where pink bollworm is not known to occur. Once Mexican kenaf seed enters the United States, it would be subject to the domestic pink bollworm regulations. These regulations are designed to prevent the movement of potentially infested kenaf seed, whether it has originated in a foreign country or domestically, from generally infested areas unless it is moved under conditions that would prevent the spread of pink bollworm, as listed in § 301.52–4(a). Any violations would be investigated by APHIS' Investigation and Enforcement Services. We are making no changes to the proposed regulations in response to these comments.

We also proposed to reorganize the regulations in § 319.37–6 into a table. The proposed table had one row for each of the six paragraphs in § 319.37–6. However, some of the paragraphs addressed multiple genera, and it could be confusing to list multiple genera in one row in a table. In this final rule, we have listed each genus in § 319.37–6 in a separate row in the table. In an effort to provide further clarity, we have also revised the proposed table entry for ''Rutaceae seeds'' to read ''Rutaceae, seeds of all species in the family.'' Finally, the proposed listing for the pests addressed by treating *Guizotia abyssinica* (niger) seeds, which stated that the treatment was intended to address *Cuscuta* spp., was incomplete; we have expanded the listing to include the other noxious weeds listed in 7 CFR 360.200.

Postentry Quarantine Requirements for Hydrangea spp.

We proposed to add a new provision in § 319.37–7(d)(7)(ii) allowing importers of *Hydrangea* spp. from all countries and localities except Canada and Japan who are operating under a postentry quarantine agreement to grow any article of *Hydrangea* spp. or increase therefrom for a period of 9 months after the importation of the plants, rather than 2 years as had been previously required.

Two commenters asked questions about the evidence leading us to the proposed reduction in the quarantine period, requesting that a risk assessment be made available. One of these commenters stated that the postentry quarantine period should be established on the basis of a risk assessment for importing *Hydrangea* spp. from each country of origin.

We determined that the 9-month postentry quarantine period was adequate based on a review of the available literature. We appreciate the opportunity to expand on our reasons for determining that a 9-month postentry quarantine period is adequate for *Hydrangea* spp.

The pest of concern for imported *Hydrangea* spp. is *Pucinnia glyceriae* (*Aecidium hydrangeae-paniculatae*). This pest is a rust fungus known as a heteroecious macrocyclic rust. This means that this rust has four different life stages in its life cycle, with two of those stages occurring on *Hydrangea* spp. and the other two stages on *Glyceria* spp., a genus within Poaceae, the grass family. Both hosts are necessary in order for the pathogen to complete its life cycle. The spores produced by this pathogen on *Hydrangea* can not reinfect Hydrangea but have to land and germinate on *Glyceria* spp.; infections on Hydrangea are caused only by spores produced on the *Glyceria* spp. host.

The regulations only allow the importation of *Hydrangea* spp. from countries where *A. hydrangeae-paniculatea* is not known to occur, which means that the *Hydrangea* spp. plants imported into postentry quarantine would not be expected to be infected with the pest. In the event that an article of *Hydrangea* spp. was imported with an infection, however, the pathogen would only survive if the article of *Hydrangea* spp. were grown in postentry quarantine with *Glyceria* spp., which are not known to be grown in cultivation. If such conditions nevertheless prevailed, the pathogen would reveal itself in large lesions on the leaves of the *Hydrangea* plant early within a growing season, which is typically 9 months.

In general, the country of origin of a plant is irrelevant to the question of how long a period is required for a pest to express itself in a plant.

Three commenters recommended that the 9-month postentry quarantine period include the three most rust-conducive months of the year, to facilitate expression of the pest.

We agree with these commenters that *Hydrangea* spp. should be grown in conditions that will facilitate expression of the pest. Plants in postentry quarantine are usually grown outside during the quarantine period. The 9-month postentry quarantine period would thus contain periods conducive to developing symptoms of *A. hydrangeae-paniculatea.* In most regions of the United States, the outdoor growing season is less than 9 months. Given these facts, we believe it is not necessary to explicitly require in the regulations that the *Hydrangea* spp. be grown in rust-conducive conditions.

Two commenters expressed concern that *R. solanacearum* may be a pest of *Hydrangea* spp. that we have not addressed. They cited recent problems with latent bacterial wilt in the ''Lady

in Red'' cultivar of *Hydrangea macrophylla* as raising concerns about whether a 9-month postentry quarantine period would be adequate to manifest this pathogen under normal production practices. Although no *R. solanacearum* race 3 biovar 2 has been detected in any *Hydrangea* spp., these commenters suggested that APHIS require that the mother plants of imported *Hydrangea* spp. be regularly indexed for *R. solanacearum.*

We appreciate the commenters' concerns. Because no *R. solanacearum* race 3 biovar 2 has been found in *Hydrangea* spp., we have no basis for establishing regulations to prevent the introduction of that pest via the importation of *Hydrangea* spp. If *R. solanacearum* race 3 biovar 2 were found in *Hydrangea* spp., we would likely address it through a systems approach (as we do for *Pelargonium* spp. and *Solanum* spp. in § 319.37–5(r)) rather than through postentry quarantine.

Postentry Quarantine Requirements for Chrysanthemum spp., Dendranthema spp., Leucanthemella serotina, and Nipponanthemum nipponicum

The regulations in § 319.37–7(a) designate as restricted articles any articles of *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina,* and *Nipponanthemum nipponicum* that meet the conditions for importation in § 319.37–5(c) and that are imported from any foreign locality except Andorra, Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canary Islands, Chile, China, Colombia, Croatia, Ecuador, Iceland, Japan, Korea, Liechtenstein, Macedonia, Malaysia, Mexico, Moldova, Monaco, New Zealand, Norway, Peru, Republic of South Africa, Romania, Russia, San Marino, Switzerland, Taiwan, Thailand, Tunisia, Ukraine, Uruguay, Venezuela, Yugoslavia; the European Union (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and United Kingdom); and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude. Articles designated as restricted articles in § 319.37–7(a) must be grown in postentry quarantine under the conditions described in paragraphs (c) and (d) of § 319.37–7. Paragraph (d)(7)(ii) currently requires that any restricted articles of *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina,* and *Nipponanthemum nipponicum* be grown in postentry quarantine for a period of 6 months. We proposed to reduce this postentry quarantine growing period to 2 months if the restricted articles are grown in accordance with the requirements of an APHIS-approved best management practices program.

We proposed this change because we had reviewed evidence indicating that the pest of concern with regard to imported articles of *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina,* and *Nipponanthemum nipponicum,* chrysanthemum white rust (CWR), will express symptoms within 2 months, meaning that 2 months would be an adequate postentry quarantine period for these articles. We proposed to reduce the postentry quarantine period for restricted articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina,* and *Nipponanthemum nipponicum* to 2 months only if the articles are grown in accordance with the requirements of an APHIS-approved best management practices program as an additional safeguard.

Sixteen commenters addressed the proposed change to the postentry quarantine requirements for articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina,* and *Nipponanthemum nipponicum.* While many commenters supported the change, many commenters were confused regarding whether the best management practices program was intended to apply to production in the country of origin or postentry quarantine in the United States. In addition, some commenters disputed our conclusion that 2 months was an adequate amount of time for CWR to express itself in postentry quarantine.

Based on these comments, we are withdrawing the proposed change. We will revisit the issue in a separate proposed rule, providing information on the issues commenters raised and revising the proposed regulatory text to clarify our intentions.

Plants in Growing Media From Certain Areas in Canada

We proposed to amend § 319.37–8(b) of the regulations to allow the importation of restricted articles in growing media from two areas in Canada from which such importation is currently prohibited if those articles are grown under certain conditions. Paragraph (b) of § 319.37–8 allows the importation of restricted articles from Canada in any growing medium, except restricted articles from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road. Restricted articles from these areas may not enter in growing media because of the presence of potato cyst nematodes (*G. rostochiensis* and *G. pallida*) in those parts of Canada.

We determined that restricted articles that are grown in approved growing media and are isolated in such a manner as to prevent the restricted articles from being infested with potato cyst nematodes may be imported safely into the United States from these areas. Therefore, we are proposing to allow the importation of restricted articles in approved growing media from these areas in Canada if the phytosanitary certificate accompanying the articles contains an additional declaration stating that the restricted articles were produced in a production site approved by the NPPO of Canada as capable of isolating the plants from potato cyst nematode infestation and that the restricted articles were isolated from potato cyst nematode infestation throughout their production.

Two commenters were concerned that the sanitary conditions required for the production of the restricted articles to be shipped in growing media may not always provide complete protection to the United States from the introduction of cysts of potato cyst nematodes, which can easily contaminate plant shipments.

Because we are requiring specifically that the plants be grown in a manner to prevent infestation by potato cyst nematodes, we believe the proposed regulations addressed this concern. We are confident that we can work with the Canadian NPPO to develop measures that will be sufficient to protect restricted articles imported under these regulations from potato cyst nematode infestation.

Two commenters stated that other countries where potato cyst nematodes are present may feel discriminated against and ask to be allowed to export restricted articles under the same conditions.

Such countries are free to request that they be allowed to export restricted articles under the same conditions. If we can determine that the only quarantine pests associated with restricted articles to be exported from such a country are potato cyst nematodes, we will work with the NPPO of that country to develop conditions under which those restricted articles can be isolated from potato cyst nematodes during production and thus be authorized for importation into the United States. For many countries infested with potato cyst nematodes, our regulations in

§ 319.37–5(a) provide a means for exporting nematode host material to the United States under adequate safeguards.

One commenter asked whether Canada would enact similar regulations to allow the export to Canada of restricted articles from the nematode-infested areas of the State of New York.

Since outbreaks of potato cyst nematodes occurred recently in Quebec and Idaho, Canada and the United States have harmonized our regulations with regard to the importation of potential hosts of potato cyst nematodes. Currently, restricted articles from the nematode-infested areas of the States of New York and Idaho may be exported to Canada under certain conditions.

We are making one change to the proposed regulatory text. The proposed rule referred to an additional declaration stating that the restricted article was produced in a production site approved by the NPPO of Canada as capable of isolating the plants from infestation by potato cyst nematodes (*G. rostochiensis* and *G. pallida*) and that the restricted article was isolated from potato cyst nematode infestation throughout its production. During the deliberations on how to harmonize our potato cyst nematode-related regulations, the NPPO of Canada and APHIS agreed to similar, but simpler, text for the additional declaration. This final rule requires the additional declaration agreed to in the bilateral negotiations, which states simply that the plants were grown in a manner to prevent infestation by potato cyst nematodes (*G. rostochiensis* and *G. pallida*).

Additions to the List of Approved Growing Media

We proposed to add unused clay pots and new wooden baskets to the list of growing media approved for epiphytic plants found in § 319.37–8(d). Such media are used by many nurseries, and we proposed these additions at the request of importers. We believe that unused clay pots and new wooden baskets would be as safe as the current approved growing media.

One commenter suggested that ''new'' would be a better word than ''unused'' to describe the clay pots. We agree and have incorporated that change into this final rule.

Several commenters expressed concern that the wooden baskets we proposed to allow might be affected by wood-boring pests, and that importing epiphytic plants established in new wooden baskets might thus introduce such pests into the United States.

We did not make it clear in the proposal that new wooden baskets imported into the United States as growing media for epiphytic plants would have to comply with the existing regulations governing the importation of logs, lumber, and other unmanufactured wood articles in §§ 319.40–1 through 319.40–11. This final rule explicitly indicates that new wooden baskets must meet the requirements found in those regulations. Therefore, new wooden baskets will have to be imported under conditions designed to prevent the introduction of wood-boring pests into the United States.

Federal Plant Inspection Stations and Other Ports of Entry

We proposed to update the list of Federal plant inspection stations in § 319.37–14 to correct addresses, remove plant inspection stations no longer in use, and add new plant inspection stations. In addition, we proposed to remove the ports of entry that do not have plant inspection stations from the list in § 319.37–14 and instead indicate that restricted articles not required to be imported at a plant inspection station may enter the United States through any Customs designated port of entry. We also proposed to make several other updates to the regulations. We did not receive any comments on our reorganization of § 319.37–14 itself.

One commenter asked APHIS to confirm that the requirement that plants which are required to be imported under a written permit must be offered for import at a plant inspection station, if not precleared, does not apply to articles from Canada as described in § 319.37–3(a)(7).

Articles from Canada described in § 319.37–3(a)(7) are not required to be imported with a permit, and thus do not need to be imported into the United States through a plant inspection station.

One commenter suggested that, given the recent reassignment of some inspection responsibilities from APHIS to the Bureau of Customs and Border Protection, Department of Homeland Security, it would be advisable to change ''Federal plant inspection stations'' to ''APHIS/PPQ plant inspection stations'' in the regulations, to make it clear what organization operates the plant inspection stations.

We agree with this commenter that using the term ''Federal'' could create confusion. However, rather than the term suggested by the commenter, we would prefer to use the term ''USDA plant inspection stations,'' as this term is used internally in APHIS. We have made this change in the final rule.

In addition, the addresses for the USDA plant inspection stations in Miami, Agana, and Seattle have changed. We are updating them in this final rule. We are also amending the entry for San Diego to indicate that plants imported into San Ysidro may also be sent to this plant inspection station for inspection. Finally, we are amending the entry for Baltimore to clarify that only niger seed may be imported into this port for treatment.

Miscellaneous Changes

One commenter asked us to correct an error in the regulations: *Fragaria* spp. is listed in the postentry quarantine regulations in § 319.37–7 as eligible for postentry quarantine from several countries, but importation of *Fragaria* spp. is prohibited from all countries other than Canada and Israel under § 319.37–2. The commenter recommended that we remove the entry for *Fragaria* spp. from § 319.37–7. We are doing so in this final rule.

In addition, we are correcting one other error in the regulations. The regulations in § 319.37–12 state that a restricted article for importation into the United States shall not be packed in the same container as an article prohibited importation into the United States by 7 CFR part 319 or part 321. Part 321 no longer exists; therefore, we are removing the reference to it in this final rule.

In a final rule published in the **Federal Register** on April 3, 2007 (72 FR 15805–15812, Docket No. 03–016–3) and effective on May 3, 2007, in the table in § 319.37–7(a)(3), we inadvertently removed Canada from the lists of countries in the entries for *Chrysanthemum* spp., *Leucanthemella serotina,* and *Nipponanthemum nipponicum,* thus erroneously indicating that postentry quarantine is required for these articles when they are imported from Canada. This final rule corrects that error.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the effects of this final rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the

introduction of plant pests and noxious weeds.

We are amending the regulations on importing nursery stock to eliminate various restrictions on the importation of kenaf seed; to establish programs for the importation of approved plants from the Canary Islands and from Israel; to require an additional declaration on the phytosanitary certificate accompanying blueberry plants imported from Canada; to require that phytosanitary certificates include the genus and species names of the restricted articles they accompany when possible; to change the phytosanitary certificate requirements for several restricted articles; to reduce the postentry quarantine growing period for *Hydrangea* spp.; and to update the list of ports of entry and Federal plant inspection stations. The potential economic effects of the changes in this document are discussed below, by topic.

In our proposed rule, we stated that we did not have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Specifically, we lacked data regarding the number and kind of small entities that may incur benefits or costs from implementation of certain changes in this rule. In our proposed rule, we invited comments on these issues. However, none of the comments we received addressed these economic issues.

Several changes we are making, such as adding and changing definitions and reorganizing § 319.37–14, are administrative in nature and are not expected to have any impact on any U.S. entities, whether small or large. This analysis examines the economic effects of changes that could potentially have economic effects.

Rubus spp. From Europe

There are more than 400 species of *Rubus* in the temperate areas of the world. These are divided into subcategories that include dewberries, blackberries, and raspberries. Most species of *Rubus* grow as shrubs or trailing vines with thorny points. We are adding *Rubus* spp. from Europe not meeting the conditions for importation in § 319.37–5(f) to the list of prohibited articles in § 319.37–2(a). *Rubus* stunt agent (*Phytoplasma*) is a leafhopper-borne agent that causes damage to foliage and flowers. *Rubus* stunt agent has caused direct damage to European fruits through yield loss.[7] This amendment to § 319.37–2 will have no effect on domestic producers and consumers, while safeguarding the multi-million dollar U.S. berry production industry (2002).[8]

Genus and Species Name on Phytosanitary Certificates

We are requiring that the phytosanitary certificate that must accompany any restricted article presented for importation into the United States under § 319.37–4(a) include the genus name of the restricted article that it accompanies. The regulations will indicate that including the species name is strongly preferred, and required if the regulations include restrictions based on species within a genus, as in § 319.37–5(b). Although this information is not currently required to be given to APHIS, this information is already available for the vast majority of importers and exporters on the invoices that typically also accompany restricted articles presented for importation into the United States. For this reason, we believe that this change will not have a significant impact on any entities, whether large or small.

Phytosanitary Certificates for Bulbs From the Netherlands

We are amending the regulations to allow bulbs from the Netherlands to enter the United States with a special certificate in lieu of a phytosanitary certificate. The special certificate will list special identification information for the shipment, including a serial number referring to the phytosanitary certificate on file in the Netherlands. The United States imported $185 million worth of bulbs and tubers from the Netherlands in 2005. This change will expedite entry of bulbs and tubers from the Netherlands when they are carried in small amounts by individuals. We have no reason to expect that this change will have a significant effect on domestic producers and consumers of bulbs and tubers.

Importation of Certain Seeds From Canada

We are amending § 319.37–4 to exempt certain Canadian seeds from the requirement for a phytosanitary certificate. Certain seeds from specific establishments in Canada will be able to enter the United States with proper identification and an alternative document in lieu of the required phytosanitary certificate. The alternative document will be an export certification label and a document agreed upon by APHIS and CFIA. This change will eliminate redundant paperwork requirements in the nursery stock regulations and the Federal Seed Act regulations in 7 CFR part 361.

The United States imported $128.5 million worth of planting seeds from Canada in 2004 while exporting $20.6 million planting seeds to Canada. The United States exported $263.3 million worth of planting seeds to the world in 2004 and imported $423 million worth of planting seeds from the world in 2004.[9] This amendment will allow the United States and Canada to trade seed more freely, benefiting both countries, with negligible impacts to domestic producers and consumers of seeds.

Vaccinium spp. Plants From Canada

We are amending § 319.37–5 to require that *Vaccinium* spp. plants from Canada be accompanied by a phytosanitary certificate with an additional declaration stating that the articles were produced in an approved certification program and found by the national plant protection organization of Canada to be free of the BC–1 and BC–2 strains of blueberry scorch carlavirus. Blueberry production in the United States was worth $324 million in 2005.[10] This additional declaration will help to safeguard U.S. producers from virulent strains of the virus that only exist in Canada while continuing to allow imports of blueberry plants from Canada. This amendment will have a negligible impact on domestic producers and consumers of blueberry plants.

Importation of Pelargonium spp. Plants From the Canary Islands

We are amending the regulations to require that *Pelargonium* spp. plants from the Canary Islands be grown under certain conditions and accompanied by a phytosanitary certificate. A phytosanitary certificate with an additional declaration confirming that those growing conditions have been met for *Pelargonium* spp. plants will minimize risk that organisms such as *Helicoverpa armigera, Chrysodeixis chalcites* and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*) might enter the United States via the importation of these plants.

In 2005, the total number of U.S. growers of floriculture crops (including geraniums) was 10,563, according to USDA/NASS; 4,412 of these growers received $100,000 or more in annual sales. The rest (6,151 growers) received less than $100,000 in annual sales that

[7] Gordon S.C., *et al*. Progress towards Integrated Crop Management (ICM) for European raspberry production.

[8] National Agricultural Statistical Survey (NASS), Noncitrus Fruits and Nuts: Price and Value for the United States, 2000–2002.

[9] Foreign Agricultural Service (FAS), 2004.

[10] NASS, Noncitrus Fruits and Nuts: Price and Value by Crop.

year. The Small Business Administration considers a grower of floriculture crops to be small if it has less than $750,000 in annual sales, so at least 6,151 small entities, and probably more, could be affected by this change.

The United States is a net importer of floriculture crops (including geraniums). Specifically, in 2005 the United States imported $578 million worth of floriculture crops and exported $304 million of floriculture crops. In 2006, the United States imported a $695 value of floriculture crops and imported $331 million value.

No export data are currently available for the Canary Islands regarding plant cuttings. Given that, we expect the potential amount of U.S. imports of geraniums from the Canary Islands to be very small. We do not expect this change to have a significant impact on any U.S. entities, including growers of geraniums, regardless of their size.

Importation of Approved Plants From Israel

We are amending the regulations to require that plants from Israel be grown under certain conditions and accompanied by a phytosanitary certificate along with an additional declaration confirming that those growing conditions have been met. Plants from Israel run the risk of harboring plant pests such as *Spodoptera littoralis* and other pests that could be introduced to the United States. *S. littoralis* is associated with cotton production losses around the world. Without control measures, *S. littoralis* could inflict heavy damage to both the yield and quality of U.S. cotton production.

Israel exported $10.2 million worth of plant cuttings to the United States in 2004, while the United States exported $9.5 million worth of cuttings to the world.[11] This change will help to safeguard the $5.57 billion worth of U.S. cotton production (2005).[12] We have no reason to expect that this change will have a significant effect on importers of plants from Israel or on domestic cotton producers and consumers.

Treatment of Regulated Articles

Under the regulations in § 319.37–4(b), any restricted article may be sampled and inspected by an inspector under preclearance inspection arrangements in the country in which the article was grown, and must undergo any treatment contained in 7 CFR part 305 that is ordered by the inspector. We are adding a paragraph to § 319.37–6 to explicitly indicate that treatment of regulated articles of nursery stock may be administered outside the United States. We believe that this change will not have any significant impact on any U.S. entities, whether small or large.

Kenaf Seed From Mexico

The regulations in § 319.37–6(a) have required seeds of *Hibiscus* spp. (hibiscus, rose mallow) from any foreign country or locality, at the time of importation into the United States, to be treated for possible infestation with pink bollworm in accordance with the applicable provisions of 7 CFR part 305. We are providing an exception to the restriction for seeds of kenaf from Mexico that are imported into pink bollworm generally infested areas in the United States. The States of Arizona, New Mexico, and Texas, and specific counties in California are pink bollworm generally infested areas. With this change, shipments of untreated kenaf seed from Mexico will be authorized entry into those pink bollworm generally infested areas subject to inspection. Immediately upon release, those shipments will be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, Subpart—Pink Bollworm.

Allowing the importation of untreated kenaf seed from Mexico into pink bollworm generally infested areas may have economic effects on some U.S. entities; however, if effects occur, they will be small, given that the United States imports mainly processed kenaf and very little seed and raw fiber.[13] For example, on average between 1999 and 2001, the United States imported 0.3 percent of world imports of raw (seeds are included) kenaf (table 1). U.S. demand for imported kenaf seed from Mexico is not expected to increase significantly as a result of the change.

Kenaf is an annual herbaceous plant of the Malvaceae family, and its flowers are closely related to those of cotton, okra, and hollyhock. Latin America, including Mexico, produces about 5 percent of the world's kenaf seed and fiber (table 2). Kenaf seed can grow in many parts of the United States, but it generally needs a long, warm growing season to produce the necessary yield to make it a profitable crop. Such a climate can only be found in the southern United States. Primary production areas in the United States are Texas (Lower Rio Grande Valley), Louisiana, Mississippi, Georgia, and Florida. An estimated 8,000 acres of kenaf was grown in the United States in 1997.[14]

TABLE 1.—WORLD IMPORTS OF RAW KENAF SEEDS AND FIBERS

[Metric tons]

	Calendar year		
	1999	2000	2001
United States	2,400	800	500
Mexico	0	0	0
Rest of the world	330,300	288,200	272,200
World	332,700	289,000	272,700

[11] FAS., U.S. Trade Statistics, Israel and U.S., plant cuttings code # 06021, 2001.

[12] USDA–NASS, U.S. cotton production value 2005.

[13] The primary focus of the kenaf development has been on the newsprint industry with its annual world production near the 30 million tons level (Scott & Taylor, 1990). U.S. publishers and other users account for nearly half of the world's total consumption of the processed kenaf. Annual production of newsprint in the United States is approximately 5 million tons. Traditionally, imports of processed kenaf have accounted for about 60 percent of U.S. consumption and demand has steadily increased at about 2.5 percent annually.

[14] Economic Research Service, USDA, FLO–2002, May 2002. Floriculture and Nursery Crops. Situation and Outlook Yearbook.

TABLE 2.—WORLD PRODUCTION OF RAW KENAF SEEDS AND FIBERS

[Metric tons]

	Crop year		
	1999–2000	2000–2001	2001–2002
Developed countries [1]	7,000	7,000	7,000
Latin America [2]	25,400	24,100	12,500
Rest of the world	427,100	388,300	409,800
World	459,500	419,400	440,500

[1] Developed countries include Europe, United States, Australia, New Zealand, Japan, and former Soviet Republics.
[2] Latin America includes Mexico.
Source: Food & Agriculture Organization of the U.N., Commodities and Trade Division, *Current Situation & Short Term Outlook for Hard Fibers, Kenaf, Jute, & Allied Fibers Statistics,* December 2002.

The number and size of the entities that will be affected by this change is unknown.

Postentry Quarantine Requirements for Hydrangea spp.

We are reducing the amount of time imported *Hydrangea* spp. from countries other than Canada and Japan must be grown in postentry quarantine conditions from 2 years to 9 months. This change might affect the volume of *Hydrangea* spp. imported into the United States because it will decrease the cost associated with growing *Hydrangea* spp. in postentry quarantine conditions after importation into the United States.

Hydrangeas are summer-flowering shrubs which are usually shipped in the late fall through early winter, after they have received a cold storage treatment. There are seven main *Hydrangea* species in the world. Only two, *H. arborescens* and *H. quercifolia,* are native to the United States; the other five are native to Asia.[15] The popularity and production of hydrangeas have both been increasing in the past few years in the United States and so has demand for them. Thus, the shorter quarantine period for imported *Hydrangea* spp. will benefit the U.S. public. However, it is difficult to measure the size of any possible economic impact of this change in postentry quarantine duration for imported hydrangeas due to lack of information about how much the cost of quarantine would decrease with a reduction in the quarantine period. In addition, we have no data number and size of small entities that will be affected by this change.

Plants in Growing Media from Certain Areas in Canada

We are amending § 319.37–8(b) to allow the importation of restricted articles from areas of Canada that are infested with potato cyst nematodes as long as they are grown in approved media and isolated from potato cyst nematodes. APHIS has determined that restricted articles from these areas that are grown in approved media can be isolated in such a manner as to prevent the introduction of potato cyst nematodes. These articles will be allowed to be imported if they are grown in approved media and are accompanied by a phytosanitary certificate with an additional declaration stating that the plants were grown in a manner to prevent infestation by potato cyst nematodes. Allowing these restricted articles to enter under these conditions will increase the flexibility of imports while protecting the United States against potato cyst nematode infestation. We have no reason to expect that this change would have a significant effect on domestic producers and consumers of nursery stock.

Additions to the List of Approved Growing Media

We are amending § 319.37–8(d) to allow new clay pots and new wooden baskets to be used as a growing media for epiphytic plants. New wooden baskets used as growing media will have to meet the relevant requirements for the importation of logs, lumber, and other untreated wood products in §§ 319.40–1 through 319.40–11. No trade information is currently available for clay pots and wooden baskets. Establishing epiphytic plants on new clay pots and new wooden baskets is a standard nursery practice. Importers have requested that APHIS amend the regulations to allow them to import plants on wooden baskets and clay pots. Neither medium is believed to pose a pest risk. We have no reason to expect that this change will have a significant effect on domestic producers and consumers of nursery stock.

USDA Plant Inspection Stations and Other Ports of Entry

We are adding a plant inspection station in Linden, NJ, to the list of USDA plant inspection stations in § 319.37–14. Adding this facility to the list of USDA plant inspection stations will make importation of nursery stock more convenient and possibly less costly for domestic sellers and consumers without reducing the effectiveness of the regulations.

This final rule contains new information collection or recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0279.

E-Government Act Compliance

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

[15] *H. aspera, H. involucrata, H. macrophylla, H. paniculata, H. anomala.*

Lists of Subjects

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 340

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and containers, Plant diseases and pests, Transportation.

■ Accordingly, we are amending 7 CFR parts 319, 330, and 340 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.28 [Amended]

■ 2. In § 319.28, the introductory text of paragraph (b)(7) is amended by removing the word ''listed'' and adding the word ''identified'' in its place.

■ 3. Section 319.37–1 is amended as follows:

■ a. By removing the definition for *bulbs.*

■ b. By adding new definitions, in alphabetical order, for *bulb, plant, preclearance, regulated plant,* and *State* to read as set forth below.

■ c. By revising the definitions for *inspector, person, plant pest, restricted article,* and *United States* to read as set forth below.

§ 319.37–1 Definitions.

* * * * *

Bulb. The portion of a plant commonly known as a bulb, bulbil, bulblet, corm, cormel, rhizome, tuber, or pip, and including fleshy roots or other underground fleshy growths, a unit of which produces an individual plant.

* * * * *

Inspector. Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

* * * * *

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

* * * * *

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles.

* * * * *

Preclearance. Phytosanitary inspection and/or clearance in the country in which the articles were grown, performed by or under the regular supervision of APHIS.

* * * * *

Regulated plant. Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts.

Restricted article. Any regulated plant, root, bulb, seed, or other plant product for or capable of propagation, excluding any prohibited articles listed in § 319.37–2(a) or (b) of this subpart, and excluding any articles regulated in §§ 319.8 through 319.24 or 319.41 through 319.74–4 and any articles regulated in part 360 of this chapter.

* * * * *

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

* * * * *

United States. All of the States.

■ 4. Section 319.37–2 is amended as follows:

■ a. In the table in paragraph (a), by adding new entries for ''*Pelargonium* spp. plants not meeting the requirements for importation in § 319.37–5(u)'', ''Plants (except bulbs, dormant perennials, and seeds) not meeting the requirements for importation in § 319.37–5(v)'', ''*Rubus* spp. not meeting the conditions for importation in § 319.37–5(f)'', and ''*Vaccinium* spp. plants not meeting the conditions for importation in § 319.37–5(t)'', in alphabetical order, to read as set forth below.

■ b. In paragraph (c)(2), by removing the words ''Plant Germplasm Quarantine Center, Building 320'' and adding the words ''National Plant Germplasm Inspection Station, Building 580'' in their place; and by removing the words ''at a port of entry designated by an asterisk in § 319.37–14(b)'' and adding the words ''through any Federal plant inspection station listed in § 319.37–14'' in their place.

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the palces named and capable of being transported with the prohibited article
* * *	*	* * *
Pelargonium spp. plants not meeting the conditions for importation in § 319.37–5(u).	Canary Islands (Spain)	*Helicoverpa armigera, Chrysodeixis chalcites,* and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*).
* * *	*	* * *
Plants (except bulbs, dormant herbaceous perennials, and seeds) not meeting the conditions for importation in § 319.37–5(v).	Israel	*Spodoptera littoralis* and other quarantine pests.
* * *	*	* * *
Rubus spp. not meeting the conditions for importation in § 319.37–5(f).	Europe	*Rubus* stunt agent

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the palces named and capable of being transported with the prohibited article
* * *	*	* * *
Vaccinium spp. plants not meeting the conditions for importation in § 319.37–5(t).	Canada	Blueberry scorch carlavirus (strains BC–1 and BC–2).
* * *	*	* * *

* * * * *

§ 319.37–3 [Amended]

■ 5. Section 319.37–3 is amended as follows:

■ a. In paragraph (a)(3), by removing the word ''spp.'' the first time it occurs.

■ b. In paragraph (a)(8), by removing the words ''*Castanea* spp. (chestnut) or''.

■ c. In paragraph (b), in the introductory text of the paragraph and in footnote 4, by removing the words ''Port Operations'' and adding the words ''Permits, Registrations, Imports and Manuals'' in their place.

■ 6. Section 319.37–4 is amended as follows:

■ a. By revising paragraph (a) to read as set forth below.

■ b. By adding a new paragraph (e) to read as set forth below.

■ c. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection. The phytosanitary certificate must identify the genus of the article it accompanies. When the regulations in this subpart place restrictions on individual species or cultivars within a genus, the phytosanitary certificate must also identify the species or cultivar of the article it accompanies. Otherwise, identification of the species is strongly preferred, but not required. Intergeneric and interspecific hybrids must be designated by placing the multiplication sign ''x'' between the names of the parent taxa. If the hybrid is named, the multiplication sign may instead be placed before the name of an intergeneric hybrid or before the epithet in the name of an interspecific hybrid. Phytosanitary certificates are not required for the following restricted articles:

(1) Greenhouse-grown plants from Canada imported in accordance with paragraph (c) of this section. These plants must be accompanied by a certificate of inspection in the form of a label in accordance with paragraph (c)(1)(iv) of this section attached to each carton of the articles and to an airway bill, bill of lading, or delivery ticket accompanying the articles.

(2) Small lots of seed imported in accordance with paragraph (d) of this section.

(3) Seeds from Canada imported in accordance with paragraph (e) of this section. Each carton of seed must be labeled as required by paragraph (e)(2)(ii) of this section. Each shipment of seed must be accompanied by the documents in paragraphs (e)(2)(iii)(A) and (e)(2)(iii)(B) of this section, as necessary.

(4) Bulbs from the Netherlands accompanied by a special certificate that lists a serial number, the scientific name of the bulb, the country of its origin, and a date on which the special certificate expires. The serial number must refer to a phytosanitary certificate issued, held, and retrievable upon request by the national plant protection organization of the Netherlands. The expiration date must be 6 weeks after the issuance of the phytosanitary certificate held by the national plant protection organization of the Netherlands. Shipments of bulbs from the Netherlands accompanied by this certificate may be imported into the United States without preclearance by APHIS.

* * * * *

(e) *Certain seeds from Canada.* Seeds imported from Canada may be imported without a phytosanitary certificate if the following conditions are met:

(1) The Canadian Food Inspection Agency shall:

(i) Establish and administer a seed export program under which Canadian exporters of seed may operate;

(ii) Assign a unique identification number to each exporting establishment enrolled in and approved by the seed inspection program;

(iii) Provide APHIS with a current list of the establishments participating in its seed export program and their names, locations, telephone numbers, and establishment identification numbers at the start of the shipping season, and provide regular updates to that list throughout the shipping season;

(iv) Enter into an agreement with APHIS that specifies the documents that must accompany shipments of seeds under the seed export program:

(A) Agricultural and vegetable seeds, as listed in the Federal Seed Act regulations in part 361 of this chapter, must be accompanied by a document certifying that the relevant provisions of the Federal Seed Act have been followed;

(B) Other seeds must be accompanied by a document certifying that the seeds have been inspected.

(2) Each seed exporter participating in the seed export program shall enter into an agreement with the Canadian Food Inspection Agency in which the exporter agrees to:

(i) Practice any and all safeguards the Canadian Food Inspection Agency may prescribe in order to ensure that seed exported to the United States is free of plant pests and that seed that does not meet the requirements for exportation to the United States is separated from seed that does;

(ii) Include an export certification document with each shipment indicating the common name of the seed, the country of origin of the seed, the establishment identification number assigned to the exporting establishment under the Canadian Food Inspection Agency's seed export program, and the lot number in addition to all other information required to be present by § 361.3 of this chapter.

(iii) Include other shipping documents as required with each shipment:

(A) Shipments of agricultural and vegetable seeds, as listed in the Federal Seed Act, must be accompanied by a document certifying that the relevant provisions of the Federal Seed Act regulations in part 361 of this chapter have been followed, as agreed upon by the Canadian Food Inspection Agency and APHIS;

(B) Shipments of other seeds must be accompanied by a document certifying that the seeds have been inspected, as agreed upon by the Canadian Food Inspection Agency and APHIS.

(Approved by the Office of Management and Budget under control numbers 0579–0285 and 0579–0279)

■ 7. Section 319.37–5 is amended as follows:

■ a. In paragraph (a), by removing the words ''at the time of arrival at the port of first arrival in the United States'' and by revising the country list at the end of the paragraph to read as set forth below.
■ b. In paragraph (b)(1), by removing the words ''Federal Republic of Germany,'' and by adding the word ''Germany,'' after the word ''France,''.
■ c. In the introductory text of paragraph (j)(1) and in paragraph (j)(1)(i), by removing the words ''Federal Republic of''.
■ d. By adding new paragraphs (t), (u), and (v) to read as set forth below.
■ e. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.37–5 Special foreign inspection and certification requirements.

(a) * * *

Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Azores, Belarus, Belgium, Bolivia, Bulgaria, Canada (only that portion comprising Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road), Channel Islands, Chile, Colombia, Costa Rica, Crete, Croatia, Cyprus, Czech Republic, Denmark (including Faeroe Islands), Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Great Britain, Greece, Guernsey, Hungary, Iceland, India, Ireland, Italy, Japan, Jersey, Jordan, Latvia, Lebanon, Lithuania, Luxembourg, Kazakhstan, Kyrgyzstan, Malta, Mexico, Republic of Moldova, Morocco, the Netherlands, New Zealand, Northern Ireland, Norway, Pakistan, Panama, Peru, the Philippines, Poland, Portugal, Russian Federation, Serbia and Montenegro, South Africa, Spain (including Canary Islands), Slovakia, Slovenia, Sweden, Switzerland, Tajikistan, Tunisia, Turkmenistan, Ukraine, Uzbekistan, and Venezuela.

* * * * *

(t) For any *Vaccinium* spp. plants from Canada, the phytosanitary certificate of inspection required by § 319.37–4 must contain an additional declaration that such article was produced in an approved certification program and found by the national plant protection organization of Canada to be free of the BC–1 and BC–2 strains of blueberry scorch carlavirus.

(u) *Special foreign inspection and certification requirements for Pelargonium spp. plants from the Canary Islands. Pelargonium* spp. plants from the Canary Islands may only be imported into the United States in accordance with the requirements of this section, to prevent the plant pests *Helicoverpa armigera, Chrysodeixis chalcites,* and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*) from entering the United States.

(1) *Phytosanitary certificate.* The phytosanitary certificate of inspection required by § 319.37–4 that accompanies *Pelargonium* spp. plants from the Canary Islands must contain additional declarations that the plants were produced in an approved Spanish (Canary Island) production site, that the production site is operated by a grower participating in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain, and that the plants were grown under conditions specified by APHIS as described in this paragraph § 319.37–5(u) to prevent infestation with *Helicoverpa armigera, Chrysodeixis chalcites,* and *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*).

(2) *Grower registration and agreement.* Persons in the Canary Islands who produce *Pelargonium* spp. plants for export to the United States must:

(i) Be registered and approved by the national plant protection organization of Spain; and

(ii) Enter into an agreement with the national plant protection organization of Spain whereby the producer agrees to participate in and follow the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain.

(3) *Growing requirements.* Growers in the Canary Islands who produce *Pelargonium* spp. plants for export to the United States must meet the following requirements for inclusion in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain:

(i) *Pelargonium* spp. plants destined for export to the United States must be produced in a production site devoted solely to production of such plants.

(ii) The production sites in which such plants are produced must be registered with the national plant protection organization of Spain. Such production sites must employ safeguards agreed on by APHIS and the national plant protection organization of Spain, including, but not limited to, prescribed mesh screen size (if the production site is a screenhouse) and automatically closing doors, to ensure the exclusion of *H. armigera.*

(iii) Each production site in which plants destined for export to the United States are grown must have at least one blacklight trap for 1 year following any of the following events:

(A) The construction of the production site;

(B) The entry of the production site into the approved plants export program;

(C) The replacement of the covering of the production site; or

(D) The detection and repair of a break or tear in the plastic or screening in the production site.

(4) *Inspections.* Inspections undertaken in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain will include, but may not be limited to, the following:

(i) The national plant protection organization of Spain will inspect the plants and the production site during the growing season and during packing.

(ii) Packing materials and shipping containers for the plants must be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

(iii) Either APHIS or the national plant protection organization of Spain will inspect the production site of the plants to ensure that they meet standards of sanitation agreed upon by APHIS and the national plant protection organization of Spain.

(iv) Inspectors from both APHIS and the national plant protection organization of Spain will have access to the production site as necessary to ensure that growers are employing the proper safeguards against infestation of *H. armigera, C. chalcites,* and *S. circumflexa* and that those safeguards are correctly implemented.

(v) The national plant protection organization of Spain will provide APHIS with access to the list of registered and approved growers at least annually.

(5) *Ineligibility for participation.* (i) Growers will be ineligible for participation in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain and their production sites will lose approved status if:

(A) Live *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*), or any other moth of the family Noctuidae, are found in a production site;

(B) Live *Syngrapha circumflexa* (syn. *Cornutiplusia circumflexa*), or any other moth of the family *Noctuidae,* are found in a shipment of plants; or

(C) Growers violate the requirements set out in this section and by the export program established by the national plant protection organization of Spain.

(ii) A grower may be reinstated, and the grower's production sites may regain approved status, by requesting

reapproval and submitting a detailed report describing the corrective actions taken by the grower. Reapproval will only be granted upon concurrence from the national plant protection organization of Spain and APHIS.

(6) *Termination.* APHIS may terminate the entire program if there are repeated violations of procedural or biological requirements.

(7) *Trust fund.* The government of Spain must enter into a trust fund agreement with APHIS before each growing season. The government of Spain or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (u) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (u) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The government of Spain or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of Spain or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of Spain or its designated representative or held on account until needed.

(v) *Special foreign inspection and certification requirements for plants from Israel.* Plants from Israel, except bulbs, dormant perennials, and seeds, may only be imported into the United States in accordance with the regulations in this section, to prevent *Spodoptera littoralis* and other quarantine pests found in Israel from entering the United States.

(1) *Phytosanitary certificate.* The phytosanitary certificate of inspection required by § 319.37–4 that accompanies plants from Israel at the time of arrival at the port of first arrival in the United States must contain additional declarations that the plants were produced in an approved Israeli production site, that the production site is operated by a grower participating in the export program for plants established by the national plant protection organization of Israel, and that the plants were grown under conditions specified by APHIS as described in this paragraph § 319.37–5(v) to prevent infestation or contamination with *Spodoptera littoralis* or other quarantine pests.

(2) *Grower registration and agreement.* Persons in Israel who produce plants for export to the United States must:

(i) Be registered and approved by the national plant protection organization of Israel; and

(ii) Enter into an agreement with the national plant protection organization of Israel whereby the producer agrees to participate in and follow the export program for plants established by the national plant protection organization of Israel.

(3) *Growing requirements.* Growers in Israel who produce plants for export to the United States must meet the following requirements for inclusion in the export program for plants established by the national plant protection organization of Israel:

(i) Plants destined for export to the United States must come from a production site devoted solely to production of such plants.

(ii) The production sites in which such plants are produced must be registered with the national plant protection organization of Israel. These production sites must employ safeguards agreed on by APHIS and the national plant protection organization of Israel to prevent the entry of *S. littoralis,* including, but not limited to, insect-proof screening over openings and double or airlock-type doors. Any rips or tears in the insect-proof screening must be repaired immediately.

(iii) Each production site in which plants destined for export to the United States are grown must have at least one blacklight trap for 1 year following any of the following events:

(A) The construction of the production site;

(B) The entry of the production site into the approved plants export program;

(C) The replacement of the covering of the production site; or

(D) The detection and repair of a break or tear in the plastic or screening in the production site.

(4) *Inspections.* Inspections undertaken in the export program for plants established by the national plant protection organization of Israel will include, but may not be limited to, the following:

(i) The national plant protection organization of Israel will inspect the plants and the production site weekly to ensure that no quarantine pests are present.

(ii) Plants must be inspected to ensure that they are free of quarantine pests before being allowed into the screened area of the production site.

(iii) The national plant protection organization of Israel will inspect the plants to ensure that no quarantine pests are present prior to export.

(iv) Packing materials and shipping containers for the plants must be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

(v) Either APHIS or the national plant protection organization of Israel will inspect the production site of the plants to ensure that they meet standards of sanitation approved by APHIS.

(vi) Inspectors from both APHIS and the national plant protection organization of Israel will have access to the production site as necessary to ensure that growers are employing the safeguards and procedures prescribed by the program and that those safeguards and procedures are correctly implemented.

(vii) The national plant protection organization of Israel will provide APHIS with access to the list of registered and approved growers at least annually.

(5) *Ineligibility for participation.* (i) Growers will be ineligible for participation in the export program for plants established by the national plant protection organization of Israel and their production sites will lose approved status if:

(A) Live *Spodoptera littoralis* are found in a production site;

(B) Live *Spodoptera littoralis* are found at port inspection two times during the shipping season in shipments from the same grower; or

(C) Growers violate the requirements set out in this section and by the export program established by the national plant protection organization of Israel.

(ii) A grower may be reinstated, and the grower's production sites may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by the grower. Reapproval will only be granted upon concurrence from the national plant protection organization of Israel and APHIS.

(6) *Termination.* APHIS may terminate the entire program if there are repeated violations of procedural or biological requirements.

(7) *Trust fund.* The government of Israel must enter into a trust fund agreement with APHIS before each growing season. The government of Israel or its designated representative is

required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (v) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (v) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The government of Israel or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of Israel or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of Israel or its designated representative or held on account until needed.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0176, 0579–0221, 0579–0246, 0579–0257, and 0579–0279)

■ 8. Section 319.37–6 is revised to read as follows.

§ 319.37–6 Specific treatment and other requirements.

(a) The following seeds and bulbs may be imported into the United States from designated countries and localities only if they have been treated for the specified pests in accordance with part 305 of this chapter. Seeds and bulbs treated prior to importation outside the United States must be treated in accordance with § 319.37–13(c). An inspector may require treatment within the United States of articles that have been treated prior to importation outside the United States if such treatment is determined to be necessary:

Seed/bulb	Country/locality	Pest(s) for which treatment is required
Abelmoschus spp. (okra) seeds.	All	*Pectinophora gossypiella* (Saunders) (pink bollworm).
Allium sativum (garlic) bulbs	Algeria, Armenia, Austria, Azerbaijan, Belarus, Croatia, Czech Republic, Egypt, France, Georgia, Germany, Greece, Hungary, Iran, Israel, Italy, Kazakhstan, Kyrgyzstan, Republic of Moldova, Morocco, Portugal, Serbia and Montenegro, Slovakia, Slovenia, Republic of South Africa, Spain, Switzerland, Syria, Russian Federation, Tajikistan, Turkey, Turkmenistan, Ukraine, and Uzbekistan.	*Brachycerus* spp. and *Dyspessa ulula* (Bkh.).
Castanea seeds	All except Canada and Mexico	*Curculio elephas* (Cyllenhal), *C. nucum* L., *Cydia (Laspeyresia) splendana* Hubner, *Pammene fusciana* L. (*Hemimene juliana* (Curtis)) and other insect pests of chestnut and acorn.
Guizotia abyssinica (niger) seeds.	All (see paragraph (c) of this section)	*Cuscuta* spp., and other noxious weeds listed in 7 CFR 360.200.
Hibiscus spp. (hibiscus, rose mallow) seeds.	All, with the exception of kenaf seed (*Hibiscus cannabinus*) from Mexico that is to be imported into pink bollworm generally infested areas listed in § 301.52–2a of this chapter.	*Pectinophora gossypiella* (Saunders) (pink bollworm).
Lathyrus spp. (sweet pea, peavine) seeds.	All except North America and Central America	Insects of the family Bruchidae.
Lens spp. (lentil) seeds	All except North America and Central America	Insects of the family Bruchidae.
Quercus seeds	All except Canada and Mexico	*Curculio elephas* (Cyllenhal), *C. nucum* L., *Cydia (Laspeyresia) splendana* Hubner, *Pammene fusciana* L. (*Hemimene juliana* (Curtis)) and other insect pests of chestnut and acorn.
Rutaceae, seeds of all species in the family.	Afghanistan, Andaman Islands, Argentina, Bangladesh, Brazil, Caroline Islands, Comoro Islands, Fiji Islands, Home Island in Cocos (Keeling) Islands, Hong Kong, India, Indonesia, Ivory Coast, Japan, Kampuchea, Korea, Madagascar, Malaysia, Mauritius, Mozambique, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, Paraguay, People's Republic of China, Philippines, Reunion Island, Rodriquez Islands, Ryukyu Islands, Saudi Arabia, Seychelles, Sri Lanka, Taiwan, Thailand, Thursday Island, United Arab Emirates, Uruguay, Vietnam, Yemen (Sanaa), and Zaire.	*Xanthomonas axonopodis*, pv. *citri* (citrus canker).
Vicia spp. (fava bean, vetch) seeds.	All except North America and Central America	Insects of the family Bruchidae.

(b) Seeds and bulbs that are treated within the United States must be treated at the time of importation into the United States.

(c) Seeds of *Guizotia abyssinica* (niger seed) that are treated prior to shipment to the United States at a facility that is approved by APHIS [8] and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of this section and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be

[8] Criteria for the approval of heat treatment facilities are contained in part 305 of this chapter.

certified in accordance with the conditions described in § 319.37–13(c).

(d) Shipments of kenaf (*Hibiscus cannabinus*) seed from Mexico that are imported into pink bollworm generally infested areas listed in § 301.52–2a shall be subject to inspection, and shall immediately, upon release, be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, ''Subpart—Pink Bollworm,'' of this chapter.

■ 9. Section 319.37–7 is amended as follows:

■ a. In the table in paragraph (a)(3), in the entries for *Chrysanthemum* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum*, by adding the word ''Canada,'' after the word ''Brunei,''.

■ b. In the table in paragraph (a)(3), by removing the entry for ''*Fragaria* spp.''.

■ c. In the table in paragraph (a)(3), by revising the entries for ''*Jasminum* spp.'' and ''*Sorbus* spp.'' to read as set forth below.

■ d. By revising paragraph (d)(7)(ii) to read as set forth below.

■ e. By removing paragraph (g).

§ 319.37–7 Postentry quarantine.

(a) * * *

(3) * * *

Restricted article (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* * * * *	* *
Jasminum spp. jasmine)	All except Canada, Belgium, Germany, Great Britain, India, and the Philippines.
* * * * *	* *
Sorbus spp. (mountain ash)	All except Canada, Czech Republic, Denmark, Germany, and Slovakia.
* * * * *	* *

* * * * *

(d) * * *

(7) * * *

(ii) To grow the article or increase therefrom only in a greenhouse or other enclosed building, and to comply with the above conditions for a period of 6 months after importation for an article of *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina*, and *Nipponanthemum nipponicum*, for a period of 1 year after importation for an article of *Dianthus* spp. (carnation, sweet-william), and for a period of 9 months after importation for an article of *Hydrangea* spp.

* * * * *

■ 10. Section 319.37–8 is amended as follows:

■ a. By revising paragraph (b) to read as set forth below.

■ b. In paragraph (c), by removing the words ''transparent or translucent''.

■ c. By revising paragraph (d) to read as set forth below.

§ 319.37–8 Growing media.

* * * * *

(b)(1) A restricted article from Canada may be imported in any growing medium, except as restricted in paragraph (b)(2) of this section.

(2) A restricted article from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road may only be imported in an approved growing medium if the phytosanitary certificate accompanying it contains an additional declaration that that the plants were grown in a manner to prevent infestation by potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*).

* * * * *

(d) Epiphytic plants (including orchid plants) established solely on tree fern slabs, coconut husks, coconut fiber, new clay pots, or new wooden baskets may be imported on such growing media. New wooden baskets must meet all applicable requirements in §§ 319.40–1 through 319.40–11.

* * * * *

§ 319.37–10 [Amended]

■ 11. In § 319.37–10, the introductory text of paragraph (b) is amended by removing the word ''listed'' and adding the word ''identified'' in its place.

§ 319.37–12 [Amended]

■ 12. Section 319.37–12 is amended by removing the words ''or part 321''.

■ 13. Section 319.37–14 is revised to read as follows.

§ 319.37–14 Ports of entry.

Any restricted article required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (6) of this subpart, if not precleared, may be imported or offered for importation only at a USDA plant inspection station listed below. Ports of entry through which restricted articles must pass before arriving at these USDA plant inspection stations are listed in the second column. Any other restricted article that is not required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (6) of this subpart may be imported or offered for importation at any Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Exceptions may be listed in § 330.104 of this chapter. Articles that are required to be imported under a written permit that are also precleared in the country of export are not required to enter at an inspection station and may enter through any Customs port of entry. Exceptions may be listed in § 330.104 of this chapter.

LIST OF USDA PLANT INSPECTION STATIONS

State	Port of entry	Federal plant inspection station
Arizona	Nogales	Plant Inspection Station, 9 North Grand Avenue, Room 120, Nogales, AZ 85621.
California	Long Beach, Los Angeles, San Pedro	Los Angeles Inspection Station, 11840 S. La Cienega Blvd., Hawthorne, CA 90250.
	San Diego, San Ysidro	Plant Inspection Station, 9777 Via de la Amistad, Room 140, San Diego, CA 92154.
	Oakland, San Francisco	Plant Inspection Station, 389 Oyster Point Blvd., Suite 2, South San Francisco, CA 94080.
Florida	Miami, (Note: Restricted articles may be moved from Fort Lauderdale to Miami under U.S. Customs bond).	Plant Inspection Station, 3500 NW., 62nd Avenue, Miami, FL 33122. Mailing address: P.O. Box 660520, Miami, FL 33266.
	Orlando	Plant Inspection Station, 9317 Tradeport Drive, Orlando, FL 32827.
Georgia	Atlanta	Hartsfield Perishable Complex, 1270 Woolman Place, Atlanta, GA 30354.
Guam	Agana	905 East Sunset Blvd., Tiyan, Barringada, GU 96913. Mailing address: P.O. Box 8769, Tamuning, GU 96931.
Hawaii	Honolulu (Airport)	Honolulu Inspection Station, Honolulu International Airport, 300 Rodgers Blvd., #57, Honolulu, HI 96819–1897.
Louisiana	New Orleans	Plant Inspection Station, 900 East Airline Service Road A, Kenner, LA 70063.
Maryland	Baltimore	(Only niger seed may be imported into the Port of Baltimore, after which it may be moved for treatment at a local treatment facility).
New Jersey	Elizabeth, New York (Maritime), Newark.	Frances Krim Memorial Inspection Station, 2500 Brunswick Avenue, Building G, Linden, NJ 07036.
New York	Jamaica (JFK)	Plant Inspection Station, 230–59 International Airport Centers Boulevard, Building C, Suite 100, Room 109, Jamaica, NY 11413.
Puerto Rico	San Juan	Plant Inspection Station, 150 Central Sector, Building C–2, Warehouse 3, Carolina, PR 00979.
Texas	Houston	Plant Inspection Station, 19581 Lee Road, Humble, TX 77338.
	Los Indios	Plant Inspection Station, P.O. Drawer Box 393, 100 Los Indios Boulevard, Los Indios, TX 78567.
Washington	Seattle	835 S. 192nd Street, Suite 1600, Sea-Tac, WA 98148.

§ 319.59–2 [Amended]

■ 14. Section 319.59–2 is amended as follows:

■ a. In paragraph (b)(1), by removing the words ''Plant Germplasm Quarantine Center, Building 320'' and adding the words ''National Plant Germplasm Inspection Station, Building 580'' in their place; and by removing the words ''at any port of entry with an asterisk listed in § 319.37–14(b)'' and adding the words ''through any USDA plant inspection station listed in § 319.37–14'' in their place.

■ b. In paragraph (b)(2), by removing the words ''Plant Germplasm Quarantine Center'' and adding the words ''National Plant Germplasm Inspection Station'' in their place.

§ 319.75 [Amended]

■ 15. In §19.75, paragraph (c)(2) is amended by removing the words ''Plant Germplasm Quarantine Center, Building 320'' and adding the words ''National Plant Germplasm Inspection Station, Building 580'' in their place; and by removing the words ''at a port of entry designated by an asterisk in § 319.37–14(b);'' and adding the words ''through any USDA plant inspection station listed in § 319.37–14;'' in their place.

§ 319.75–8 [Amended]

■ 16. § 319.75–8 is amended by removing the word ''listed'' and adding the word ''identified'' in its place.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

■ 17. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

■ 18. Section 330.104 is amended by revising all of the text after the first sentence to read as follows:

§ 330.104 Ports of entry.

* * * The ports of entry shall be those named in 19 CFR 101.3(b)(1), except as otherwise provided by administrative instructions or by permits issued in accordance with this part, and except those ports of entry listed below.

LIST OF EXCEPTIONS TO CUSTOMS DESIGNATED PORTS OF ENTRY

State	Port of entry
[Reserved]	[Reserved]

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

■ 19. The authority citation for part 340 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 340.4 [Amended]

■ 20. In § 340.4, paragraph (f)(11)(i) is amended by removing the words ''at a port of entry which is designated by an asterisk in 7 CFR 319.37–14(b);'' and adding the words ''through any USDA plant inspection station listed in § 319.37–14 of this chapter;'' in their place.

§ 340.7 [Amended]

■ 21. In § 340.7, the introductory text of paragraph (b) is amended by removing the words ''at a port of entry designated

by an asterisk in 7 CFR 319.37–14(b)'' and adding the words ''through any USDA plant inspection station listed in § 319.37–14 of this chapter'' in their place.

Done in Washington, DC, this 30th day of July 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–15124 Filed 8–3–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30564; Amdt. No. 469]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–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 part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC, on July 30, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 30, 2007.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

BILLING CODE 4910–13–P

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS
AMENDMENT 469

EFFECTIVE DATE August 30, 2007

&95.4000 LOW ALTITUDE RNAV ROUTES

&95.4245 RNAV ROUTE T245

FROM	TO	MEA	MAA
IS ADDED TO READ			
SEAL BEACH, CA VORTAC	SANTA MONICA, CA VOR/DME	2500	17500
SANTA MONICA, CA VOR/DME	SILEX, CA FIX	4000	17500

&95.4247 RNAV ROUTE T247

FROM	TO	MEA	MAA
IS ADDED TO READ			
SEAL BEACH, CA VORTAC	SANTA MONICA, CA VOR/DME	2500	17500
SANTA MONICA, CA VOR/DME	CANOG, CA FIX	5000	17500

&95.4249 RNAV ROUTE T249

FROM	TO	MEA	MAA
IS ADDED TO READ			
VAN NUYS, CA VOR/DME	SANTA MONICA, CA VOR/DME	4700	17500
SANTA MONICA, CA VOR/DME	SEAL BEACH, CA VORTAC	2500	17500

&95.6001 VICTOR ROUTES-U.S.

&95.6006 VOR FEDERAL AIRWAY V6

FROM	TO	MEA
IS AMENDED TO READ IN PART		
DRYER, OH VOR/DME *2100 - MOCA	SANDUSKY, OH VOR/DME	*3000

&95.6011 VOR FEDERAL AIRWAY V11

FROM	TO	MEA
IS AMENDED TO READ IN PART		
POCKET CITY, IN VORTAC	MACKY, IN FIX	2300
MACKY, IN FIX *2100 - MOCA	CLOWN, IN FIX	*3000
CLOWN, IN FIX *2100 - MOCA	SCOTO, IN FIX	*6000
SCOTO, IN FIX *2200 - MOCA	BRICKYARD, IN VORTAC	*2900

&95.6025 VOR FEDERAL AIRWAY V25

FROM		TO	MEA
IS AMENDED TO READ IN PART			
HOMAN, CA FIX		*ITMOR, CA FIX	**5000
*7000 - MCA ITMOR, CA FIX , N BND			
**4000 - MOCA			
**4000 - GNSS MEA			
ITMOR, CA FIX		MUREX, CA FIX	*11000
*9600 - MOCA			
*10000 - GNSS MEA			
MUREX, CA FIX		KLAMATH FALLS, OR VORTAC	
	N BND		*8600
	S BND		*11000
*8500 - MOCA			
*10000 - GNSS MEA, S BND			
KLAMATH FALLS, OR VORTAC		SPRAG, OR FIX	*12000
*9500 - MOCA			
*10000 - GNSS MEA			
SPRAG, OR FIX		OCTAD, OR FIX	*12000
*9500 - MOCA			
*10000 - GNSS MEA			
OCTAD, OR FIX		DESCHUTES, OR VORTAC	
	S BND		*12000
	N BND		*7000
*6700 - MOCA			
*10000 - GNSS MEA, S BND			

&95.6027 VOR FEDERAL AIRWAY V27

FROM		TO	MEA
IS AMENDED TO READ IN PART			
NEWPORT, OR VORTAC		CUTEL, OR FIX	
	N BND		*8000
	S BND		*3000
*3000 - MOCA			
*4000 - GNSS MEA, N BND			
CUTEL, OR FIX		DANES, OR FIX	
	N BND		*8000
	S BND		*5000
*3600 - MOCA			
*4000 - GNSS MEA			
DANES, OR FIX		ASTORIA, OR VOR/DME	*8000
*5000 - MOCA			
*5000 - GNSS MEA			

&95.6030 VOR FEDERAL AIRWAY V30

FROM	TO	MEA
IS AMENDED TO READ IN PART		
DRYER, OH VOR/DME	SANDUSKY, OH VOR/DME	*3000
*2100 - MOCA		

&95.6065 VOR FEDERAL AIRWAY V65

FROM		TO	MEA
IS AMENDED TO READ IN PART			
DRYER, OH VOR/DME *2100 - MOCA		SANDUSKY, OH VOR/DME	*3000
SANDUSKY, OH VOR/DME *2400 - MOCA		CARLETON, MI VORTAC	*3000

&95.6121 VOR FEDERAL AIRWAY V121

FROM		TO	MEA
IS AMENDED TO READ IN PART			
VIDAS, OR FIX		WHIFF, OR FIX	
	NE BND		*13000
	SW BND		*9000
*7500 - MOCA			
*8000 - GNSS MEA			

&95.6126 VOR FEDERAL AIRWAY V126

FROM		TO	MEA
IS AMENDED TO READ IN PART			
DRYER, OH VOR/DME *2100 - MOCA		SANDUSKY, OH VOR/DME	*3000

&95.6148 VOR FEDERAL AIRWAY V148

FROM		TO	MEA
IS AMENDED TO READ IN PART			
MAYER, MN FIX		GOPHER, MN VORTAC	3000

&95.6165 VOR FEDERAL AIRWAY V165

FROM		TO	MEA
IS AMENDED TO READ IN PART			
MUSTANG, NV VORTAC *9700 - MOCA *10000 - GNSS MEA		PYRAM, NV FIX	*11000
PYRAM, NV FIX		BINNZ, NV FIX	
	NW BND		*14000
	SE BND		*12000
*11000 - MOCA			
*11000 - GNSS MEA			
BINNZ, NV FIX *12200 - MOCA		CHOIR, CA FIX	*14000
CHOIR, CA FIX		LAKEVIEW, OR VORTAC	
	SE BND		*14000
	NW BND		*11000
*10500 – MOCA			

&95.6198 VOR FEDERAL AIRWAY V198

FROM	TO	MEA
IS AMENDED TO READ IN PART		
HUDSPETH, TX VORTAC	AGAZY, TX FIX	*11000
*8900 – MOCA		
AGAZY, TX FIX	DOWES, TX FIX	*8000
*6400 – MOCA		
DOWES, TX FIX	FORT STOCKTON, TX VORTAC	*5000

&95.6233 VOR FEDERAL AIRWAY V233

FROM	TO	MEA
IS AMENDED TO READ IN PART		
GAYLORD, MI VOR/DME	PELLSTON, MI VORTAC	3200

&95.6468 VOR FEDERAL AIRWAY V468

FROM	TO	MEA
IS AMENDED TO READ IN PART		
*BATTLE GROUND, WA VORTAC	TROTS, WA FIX	**10000
*5000 - MCA BATTLE GROUND, WA VORTAC , NE BND		
**7200 - MOCA		
**8000 - GNSS MEA		
*TROTS, WA FIX	SWANY, WA FIX	**11500
*11500 - MCA TROTS, WA FIX , NE BND		
**6800 - MOCA		
**7000 - GNSS MEA		
SWANY, WA FIX	HITCH, WA FIX	*8500
*6800 - MOCA		
*7000 - GNSS MEA		
HITCH, WA FIX	YAKIMA, WA VORTAC	
SW BND		*8500
NE BND		*5000
*4300 - MOCA		
*5000 - GNSS MEA, SW BND		

&95.6495 VOR FEDERAL AIRWAY V495

FROM	TO	MEA
IS AMENDED TO READ IN PART		
SEATTLE, WA VORTAC	CIDUG, WA FIX	*5000
*3000 - MOCA		
*3000 - GNSS MEA		
CIDUG, WA FIX	ALDER, WA FIX	
S BND		*9000
N BND		*5000
*4000 - MOCA		
*4000 - GNSS MEA		
ALDER, WA FIX	*TOUTL, WA FIX	**9000
*8500 - MRA		
**6800 - MOCA		
**7000 - GNSS MEA		

*TOUTL, WA FIX	BATTLE GROUND, WA VORTAC	
	N BND	**9000
	S BND	**5000

*8500 - MRA
**5000 - MOCA
**5000 - GNSS MEA, N BND

&95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V25		
IS AMENDED TO DELETE CHANGEOVER POINT			
KLAMATH FALLS, OR VORTAC	DESCHUTES, OR VORTAC	23	KLAMATH FALLS

[FR Doc. E7–15125 Filed 8–3–07; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 744, 748, 750, 752, 758, 762, 772, and 774

[Docket No. 070611188–7189–01]

RIN 0694–AE07

Technical Corrections to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by making the following changes: Correcting citations in several sections of the EAR, removing an endnote to the Entity List, reinserting the grace period provision for support documents, clarifying when an Automated Export System or Shipper's Export Declaration record must be filed, adding omitted information to certain Export Control Classification Numbers (ECCNs), removing references to the International Munitions List, and removing or editing references to ECCNs that have either changed or do not exist.

DATES: This rule is effective August 6, 2007.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AE07 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Steven Emme, Regulatory Policy Division, Bureau of Industry and Security, telephone: (202) 482–2440, e-mail: *semme@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

This rule makes the following corrections to the Export Administration Regulations.

Corrections to Citations in the EAR

This rule makes corrections to citations to three different subject matters in the EAR. First, throughout the EAR, many sections refer readers to the General Prohibitions, which affirmatively state licensing requirements for transactions and activities subject to the EAR. The General Prohibitions can be found in part 736 of the EAR, but several locations in the EAR cite part 734 instead. This rule corrects inaccurate citations to the General Prohibitions in the note to § 740.12(a), in paragraphs (f) and (i) in Supplement No. 2 to part 748, and in § 752.6(c).

Next, § 762.7 discusses the required period of retention for recordkeeping under the EAR, and paragraph (b) refers to ''§ 765.5(c)(4)(ii)'' for recordkeeping related to voluntary disclosures. However, part 765 does not exist in the EAR. Thus, this rule replaces that reference with the correct citation, which is § 764.5(c)(4)(ii).

Lastly, the definition for ''Hold Without Action (HWA)'' in § 772.1 refers to ''§ 750.4(c)'' for circumstances in which license applications may be held without action. However, § 750.4(c) refers to initial processing of applications, so this rule replaces ''§ 750.4(c)'' with the correct citation, which is § 750.4(b).

Correction to the Removal of Indian Entities From the Entity List

In accordance with the Next Steps in Strategic Partnership between the United States and India, the Bureau of Industry and Security (BIS) published a final rule on August 30, 2005 (70 FR 51251) removing certain Indian entities from the Entity List. One of the changes made concerned the removal of the second entry for the Department of Atomic Energy. The second entry for that entity contained the phrase ''balance of plant'', which was found in the column for License review policy. Prior to the August 30, 2005 final rule, a superscript ''1'' was located next to ''balance of plant'' to reference an endnote found at the end of Supplement No. 4 to Part 744, which further elaborated on the phrase. When the prior rule removed the second entry containing the superscript ''1'', it did not remove the endnote as well; thus, endnote 1 has remained with no corresponding text. As a result, this rule removes endnote 1 for ''balance of plant'' from the end of Supplement No. 4 to Part 744.

Reinsertion of Grace Period Provision for Support Documents

On June 19, 2007, BIS published a final rule (72 FR 33646) that inadvertently removed and reserved paragraph (a) in § 748.12 (special provisions for support documents), which should have remained in the EAR. Therefore, this rule corrects that removal by adding paragraph (a) back into § 748.12.

Clarification on Filing an AES or SED Record for Exports Requiring a License

Section 758.1 introduces the Shipper's Export Declaration (SED) and Automated Export System (AES), which are used by the Bureau of Census to compile data on trade statistics and used by BIS to collect data on export

controls. Paragraph (b) of § 758.1 details when an SED or AES record is required when exporting an item subject to the EAR. Prior to this rule, paragraph (b)(2) stated that an exporter must file an SED or AES ''[f]or all exports subject to the EAR that require a license, regardless of value, or destination;''. This wording could cause ambiguity as to whether this paragraph requires an SED or AES record to be filed for the export of items having a license requirement that can be overcome by a license exception. The wording in paragraph (b)(2) is meant to apply only to those items having a license requirement that cannot be overcome by a license exception. Consequently, this rule changes the wording to read: ''[f]or all exports subject to the EAR that require submission of a license application, regardless of value or destination;''.

Addition of ''License Exceptions'' and ''List of Items Controlled'' Sections to ECCN 0A987, Addition of ''Reason for Control'' Paragraph to ECCNs 1C239 and 1C240, and Addition of ECCNs to ''Related Controls'' Paragraph of ECCN 1C239

On April 13, 1999, BIS (then the Bureau of Export Administration, or BXA) published a final rule (64 FR 17968) that added Export Control Classification Number (ECCN) 0A987 to the Commerce Control List for optical sighting devices for firearms. Prior to that rule, optical sighting devices for firearms were controlled under ECCN 0A985 (then partially titled ''Optical sighting devices for firearms (including shotguns controlled by ECCN 0A984); discharge type arms * * *; and parts, n.e.s.''). In order to further clarity and consistency, BIS transferred optical sighting devices for firearms to a new ECCN. However, when ECCN 0A987 was added to the Commerce Control List, no License Exceptions section and no List of Items Controlled section were included. Since ECCN 0A985 previously controlled optical sighting devices for firearms, this rule adds a License Exceptions section and List of Items Controlled section to ECCN 0A987 that are identical to those respective sections in ECCN 0A985.

In addition, ECCNs 1C239 (certain high explosives) and 1C240 (certain nickel powder or porous nickel metal) currently list the applicable controls and country chart columns, but they do not list each reason for control at the beginning of the License Requirements section of each entry. Therefore, this rule adds the applicable reasons for control by adding nuclear nonproliferation (''NP'') and anti-terrorism (''AT'') to both ECCNs 1C239 and 1C240.

Lastly, this rule provides additional guidance by alerting readers of ECCN 1C239 to similar export controls found in related ECCNs. Specifically, this rule adds language to the ''Related Controls'' paragraph of ECCN 1C239 to refer readers to ECCNs 1C018 (commercial charges and devices containing energetic materials on the Wassenaar Arrangement Munitions List and certain chemicals) and 1C992 (certain commercial charges and devices containing energetic materials and nitrogen trifluoride in a gaseous state).

Removal of References to the International Munitions List

This rule removes references to the International Munitions List found in various parts of the EAR and in three separate ECCNs. The International Munitions List was a term used by the Coordinating Committee on Multilateral Export Controls (CoCom). CoCom was a multilateral organization that restricted strategic exports to controlled countries. On March 31, 1994, CoCom disbanded and was later replaced by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Due to the United States's membership in the Wassenaar Arrangement, this rule removes ''International Munitions List'' and replaces it with ''Wassenaar Arrangement Munitions List'' in §§ 738.2(d)(1), 744.17(d), 744.21(f), and 750.4(b)(6)(ii)(E), as well as in the headings of ECCNs 1B018, 2B018, and 8A018 on the Commerce Control List.

Removal of Nonexistent ECCN References Related to ''Space Qualified'' Items

Section 740.2 details restrictions which prevent the use of any License Exceptions. One such restriction on the use of License Exceptions involves ''space qualified'' items, found in paragraph (a)(7) of § 740.2. That paragraph lists ECCN 6D104 and ECCN 6E102 as two ECCN entries for the ''software'' and ''technology'', respectively, for certain ''space qualified'' commodities. However, ECCNs 6D104 and 6E102 do not currently exist on the Commerce Control List; thus, this rule removes those references to ECCNs 6D104 and 6E102 from § 740.2(a)(7).

Similarly, ECCN 6D001 also contains a reference to ECCN 6E102. In ECCN 6D001, the Related Controls paragraph instructs readers to ''[s]ee also 6D991, and ECCNs 6E001 ('development') and 6E102 ('use') for 'technology' for items controlled under this entry.'' This rule revises that sentence to read ''See also 6D991, and ECCN 6E001 ('development') for 'technology' for items controlled under this entry.''

Correction to the ECCN for Mobile Devices for Reexport to Sudan Under License Exception APR

On July 23, 1999, BIS (then BXA) published a final rule (64 FR 40106) that moved mobile communication devices from ECCN 5A991.f to ECCN 5A991.g. This renumbering of paragraphs in ECCN 5A991 was done pursuant to Wassenaar Arrangement review. Later, on May 26, 2000, BIS published another final rule (65 FR 34073) that reflected the classification change for mobile devices in § 742.10(a)(2), which lists the ECCNs that are allowed for reexport to Sudan, under anti-terrorism controls. However, that May 26, 2000, final rule did not update the classification change for mobile devices for § 740.16(i), which lists the ECCNs that are permitted for reexport to Sudan without a license under License Exception APR (additional permissive reexports). Prior to the May 26, 2000, final rule, the ECCNs listed in § 742.10(a)(2) matched the ECCNs listed in § 740.16(i). To ensure conformity, this final rule updates § 740.16(i) to replace ''5A991.f'' with ''5A991.g'', which will make the requirements concerning reexports to Sudan under License Exception APR consistent with the list of items allowed for reexport to Sudan under § 742.10.

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

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the requirements of the PRA. This collection has previously been approved by OMB under control number 0694–0088 (Multi-Purpose

Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS expects that this rule will not change that burden hour estimate.

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

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

List of Subjects

15 CFR Parts 738 and 772

Exports.

15 CFR Parts 740, 748, 750, 752, and 758

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

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 738, 740, 744, 748, 750, 752, 758, 762, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are corrected by making the following amendments:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 continues to read as follows:

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

§ 738.2 [Amended]

■ 2. Section 738.2(d)(1) is amended by removing the term ''International Munitions List'' and adding ''Wassenaar Arrangement Munitions List'' in its place.

PART 740—[AMENDED]

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

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

§ 740.2 [Amended]

■ 4. Section 740.2(a)(7) is amended by removing the ECCN references ''6D104'' and ''6E102''.

§ 740.12 [Amended]

■ 5. Section 740.12 is amended by removing the citation ''§ 734.2(b)'' in the second sentence in the Note to paragraph (a) and adding ''§ 736.2(b)'' in its place.

§ 740.16 [Amended]

■ 6. Section 740.16(i) is amended by removing the ECCN reference ''5A991.f'' and adding ''5A991.g'' in its place.

PART 744—[AMENDED]

■ 7. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 8. Section 744.17 is amended by revising the first sentence in paragraph (d) to read as follows:

§ 744.17 Restrictions on certain exports and reexports of general purpose microprocessors for ''military end-uses'' and to ''military end-users''.

* * * * *

(d) *Military end-use.* In this section, the phrase ''military end-use'' means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); commodities listed under ECCN's ending in ''A018'' on the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR; or any item that is designed for the ''use'', ''development'', ''production'', or deployment of military items described on the USML, the Wassenaar Arrangement Munitions List, or commodities listed under ECCNs ending in ''A018'' on the CCL.* * *

* * * * *

§ 744.21 [Amended]

■ 9. Section 744.21(f) is amended by removing the term ''International Munitions List (IML)'' and adding ''Wassenaar Arrangement Munitions List'' in its place.

Supplement No. 4 to Part 744 [Amended]

■ 10. Supplement No. 4 to part 744 is amended by removing endnote 1, '' 'Balance of Plant' refers to the part of a nuclear power plant used for power generation (e.g., turbines, controllers, or power distribution) to distinguish it from the nuclear reactor.''

PART 748—[AMENDED]

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

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

■ 12. Section 748.12 is amended by adding paragraph (a) to read as follows:

§ 748.12 Special provisions for support documents.

(a) *Grace periods.* Whenever the requirement for an Import Certificate or

End-User Statement or Statement by Ultimate Consignee or Purchaser is imposed or extended by a change in the regulations, the license application need not conform to the new support documentation requirements for a period of 45 days after the effective date of the regulatory change published in the **Federal Register**.

(1) Requirements are usually imposed or extended by virtue of one of the following:

(i) Addition or removal of national security controls over a particular item; or

(ii) Development of an Import Certificate/Delivery Verification or End-User Certificate program by a foreign country; or

(iii) Removal of an item from eligibility under the Special Comprehensive License described in part 752 of the EAR, when you hold such a special license and have been exporting the item under that license.

(2) License applications filed during the 45 day grace period must be accompanied by any evidence available to you that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between you and ultimate consignee, or other documents received from the ultimate consignee. You must also identify the regulatory change (including its effective date) that justifies exercise of the 45 day grace period. Note that an Import Certificate or End-User Statement will not be accepted, after the stated grace period, for license applications involving items that are no longer controlled for national security reasons. If an item is removed from national security controls, you must obtain a Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part. Likewise, any item newly controlled for national security purposes requires support of an Import Certificate or End-User Statement as described in § 748.10 of this part after expiration of the stated grace period.

* * * * *

Supplement No. 2 to Part 748 [Amended]

■ 13. Supplement No. 2 to part 748 is amended by:

■ a. Removing the term ''No. 8'' in paragraph (f) and adding ''Eight'' in its place;

■ b. Removing the citation ''§ 734.2(b)(8)'' in paragraph (f) and adding ''§ 736.2(b)(8)'' in its place; and

■ c. Removing the citation ''§ 734.2(b)(2)'' in paragraph (i) and adding ''§ 736.2(b)(2)'' in its place.

PART 750—[AMENDED]

■ 14. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

§ 750.4 [Amended]

■ 15. Section 750.4 is amended by removing the term ''International Munitions List'' in paragraph (b)(6)(ii)(E) and adding ''Wassenaar Arrangement Munitions List'' in its place.

PART 752—[AMENDED]

■ 16. The authority citation for 15 CFR part 752 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

§ 752.6 [Amended]

■ 17. Section 752.6 is amended by removing the number ''734'' in the first sentence of paragraph (c) and adding ''736'' in its place.

PART 758—[AMENDED]

■ 18. The authority citation for 15 CFR part 758 continues to read as follows:

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

■ 19. Section 758.1 is amended by revising paragraph (b)(2) to read as follows:

§ 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

* * * * *

(b) * * *

(2) For all exports subject to the EAR that require submission of a license application, regardless of value or destination;

* * * * *

PART 762—[AMENDED]

■ 20. The authority citation for 15 CFR part 762 continues to read as follows:

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

§ 762.6 [Amended]

■ 21. Section 762.6(b) is amended by removing the citation ''§ 765.5(c)(4)(ii)'' and adding ''§ 764.5(c)(4)(ii)'' in its place.

PART 772—[AMENDED]

■ 22. The authority citation for 15 CFR part 772 continues to read as follows:

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

§ 772.1 [Amended]

■ 23. Section 772.1 is amended by removing the citation ''§ 750.4(c)'' in the definition of ''Hold Without Action (HWA)'' and adding ''§ 750.4(b)'' in its place.

PART 774—[AMENDED]

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

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

Supplement No. 1 to Part 774—The Commerce Control List—[Amended]

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0–Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], Export Control Classification Number (ECCN) 0A987 is amended by adding a ''License Exceptions'' section and a ''List of Items Controlled'' section, after the ''License Requirements'' section, to read as follows:

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts, n.e.s.

License Requirements

* * * * *

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category

1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1B018 is amended by revising the Heading to read as follows:

1B018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C239 is amended by revising the ''Reason for Control'' paragraph of the ''License Requirements'' section and the ''Related Controls'' paragraph in the ''List of Items Controlled'' section to read as follows:

1C239 High explosives, other than those controlled by the U.S. Munitions List, or substances or mixtures containing more than 2% by weight thereof, with a crystal density greater than 1.8 g/cm^3 and having a detonation velocity greater than 8,000 m/s.

License Requirements

Reason for Control: NP, AT

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) See ECCNs 1C018 (commercial charges and devices containing energetic materials on the Wassenaar Arrangement Munitions List and certain chemicals as follows) and 1C992 (commercial charges and devices containing energetic materials, n.e.s and nitrogen trifluoride in a gaseous state). (3) High explosives for military use are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (see 22 CFR part 121.12).

* * * * *

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C240 is amended by revising the ''Reason for Control'' paragraph of the ''License Requirements'' section to read as follows:

1C240 Nickel powder or porous nickel metal, other than those described in 0C006, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NP, AT

* * * * *

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B018 is amended by revising the Heading to read as follows:

2B018 Equipment on the Wassenaar Arrangement Munitions List.

* * * * *

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D001 is amended by revising the Heading and ''Related Controls'' paragraph of the ''List of Items Controlled'' section as follows:

6D001 ''Software'' specially designed for the ''development'' or ''production'' of equipment controlled by 6A004, 6A005, 6A008, or 6B008.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: ''Software'' specially designed for the ''development'' or ''production'' of ''space qualified'' components for optical systems defined in 6A004.c and ''space qualified'' optical control equipment defined in 6A004.d.1 is subject to the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121). See also 6D991, and ECCN 6E001 (''development'') for ''technology'' for items controlled under this entry.

* * * * *

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number 8A018 is amended by revising the Heading to read as follows:

8A018 Items on the Wassenaar Arrangement Munitions List.

* * * * *

Dated: July 30, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–15099 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–07–077]

RIN 1625–AA09

Drawbridge Operation Regulations; Beaufort (Gallants) Channel, Beaufort, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the U.S. 70 Bridge across Beaufort (Gallants) Channel, mile 0.1, at Beaufort, NC, to accommodate the running portion of the annual triathlon.

DATES: This deviation is effective from 11:30 a.m. to 2 p.m. on September 8, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587.

SUPPLEMENTARY INFORMATION: The U.S. 70 Bridge, at mile 0.1, across Beaufort (Gallants) Channel, has a vertical clearance in the closed-to-navigation position of approximately 13 feet above mean high water.

On behalf of the Duke University chapter of the Coastal Society, the North Carolina Department of Transportation (the bridge owner) requested a temporary deviation from the current operating regulation set out in 33 CFR 117.822 to close the drawbridge to navigation to accommodate the annual triathlon fundraiser for the Neuse River Foundation scheduled for Saturday, September 8, 2007. The triathlon is an annual event, attracting participants from the surrounding cities and states.

To facilitate the triathlon run, the U.S. 70 Bridge will be maintained in the closed-to-navigation position from 11:30 a.m. to 2 p.m. on September 8, 2007.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 25, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7–15161 Filed 8–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–093]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the NJTRO Lower Hack Bridge across the Hackensack River, mile 3.4, at Jersey City, New Jersey. Under this temporary deviation, in effect for four weekends, July 28 and 29, August 4 and 5, August 11 and 12, and August 18 and 19, 2007, the NJTRO Lower Hack Bridge may remain in the closed position, each Saturday morning from 7 a.m. through each Sunday evening at 7 p.m. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate aerial cable installation at the bridge.

DATES: This deviation is effective from July 28, 2007 through August 19, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The NJTRO Lower Hack Bridge, across the Hackensack River, mile 3.4, at Jersey City, New Jersey, has a vertical clearance in the closed position of 40 feet at mean high water and 45 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(b).

The owner of the bridge, New Jersey Transit Rail Operation (NJTRO), requested a temporary deviation to facilitate aerial cable installation at the bridge.

Under this temporary deviation the NJTRO Lower Hack Bridge need not open for the passage of vessel traffic for four weekends, July 28 and 29, August 4 and 5, August 11 and 12, and August 18 and 19, 2007, from 7 a.m. each Saturday morning through 7 p.m. each Sunday evening. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 26, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–15163 Filed 8–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–112]

Drawbridge Operation Regulations; Mystic River, Charlestown and Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the S99 Alford Street Bridge across the Mystic River, mile 1.4, between Charlestown and Boston, Massachusetts. Under this temporary deviation the S99 Alford Street Bridge may remain in the closed position from 7 a.m. through 7 p.m. on July 27, 2007. In addition, the bridge may remain in the closed position from 7 a.m. on August 28, 2007 through 11:59 p.m. on August 30, 2007. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate emergency mechanical repairs.

DATES: This deviation is effective from 7 a.m. on July 27, 2007 through 11:59 p.m. on August 30, 2007.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The S99 Alford Street Bridge across the Mystic River, mile 1.4, between Charlestown and Boston, Massachusetts, has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.609(a).

The owner of the bridge, the City of Boston, requested a temporary deviation to facilitate emergency mechanical repairs at the bridge that must be performed with all due speed to assure safe continued operation of the bridge.

Under this temporary deviation the S99 Alford Street Bridge need not open for the passage of vessel traffic from 7 a.m. on July 27, 2007 through 7 p.m. on July 27, 2007 and from 7 a.m. on August 28, 2007 through 11:59 p.m. on August 30, 2007. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.36.

Dated: July 26, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–15162 Filed 8–3–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. COTP San Juan 05–007]

RIN 1625–AA87

Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands. The security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. This interim rule excludes entry into the security zone by all vessels without permission of the U.S. Coast Guard Captain of the Port San Juan or a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

DATES: This interim rule is effective August 6, 2007. Comments and related material must reach the Coast Guard on or before September 5, 2007.

ADDRESSES: You may mail comments and related material to Sector San Juan, 5 Calle La Puntilla, San Juan, PR 00901. Sector San Juan Waterways Management maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Resident Inspections Office in St. Croix, United States Virgin Island between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A.M. Schmidt of Sector San Juan, Prevention Operations Department at (787) 289–2086.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Juan 05–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this interim rule in view of them.

Public Meeting

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

Regulatory Information

On February 10, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone: HOVENSA Refinery, St. Croix, United States Virgin Islands'' in the **Federal Register** (70 FR 7065). We received no letters commenting on the proposed rule. No public meeting was requested and none was held. We decided to publish this interim rule instead of a final rule because we have determined it was necessary make a slight revision from the rule proposed in the above-mentioned notice of proposed rulemaking. Since the public did not have an opportunity to comment on the revision, we are issuing this interim rule with a request for comments before we create a final permanent rule.

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**. Given, the prior notice of proposed rulemaking, the current request for comments in this interim rule and the highly volatile nature of the substances at the HOVENSA refinery, to which it has the potential of being a terrorist target, it would be contrary to the public interest to delay the effective date of this regulation.

Background and Purpose

The Coast Guard has published similar temporary security zones in the **Federal Register** at 67 FR 2332, January 17, 2002; 67 FR 57952, September 13, 2002; 68 FR 22296, April 28, 2003; 68 FR 41081, July 10, 2003; 69 FR 6150, February 10, 2004; 69 FR 29232, May 21, 2004; and 70 FR 2950, January 19, 2005. Given the highly volatile nature of the substances stored at the HOVENSA facility, the Coast Guard recognizes that it could be a potential terrorist target and there is continuing risk that subversive activity could be launched by vessels or persons in close proximity to the facility. This activity could be directed against tank vessels and the waterfront facility. This security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels from entering within approximately 2 miles of the HOVENSA facility unless they have been specifically authorized by the Captain of the Port San Juan or have submitted a notice of arrival in accordance with the notice of arrival requirements of 33 CFR part 160, subpart C.

Discussion of Change From Proposed Rule

Although no comments were received on the NPRM, the COTP would like to receive comments on a proposed change to the regulatory text before issuing a final rule. The purpose of this change would be to clarify the boundaries of the security zone and reduce potential for misinterpretation. The change would affect the listed coordinates in paragraph (a) of § 165.766, and not the regulatory restrictions of the security zone in paragraph (b) of that section presented in the NPRM.

The pertinent sentence from the regulatory text in both the NPRM and this interim rule reads as follows:

> This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1: 17°41′31″ North, 64°45′09″ West, Point 2: 17°39′36″ North, 64°44′12″ West, Point 3: 17°40′00″ North, 64°43′36″ West, Point 4: 17°41′48″ North, 64°44′25″ West, and returning to the point of origin.

The replacement language proposed for the final rule would read as follows:

> This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1: 17°41′31″ North, 64°45′09″ West, Point 2: 17°39′36″ North, 64°44′12″ West, Point 3: 17°40′00″ North, 64°43′36″ West, Point 4: 17°41′48″ North, 64°44′25″ West, and then tracing the shoreline along the water's edge to return to the point of origin.

The only difference between the two versions is that in the final rule, instead of returning from the last coordinate listed to the point of origin, the line would follow ''the shoreline along the water's edge'' in returning to the point of origin.

Discussion of Rule

The security zone around the HOVENSA facility is encompassed by a

line connecting the following coordinates: 17°41′31″ North, 64°45′09″ West; 17°39′36″ North, 64°44′12″ West; 17°40′00″ North, 64°43′36″ West; and 17°41′48″ North, 64°44′25″ West, and back to the point of origin. The security zone includes the waters extending approximately 2 miles seaward from the HOVENSA facility, Limetree Bay Channel and Limetree Bay. All coordinates are based upon North American Datum 1983 (NAD 1983). All vessels without a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C are excluded from the zone unless specifically authorized by the Captain of the Port San Juan.

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. The burden imposed on the public by this rule is minimal and mariners may seek permission to enter the zone from the Coast Guard Captain of the Port San Juan or they may enter the zone if they have a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR, part 160, subpart C.

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.

The factual basis for this certification is as follows:

- Owners of small charter fishing or diving operations that operate near the HOVENSA facility may be affected by the existence of this security zone.
- This rule will not have a significant economic impact on the above-mentioned entities or a substantial number of small entities because this zone covers an area that is not typically used by commercial fisherman or divers.

Additionally, vessels may be allowed to enter the zone on a case-by-case basis with the permission of the Captain of the Port San Juan.

Assistance for Small Entities

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)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.766 to read as follows:

§ 165.766 Security Zone: HOVENSA Refinery, St. Croix, U.S. Virgin Islands

(a) *Regulated area.* The Coast Guard is establishing a security zone in and around the HOVENSA Refinery on the south coast of St. Croix, U.S. Virgin Islands. This security zone includes all waters from surface to bottom, encompassed by an imaginary line connecting the following points: Point 1: 17°41′31″ North, 64°45′09″ West, Point 2: 17°39′36″ North, 64°44′12″ West, Point 3: 17°40′00″ North, 64°43′36″ West, Point 4: 17°41′48″ North, 64°44′25″ West, and returning to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in the security zone in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port San Juan or vessels have a scheduled arrival in accordance with the Notice of Arrival requirements of 33 CFR part 160, subpart C.

(2) Persons and vessels desiring to transit the Regulated Area may contact the U.S. Coast Guard Captain of the Port, San Juan, at telephone number 787–289–2041 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port.

Dated: July 23, 2007.

J.E. Tunstall,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. E7–15160 Filed 8–3–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0610; FRL–8448–6]

Revisions to the Arizona State Implementation Plan, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Maricopa County portion of the Arizona State Implementation Plan (SIP). This revision concerns reductions of particulate matter (PM) emissions from the paving of unpaved roads and the use of these reductions to satisfy the offset requirements under the new source review provisions of the Clean Air Act as amended in 1990 (CAA or the Act). We are approving a local rule which assures that the PM emission reductions resulting from the road paving meet the criteria for valid offsets under the Act.

DATES: This rule is effective on October 5, 2007 without further notice, unless EPA receives adverse comments by September 5, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0610, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the date that it was adopted by the Maricopa Air Quality Department and submitted to us by the Arizona Department of Environmental Quality.

Local agency	Rule No.	Rule title	Adopted	Submitted
Maricopa County Air Quality Department	242	Emission Offsets Generated by the Voluntary Paving of Unpaved Roads.	06/20/07	07/05/07

On July 12, 2007, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 242 in the SIP, and the Maricopa County Air Quality Department has not adopted any earlier version of this rule.

C. What is the purpose of the submitted rule?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 173(c) of the CAA requires, among other things, that major new sources of PM and major modifications of existing sources of PM offset their increases of PM emissions. Rule 242 creates a mechanism for owners and operators of such sources to offset their PM emissions increases through the paving of unpaved public roads in the PM non-attainment area of Maricopa County. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, an offset generating rule of this type must meet the criteria for generating valid offsets and should meet the criteria set forth in our guidance concerning economic incentive programs.

Guidance and policy documents that we use to help evaluate specific enforceability requirements and economic incentive rules or programs consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. AP–42, Fifth edition, ''Compilation of Air Pollutant Emission Factors, Volume I, Stationary and Point Area Sources, Miscellaneous Sources, Chapter 13,'' December 2003.
4. ''Emission Offset Interpretative Ruling,'' 40 CFR part 51, appendix S.
5. ''Improving Air Quality with Economic Incentive Programs,'' EPA 452/R–01–001, January 2001.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and economic incentive programs and ensures that the emission reductions are surplus, quantifiable, enforceable, and permanent. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 5, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 5, 2007. This will incorporate the rule into the federally enforceable SIP.

III. 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 Clean Air 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 approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, and Reporting and recordkeeping requirements.

Dated: July 20, 2007.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(139) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(139) The following plan was submitted on July 5, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Maricopa County Air Quality Department

(*1*) Rule 242, adopted on June 20, 2007.

[FR Doc. E7–15118 Filed 8–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0347; FRL–8450–1]

Approval and Promulgation of Implementation Plans; Iowa; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Iowa State Implementation Plan (SIP) submitted on August 15, 2006. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR) promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA has determined that the SIP revision fully implements the CAIR requirements for Iowa. As a result of this action, EPA will also withdraw, through a separate rulemaking, the CAIR Federal Implementation Plans (FIPs) concerning SO_2, NO_X annual, and NO_X ozone season emissions for Iowa. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes State budgets for SO_2 and NO_X and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is approving today, Iowa has met the CAIR requirements by electing to participate in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions.

DATES: This rule is effective on September 5, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2007–0347. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460 or by e-mail at *jay.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What Action Is EPA Taking?

EPA is taking final action to approve a revision to Iowa's SIP submitted on August 15, 2006. In its SIP revision, Iowa has met the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions, as finalized in the Iowa Administrative Bulletin on June 7, 2006 (567–20.1(455B,17A), 21.1(4), and Chapter 34). Iowa's regulations adopt by reference most of the provisions of EPA's SO_2, NO_X annual, and NO_X ozone season model trading rules, with certain changes discussed below. EPA has determined that the SIP as revised will meet the applicable requirements of CAIR. As a result of this action, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Iowa. The Administrator's action will delete and reserve 40 CFR 52.840 and 40 CFR 52.841, relating to the CAIR FIP obligations for Iowa. The withdrawal of the CAIR FIPs for Iowa is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Iowa. Once a SIP is fully approved, EPA no longer has authority for the FIPs. Thus, EPA does not have the option of maintaining the FIPs following full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

EPA proposed to approve Iowa's request to amend the SIP on May 8, 2007 (72 FR 26040). In that proposal, EPA also stated its intent to withdraw the FIP, as described above. The comment period closed on June 7, 2007. No comments were received. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

II. What Is the Regulatory History of CAIR and the CAIR FIPs?

The CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1 to September 30). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS.

Iowa submitted its SIP in response to EPA's section 110(a)(2)(D) finding, which EPA approved in a rule published March 8, 2007 (72 FR 10380). In that rule, EPA stated that Iowa had met its obligation with regard to interstate transport by adoption of the CAIR model rule. EPA also stated that it would review and act on Iowa's CAIR rule in a separate rulemaking. This document takes final action on Iowa's CAIR rule as explained below.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. Analysis of Iowa's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

In this action, EPA is taking final action to approve Iowa's SIP revision that adopts the budgets established for the State in CAIR, i.e., 32,692 (2009–2014) and 27,243 (2015–thereafter) tons for NO_X annual emissions, 14,263 (2009–2014) and 11,886 (2015–thereafter) tons for NO_X ozone season emissions, and 64,095 (2010–2014) and 44,866 (2015–thereafter) tons for SO_2 emissions. Iowa's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

Iowa has committed to revising a definition in all three CAIR rules in order to fully ensure allowances can be traded among all sources participating in the EPA-administered cap-and-trade programs as intended. EPA discovered after review of other States' rules, but after Iowa had adopted its CAIR rules, that there was an issue related to the definition of ''permitting authority'' when it is revised to refer to a specific State's permitting authority.

In each of Iowa's rules for CAIR, the EPA model trading rules were revised to limit all references to ''permitting authority'' to refer to the Iowa Department of Natural Resources. This change is acceptable in most, but not all, instances under the current model rules. In certain definitions in the model rules incorporated by Iowa (i.e., ''allocate'' or

''allocation,'' ''CAIR NO_X allowance,'' ''CAIR SO_2 allowance,'' and ''CAIR NO_X Ozone Season allowance''), it is important that the term ''permitting authority'' cover permitting authorities in all States that choose to participate in the respective EPA-administered trading programs. This is necessary to ensure that all allowances issued in each EPA-administered trading program are fungible and can be traded and used for compliance with the allowance-holding requirement in any State in the program.

On February 17, 2007, EPA provided a letter to Iowa that requested and outlined necessary definition revisions. EPA received a letter from Iowa on February 28, 2007, that provided a commitment to make the EPA suggested rule revisions as soon as is practicable upon publication of the final rule concerning the proposed Clean Air Mercury Rule (CAMR) Federal plan. On April 11, 2007, EPA received an electronic correspondence from Iowa stating that Iowa will, in any event, complete these rule revisions before January 1, 2008. The State will be able to simultaneously revise the ''permitting authority'' definition in all cap-and-trade rules for both CAIR and CAMR, and properly update the State's rule as necessary to meet the requirements of the EPA-administered cap-and-trade-program for mercury.

The final rule concerning the CAMR Federal plan is expected to be published before the earliest, major deadline for compliance with requirements for source owners and operators under the CAIR trading programs, i.e., the January 1, 2008, deadline for emissions monitoring requirements under the CAIR Annual Trading Program. EPA expects that, by timing adoption of the EPA requested rule revisions to be soon after the publication of the final rule concerning the CAMR Federal plan, the State will ensure the revisions to the definition of ''permitting authority'' will be completed prior to any of the major compliance deadlines for source owners and operators under the CAIR trading programs. In the event the final rule concerning the CAMR Federal plan is not published in the expected timeframe, the State will need to ensure the necessary State rule revisions are completed and submitted to EPA in advance of the January 1, 2008, monitoring deadline for the CAIR NO_X Annual Trading Program.

To be clear, EPA notes that it is not proposing to approve the State's rule to comply with CAMR as part of this rulemaking. EPA will propose a separate rulemaking for the Iowa rule relating to CAMR.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone season model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) provides for a compliance supplement pool (CSP), which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season model rule reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing one ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, Iowa has chosen to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Iowa has adopted a full SIP revision (with the revisions discussed above) that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to: (1) The cost to recipients of the allowances, which may be distributed for free or auctioned; (2) the frequency of allocations; (3) the basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and (4) the use of allowance set-asides and, if used, their size.

Iowa has chosen to adopt generally the provisions of the CAIR NO_X annual and CAIR NO_X ozone season model trading rules concerning the allocation of allowances with two notable exceptions. Language is provided in Iowa's rules that states that allowances will be allocated in future years only ''to meet the minimum timing requirements'' specified in the Federal regulations. As explained in the proposed approval, EPA understands that the language is intended to mean that allocations will be determined by the dates and only for the years identified or described in 40 CFR 96.141

and 40 CFR 96.341. EPA did not receive any comments on this issue, and concludes that this understanding is a correct interpretation of Iowa's rules. Additionally, Iowa's CAIR NO_X Annual and CAIR NO_X ozone season rules establish permanent allocations for specified units designated as ''existing units'' or ''new units'' and do not include provisions of the EPA's model rules that call for adjusting the allocations for existing units to provide allocations for future, new units. EPA is taking final action to approve these variations from the model rule provisions because the changes are consistent with the flexibility that CAIR provides States with regard to allocation methodologies.

D. Allocation of NO_X Allowances From Compliance Supplement Pool

The CAIR establishes a compliance supplement pool to provide an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO_X model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

Iowa has not chosen to modify the provisions from the CAIR NO_X annual model trading rule concerning the allocation of allowances from the CSP. Iowa has chosen to distribute CSP allowances using the allocation methodology provided in 40 CFR 96.143 and has adopted this section by reference.

E. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Iowa has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR trading programs by adopting by reference the entirety of EPA's model rule provisions for opt-in units in the CAIR SO_2, CAIR NO_X annual, and CAIR NO_X ozone season trading programs.

V. Final Action

EPA is taking final action to approve Iowa's full CAIR SIP revision submitted on August 15, 2006. Under this SIP revision, Iowa is choosing to participate in the EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. EPA has determined that the SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. EPA has determined that the SIP as revised will meet the requirements of CAIR. The Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Iowa. The Administrator's action will delete and reserve 40 CFR 52.840 and 40 CFR 52.841. EPA will take final action to withdraw the CAIR FIPs for Iowa in a separate rulemaking.

VI. 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 would impose 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 action 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 CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. 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. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 5, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 26, 2007

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart Q—Iowa

■ 2. In § 52.820(c) the table is amended by:

■ a. Revising the entries for 567–20.1 and 567–21.1.

■ b. Adding in numerical order a heading for Chapter 34 and entries for chapter 34 subsections.

The revisions and additions read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
Chapter 20—Scope of Title—Definitions—Forms—Rule of Practice				
567–20.1	Scope of Title	N/A	8/6/07 [*insert FR page number where the document begins*].	This rule is a non-substantive description of the Chapters contained in the Iowa rules. EPA has not approved all of the Chapters to which this rule refers.
*	*	*	*	*
Chapter 21—Compliance				
567–21.1	Compliance Schedule	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
*	*	*	*	*
Chapter 34—Provisions for Air Quality Emissions Trading Programs				
567–34.1	Purpose	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.2 to 567–34.199.	Reserved	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.201	CAIR NO_X annual trading program provisions.	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.202	CAIR designated representative for CAIR NO_X sources.	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.203	Permits	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.204	Reserved	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.205	CAIR NO_X allowance allocations	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Explanation
567–34.206	CAIR NO_X allowance tracking system.	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.207	CAIR NO_X allowance transfers	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.208	Monitoring and reporting	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.209	CAIR NO_X opt-in units	7/12/2006	8/6/07 [*insert FR page number where the document begins*].	
567–34.210	CAIR SO_2 trading program	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.211 to 567–34.219.	Reserved	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.220	CAIR NO_X ozone season trading program.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.221	CAIR NO_X ozone season trading program general provisions.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.222	CAIR designated representative for CAIR NO_X ozone season sources.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.223	CAIR NO_X ozone season permits ..	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.224	Reserved	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.225	CAIR NO_X ozone season allowance allocations.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.226	CAIR NO_X ozone season allowance tracking system.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.227	CAIR NO_X ozone season allowance transfers.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.228	CAIR NO_X ozone season monitoring and reporting.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
567–34.229	CAIR NO_X ozone season opt-in units.	7/12/2006	8/6/2007 [*insert FR page number where the document begins*].	
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[FR Doc. E7–15121 Filed 8–3–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 5

[Docket ID FEMA–2007–0006]

RIN 1660–AA54

Federal Emergency Management Agency (FEMA) Touhy Regulations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule makes a clarifying amendment to the Federal Emergency Management Agency's (FEMA) *Touhy* regulations. As already provided in the *Touhy* regulations of the Department of Homeland Security (DHS), of which FEMA is a component, FEMA is adding language to its regulations clarifying that DHS *Touhy* regulations are applicable to any subject matter not already covered by FEMA's regulations, including but not limited to demands or requests directed to current or former FEMA contractors. This action ensures consistency within DHS with a uniform approach and administration of *Touhy* regulations, and provides additional clarification with respect to agency organization and practice. This regulation will have no substantive effect on the regulated public.

DATES: This final rule is effective August 6, 2007.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying under Docket ID FEMA–2007–0006, at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC, or online at the Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jordan S. Fried, Associate Chief Counsel for Litigation, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW., Washington, DC 20472, (phone) 202–646–4112, (facsimile) 202–646–4536, or (e-mail) *Jordan.fried@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Regulatory Information

FEMA did not publish a notice of proposed rulemaking for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), FEMA finds that this rule is exempt from notice and comment rulemaking requirements because this is a procedural rule involving agency organization and practice, and has no substantive effect on the public. This rule consists only of a technical clarifying amendment. Because this is a procedural rule, rather than substantive, this rule will become effective immediately upon publication as authorized under 5 U.S.C. 553(d).

Background

The Federal Emergency Management Agency (FEMA), a component of the Department of Homeland Security (DHS), issues this rule to eliminate public confusion with respect to how

FEMA applies its *Touhy* regulations. *Touhy* regulations, named after *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), establish restrictions and procedures for demands on Federal agency employees for information or testimony in response to a subpoena or other demand in private litigation as to any information relating to material contained in the files of the Agency, or any information acquired as a part of the performance of that person's official duties or because of that person's official status.

Currently, FEMA has *Touhy* regulations at 44 CFR part 5 subpart F, Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information; and DHS has *Touhy* regulations at 6 CFR part 5 subpart C, Disclosure of Information in Litigation. DHS' regulation, at 6 CFR 5.41(b), provides that ''[t]he provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance governing the subject matter of a provision of this subpart, the provisions of this subpart shall apply to each component of the Department.'' There are some circumstances in which the DHS regulations address subject matter that is not addressed in FEMA's regulations. Therefore, as a matter of agency practice, FEMA applies DHS regulations when FEMA's regulations are silent, pursuant to the language of 6 CFR 5.41(b).

In an effort toward providing public notice of this agency practice, FEMA is amending its scope and applicability regulation at 44 CFR 5.80 to clarify for the public that DHS' *Touhy* regulations apply to any subject matter not already covered by FEMA's regulations, including but not limited to demands or requests directed to current or former FEMA contractors. FEMA specifically addressed the issue of demands or requests directed to current or former FEMA contractors because the agency is aware of particular confusion with respect to Title 44's silence on this subject matter. This regulatory change clarifies agency organization and practice and will have no substantive effect on the regulated public.

Executive Order 12866—Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866 (58 FR 51735, Oct. 4, 1993). Under Executive Order 12866, a ''significant regulatory action'' is subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. Section 3(f) of the Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

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

As a DHS component, FEMA is subject to the *Touhy* provisions established by DHS at 6 CFR part 5 subpart C, except to the extent that FEMA has adopted separate guidance governing the subject matter of a provision of that subpart. As a result, DHS' regulations apply to any subject matter not already covered by FEMA's regulations, including but not limited to demands or requests directed to current or former FEMA contractors. In an effort at removing public confusion, FEMA is amending 44 CFR 5.80 to include language notifying the public of this existing agency practice and procedure. This regulatory change provides clarification with respect to agency organization and practice and has no substantive effect on the regulated public. Therefore, this rulemaking is not considered to be a significant regulatory action under section 3(f) of Executive Order 12866. This rule adheres to the principles of regulation as set forth in the Executive Order.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA is not required to prepare a final regulatory flexibility analysis for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) implementing regulations governing FEMA activities at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. This amendment provides clarifying information regarding administrative actions of the agency regarding the handling of demands on Federal agency employees for information or testimony in response to a subpoena or other demand in private litigation and is therefore categorically exempt under § 10.8(d)(2)(i). Because no other extraordinary circumstances have been identified, this rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism,'' (64 FR 43255, published August 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. This rule provides clarification with respect to agency organization and practice and will have no substantive effect on the regulated public, therefore it will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It will not preempt any State laws. In accordance with section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. This rule does not impose any new reporting or recordkeeping requirements, nor does it revise information collection requirements

currently approved under the Paperwork Reduction Act of 1995.

Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, published February 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Though this rule will not result in such an expenditure, FEMA does discuss the effects of this rule elsewhere in this preamble.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, published February 16, 1994), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA believes that no action under this rule will have a disproportionately high or adverse effect on human health or the environment as it contains only a clarifying amendment regarding agency organization and practice and has no substantive effect on the regulated public. Accordingly, the requirements of Executive order 12898 do not apply to this rule.

Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, (''Congressional Review Act'') Public Law 104–121. This rule is not a ''major rule'' within the meaning of the Congressional Review Act. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises.

Executive Order 13045, Protection of Children

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this rule under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, published November 9, 2000). As this rule provides clarification with respect to agency organization and practice and has no substantive effect on the regulated public, 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.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' (53 FR 8859, published March 18, 1988) as supplemented by Executive Order 13406, ''Protecting the Property Rights of the American People'' (71 FR 36973, published June 28, 2006). This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

List of Subjects in 44 CFR Part 5

Courts, Freedom of Information, Government employees.

■ For the reasons set forth above, FEMA amends 44 CFR part 5 as follows:

44 CFR Chapter 1—Federal Emergency Management Agency, Department of Homeland Security

Subchapter A—General

PART 5—[REVISED]

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 301; 6 U.S.C. 101 *et seq*; Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12148.

■ 2. Amend § 5.80, by adding paragraph (d) to read as follows:

§ 5.80 Scope and applicability.

* * * * *

(d) The Department of Homeland Security's regulations, 6 CFR 5.41 through 5.49, apply to any subject matter not already covered by this subpart, including but not limited to demands or requests directed to current or former FEMA contractors.

Dated: August 1, 2007.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–15224 Filed 8–3–07; 8:45 am]

BILLING CODE 9110–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 6 and 64

[WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105; FCC 07–110]

IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission extends the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended (the Act), to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed

equipment used to provide those services. In addition, the Commission extends the Telecommunications Relay Services (TRS) requirements contained in its regulations to interconnected VoIP providers.

DATES: Effective October 5, 2007 except for the amendments to 47 CFR 6.11(a) and (b), 6.18(b), 6.19, 64.604(a)(5), 64.604(c)(1) through (c)(3), 64.604(c)(5)(iii)(C), 64.604(c)(5)(iii)(E), 64.604(c)(5)(iii)(G), 64.604(c)(6)(v)(A)(*3*), 64.604(c)(6)(v)(G), 64.604(c)(7), and 64.606(b), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB), and on which the Commission must seek comment pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Written comments on the new or modified information collection requirements must be submitted on or before October 5, 2007. The Commission will publish a document in the **Federal Register** announcing the effective date of those rules and requirements.

ADDRESSES: You may submit PRA comments identified by FCC number 07–110 and CG Docket No. 03–123, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their PRA comments to *PRA@fcc.gov* and to Jasmeet Seehra, at *Jasmeet_K._Seehra@omb.eop.gov.* Please include FCC number 07–110 and CG Docket No. CG 03–123 in the subject line of the message.
- *Mail/Fax:* Parties who choose to file by paper should submit their PRA comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, and to Jasmeet Seehra, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via fax (202) 395–5167.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, etc.) by e-mail: *FCC504@fcc.gov*, phone (202) 418–0539 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: Lisa Elster Boehley, Consumer & Governmental Affairs Bureau at (202) 418–7395 (voice), or e-mail Lisa.Boehley@fcc.gov. For additional information concerning the PRA information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document contains new or modified information collection requirements subject to the PRA. These will be submitted to OMB for review under § 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

On September 29, 1999, the Commission issued an order (*Section 255 Order*) implementing the disability access provisions in sections 255 and 251(a)(2) of the Act (FCC 99–181), published at 64 FR 63235, November 19, 1999. The *Section 255 Order* included a *Further Notice of Inquiry (NOI)*, published at 64 FR 63277, November 19, 1999, which sought comment on applying accessibility requirements to Internet Protocol telephony and computer-based equipment that replicates telecommunications functionality. The *NOI* sought comment on the extent to which Internet telephony was impairing access to communications services among people with disabilities, the efforts manufacturers were taking to render new technologies accessible, and the degree to which these technologies should be subjected to the same disability access requirements as traditional telephony facilities.

On March 10, 2004, the Commission released a *Notice of Proposed Rulemaking (FCC 04–28)*, published at 69 FR 16193, March 29, 2004, seeking comment on issues relating to services and applications utilizing Internet Protocol. On June 15, 2007, the Commission released this *Order (FCC 07–110)* extending the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Act to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services, and extending the TRS requirements contained in 47 CFR 64.601 *et seq.* of the Commission's rules to interconnected VoIP providers. Copies of document FCC 07–110 and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 07–110 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document FCC 07–110 can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders* under TRS Headlines (June 15, 2007).

Paperwork Reduction Act of 1995 Analysis

Document FCC 07–110 contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in document FCC 07–110, as required by the PRA. Public and agency comments are due October 5, 2007. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission assessed the effects of imposing disability access requirements on interconnected VoIP providers and manufacturers, and of imposing TRS requirements on interconnected VoIP providers, and finds that there may be an increased administrative burden on businesses with fewer than 25 employees.

The Commission has taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25

employees. For example, although the Commission requires covered entities to maintain records of their accessibility efforts that can be presented to the Commission to demonstrate compliance, the Commission does not delineate specific documentation or certification requirements for ''readily achievable'' analyses. In addition, by adopting general performance criteria, as opposed to accessibility standards or performance measurements specifying exactly how access must be achieved, the Commission's rules provide small entities flexibility in determining how best to manage their compliance with these rules. Moreover, by adopting the ''readily achievable'' standard that currently applies to telecommunications service providers and manufacturers, covered interconnected VoIP providers and manufacturers are required to render their services or products accessible only if doing so is ''easily accomplishable and able to be carried out without much difficulty or expense.'' Finally, because the information interconnected VoIP providers currently provide on the Telecommunications Reporting Worksheet (FCC Form 499–A) for purposes of the USF reporting requirements also will be used to determine these entities' TRS contribution, there will be no increased reporting burden on small businesses. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.

Synopsis

Section 255 of the Act requires manufacturers of ''telecommunications equipment or customer premises equipment'' to ensure that such equipment is accessible to and usable by individuals with disabilities, if readily achievable, and requires providers of a ''telecommunications service'' to ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. In this *Order*, the Commission extends those disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Act and 47 CFR part 6, to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services. The Commission adopts this measure under its Title I ancillary jurisdiction in order to give full effect to the accessibility policies embodied in section 255 of the Act, and to further the Commission's statutory mandate to make available a nationwide communications system that promotes the safety and welfare of all Americans. In addition, the Commission extends the TRS requirements contained in the Commission's regulations, 47 CFR 64.601 *et seq.* (subpart F), to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act and the Commission's Title I ancillary jurisdiction. Among the TRS requirements extended to interconnected VoIP providers, the Commission requires such providers to contribute to the Interstate TRS Fund (Fund) under the Commission's existing contribution rules, and to offer 711 abbreviated dialing for access to relay services. Together, these measures will ensure that, as more consumers migrate from traditional phone service to interconnected VoIP services, the disability access provisions mandated by Congress under sections 255 and 225 of the Act will apply to, and benefit users of, interconnected VoIP services and equipment.

Final Regulatory Flexibility Certification (FRFA)

Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.* (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The Commission sought written public comment on the proposals in the notice, including comment on the Initial Regulatory Flexibility Analysis (IRFA). *See IP-Enabled Services NPRM*, 19 FCC Rcd at 4917, paragraph 91 and Appendix A. The Commission received three comments on the IRFA, which are discussed below. This FRFA conforms to the RFA. *See* 5 U.S.C. 604.

Need for, and Objectives of, the Rules

FCC 07–110 strengthens the Commission's disability access rules. Section 255 of the Act requires telecommunications service providers and equipment manufacturers to render their services or equipment accessible to persons with disabilities, if readily achievable. The *Order* extends the disability access requirements, that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Act, to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide those services. In addition, the *Order* extends the TRS requirements contained in the Commission's regulations, 47 CFR 64.601 *et seq.* (subpart F), to providers of interconnected VoIP services. Among the TRS requirements extended to interconnected VoIP providers, the Commission requires such providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, *see* 47 CFR 64.604(c)(5)(iii)(A), (B), and to offer 711 abbreviated dialing for access to relay services, *see* 47 CFR 64.603. Together, these measures will ensure that, as more consumers migrate from traditional phone service to interconnected VoIP services, the disability access provisions mandated by Congress under sections 255 and 225 of the Act will apply to, and benefit users of, interconnected VoIP services and equipment.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

Comments Received in Response to the IP-Enabled Services NPRM. In this section, we respond to comments filed in response to the IRFA. To the extent comments raised general small business concerns during this proceeding, those comments have been addressed in the *Order.* The Commission disagrees with SBA and Menard that the Commission should postpone acting in this proceeding—thereby postponing extension of the application of the disability access and TRS contribution rules to interconnected VoIP providers—and instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities, and less burdensome alternatives. *See* Comments of SBA at 2, 4, 6 (May 28, 2004); Comments of Menard at 2–5 (May 28, 2004); Reply of Menard at 4 (July 15, 2004).

The additional steps suggested by SBA and Menard are unnecessary, because small entities already had sufficient notice of the issues addressed in the *Order*, through comment sought by the *IP-Enabled Services NPRM* and the *Section 255 NOI.* Indeed, the Commission notes that a number of small entities submitted comments in this proceeding. The Commission has considered the economic impact on small entities as well as ways to minimize the burdens imposed on those entities, and, to the extent feasible, has implemented those less burdensome alternatives. *See Order*, FCC 07–110, section E of Appendix A.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.

A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Small Businesses. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

Small Organizations. Nationwide, there are approximately 1.6 million small organizations.

Small Governmental Jurisdictions. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

Telecommunications Service Entities

Wireless Carriers and Service Providers. The Commission has included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. The Commission therefore has included small incumbent local exchange carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wired Telecommunications Carriers. The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's action.

Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by the Commission's action.

Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone

services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the Commission's action.

Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by the Commission's action.

Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 102 are estimated to have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by the Commission's action.

800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers, under which a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to this source, as of the end of June 2006, the number of 800 numbers assigned was 7,647,941, the number of 888 numbers assigned was 5,318,667, the number of 877 numbers assigned was 4,431,162, and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are approximately 7,647,941 small entity 800 subscribers, approximately 5,318,667 small entity 888 subscribers, approximately 4,431,162 small entity 877 subscribers, and approximately 6,008,976 small entity 866 subscribers.

International Service Providers

The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $12.5 million or less in average annual receipts. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by the Commission's action.

The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.

Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by the Commission's action.

Wireless Telecommunications Service Providers

Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. The Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications,'' under which a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission has estimated that 221 of these are small, under the SBA small business size standard.

Common Carrier Paging. The SBA has developed a small business size standard for wireless firms within the broad economic census category, ''Cellular and Other Wireless Telecommunications,'' under which a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. In the *Paging Third Report and Order*, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses.'' *See* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, *Third Report and Order and Fifth Notice of Proposed Rulemaking,* 12 FCC Rcd 10943, 11068–70, paragraphs 291–295, 62 FR 16004 (April 3, 1997) (*220 MHz Third Report and Order*).

A ''small business'' and a ''very small business'' are entities that, together with their affiliates and controlling principals, have average gross revenues not exceeding $15 million for $3 million, respectively, for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, the Commission estimates that 370 are small, under the SBA-approved small business size standard.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' and a ''very small business'' are entities with average gross revenues of $40 million or $15 million, respectively, for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

Wireless Telephony. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission has estimated that 221 of these are small, under the SBA small business size standard.

Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, *Report and Order*, 11 FCC Rcd 7824, 61 FR 33859 (July 1, 1996) (*PCS Order*). For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' *See PCS Order.* These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order,* 9 FCC Rcd 5332, 59 FR 37566 (July 22, 1994). No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

Narrowband Personal Communications Services. To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. A ''small business'' and a ''very small business'' are entities that, together with affiliates and controlling interests, have average gross revenues of not more than $40 million or $15 million, respectively, for the three preceding years. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of

licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies, under which a small business is a wireless company employing no more than 1,500 persons. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. Assuming this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for entities that, together with affiliates and controlling interests, have average gross revenues not exceeding $15 million or $3 million, respectively, for the three preceding years. *See 220 MHz Third Report and Order,* 12 FCC Rcd at 11068–70, paragraphs 291–295. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

800 MHz and 900 MHz Specialized Mobile Radio Licenses. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes that the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

700 MHz Guard Band Licensees. In the *700 MHz Guard Band Order,* the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for entities that, together with affiliates and controlling interests, have average gross revenues not exceeding $15 million or $3 million, respectively, for the three preceding years. *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order,* 65 FR 17599 (Apr. 4, 2000). An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759. The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station

licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined ''small'' businesses and ''very small'' businesses as entities that, together with affiliates and controlling interests, have average gross revenues not exceeding $15 million or $3 million, respectively, for the three preceding years. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

39 GHz Service. The Commission created special ''small business'' and ''very small business'' size standards for 39 GHz licenses—entities that have average gross revenues of up to $40 million or $15 million, respectively, in the three previous calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

Wireless Cable Systems. Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS'') (formerly Multipoint Distribution Service (''MDS'')) and the Educational Broadband Service (''EBS'') (formerly Instructional Television Fixed Service (''ITFS'')), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to BRS, EBS and LMDS. Other standards also apply, as described.

The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a ''small business'' as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition has been approved by the SBA in the context of MDS auctions. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Act, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for ''other telecommunications'' (annual receipts of $13.5 million or less). MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity BRS providers, as defined by the SBA and the Commission's auction rules. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

Local Multipoint Distribution Service. LMDS is a fixed broadband, point-to-multipoint, microwave service that provides for two-way video telecommunications. The Commission established ''small business'' and ''very small business'' size standards for LMDS licenses as entities that have average gross revenues not exceeding $40 million or $15 million, respectively, for the three preceeding years. The SBA has approved these small business size standards in the context of LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses in LMDS auctions. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concludes that the maximum number of small LMDS licensees consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

218–219 MHz Service. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* 64 FR 59656, the Commission established standards for a ''small business'' and a ''very small business'' as entities that, together with affiliates and controlling interests, have average annual gross revenues not exceeding $15 million or $3 million, respectively, for the three preceding years. These special small business size standards will be used, as appropriate, in future auctions of 218–219 MHz spectrum.

24 GHz—Incumbent Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of

''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

24 GHz—Future Licensees. With respect to new applicants in the 24 GHz band, the SBA approved small business size standards for a ''small business'' and ''very small business,'' which are entities that, together with affiliates and controlling interests, have average annual gross revenues not exceeding $15 million or $3 million, respectively, for the three preceding years. These size standards will apply to the future auction, if held.

Cable and OVS Operators

Cable and Other Program Distribution. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

Cable System Operators. The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it cannot provide a more accurate estimate of the number of cable system operators that would qualify as small under this size standard.

Open Video Services. Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, some of which are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Since some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to all 24 of the OVS operators other than RCN might qualify as small businesses that may be affected by the rules and policies adopted herein.

Internet Service Providers

Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

Other Internet-Related Entities

Web Search Portals. The Commission's action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA developed a small business size standard for this category of $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, 342 firms in this category operated for the entire year. Of these, 303 had annual receipts of under $5 million, and 15 firms had receipts of between $5 million and $9,999,999. The Commission estimates that the majority of these firms are small

entities that may be affected by the Commission's action.

Data Processing, Hosting, and Related Services. Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA developed a small business size standard for this category of $23 million or less in average annual receipts. According to Census Bureau data for 2002, 6,877 firms in this category operated for the entire year, 6,418 of which had annual receipts of under $10 million, and an additional 251 of which had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

All Other Information Services. ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The Commission's action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA developed a small business size standard for this category of $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. The Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

Internet Publishing and Broadcasting. ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA developed a small business size standard for this census category of 500 or fewer employees. According to Census Bureau data for 2002, 1,362 firms in this category operated for the entire year. Of these, 1,351 employed 499 or fewer employees, and six firms employed between 500 and 999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

Software Publishers. These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA developed a small business size standard of $23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under $10 million, and an additional 101 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of the firms in each of these three categories are small entities that may be affected by the Commission's action.

Equipment Manufacturers

The disability access requirements we adopt today apply to manufacturers of specialized VoIP equipment and CPE. The following entities include those that may be affected by the actions taken in this *Order*.

Telephone Apparatus Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, 518 establishments in this category operated for the entire year. Of this total, 511 employed under 1,000, and an additional 7 employed 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA established firms having 750 or fewer employees as the small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. According to Census Bureau data for 2002, 1,041 establishments in this category operated for the entire year. Of this total, 1,010 employed under 500, and an additional 13 employed 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

Other Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' The SBA established firms having 750 or fewer employees as the small business size standard for Other Communications Equipment Manufacturing. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 employed under 500, and 7 employed 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

SBA small business size standards are given in terms of ''firms.'' Census Bureau data concerning computer manufacturers, on the other hand, are given in terms of ''establishments.'' The Commission notes that the number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, although that location may be owned by a

different establishment. Thus, the census numbers provided below may reflect inflated numbers of businesses in the given category, including the numbers of small businesses.

Electronic Computer Manufacturing. This category ''comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers.'' The SBA has established firms having 1000 or fewer employees as the small business size standard for this category of manufacturing. According to Census Bureau data, 485 establishments in this category operated with payroll during 2002. Of these, 476 employed under 1,000, and an additional four employed 1,000 to 2,499. Consequently, the Commision estimates that the majority of these establishments are small entities.

Computer Storage Device Manufacturing. These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' The SBA established firms having 1000 or fewer employees as the small business size standard for this category of manufacturing. According to Census Bureau data, 170 establishments in this category operated with payroll during 2002. Of these, 164 employed under 500, and five employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Computer Terminal Manufacturing. ''Computer terminals are input/output devices that connect with a central computer for processing.'' The SBA established firms having 1000 or fewer employees as the small business size standard for this category of manufacturing. According to Census Bureau data, 71 establishments in this category operated with payroll during 2002, and all employed fewer than 1,000. The Commission estimates that all of these establishments are small entities.

Other Computer Peripheral Equipment Manufacturing. Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA established firms having 1000 or fewer employees as the small business size standard for this category of manufacturing. According to Census Bureau data, 860 establishments in this category operated with payroll during 2002. Of these, 851 employed under 1,000, and five employed 1,000 to 2,499. The Commission estimates that the majority of these establishments are small entities.

Audio and Video Equipment Manufacturing. These establishments manufacture ''electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications.'' The SBA established firms having 750 or fewer employees as the small business size standard for this category of manufacturing. According to Census Bureau data, 571 operated with payroll during 2002. Of these, 560 employed under 500, and ten employed of 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Electron Tube Manufacturing. These establishments are ''primarily engaged in manufacturing electron tubes and parts (except glass blanks).'' The SBA developed a small business size standard of 750 or fewer employees for this category of manufacturing. According to Census Bureau data, 102 establishments in this category operated with payroll during 2002. Of these, 97 employed under 500, and one employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Bare Printed Circuit Board Manufacturing. These establishments are ''primarily engaged in manufacturing bare (*i.e.*, rigid or flexible) printed circuit boards without mounted electronic components.'' The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 936 establishments in this category operated with payroll during 2002. Of these, 922 employed under 500, and 12 employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Semiconductor and Related Device Manufacturing. Examples of manufactured devices in this category include ''integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.'' The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 1,032 establishments in this category operated with payroll during 2002. Of these, 950 employed under 500, and 42 employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Electronic Capacitor Manufacturing. These establishments manufacture ''electronic fixed and variable capacitors and condensers.'' The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 104 establishments in this category operated with payroll during 2002. Of these, 101 employed under 500, and two employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Electronic Resistor Manufacturing. These establishments manufacture ''electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors.'' The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 79 establishments in this category operated with payroll during 2002. All of these establishments employed under 500. The Commission estimates that all of these establishments are small entities.

Electronic Coil, Transformer, and Other Inductor Manufacturing. These establishments manufacture ''electronic inductors, such as coils and transformers.'' The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 365 establishments in this category operated with payroll during 2002, and all employed under 500. The Commission estimates that all of these establishments are small entities.

Electronic Connector Manufacturing. These establishments manufacture ''electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic.'' The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 321 establishments in this category operated with payroll during 2002. Of these, 315 employed under 500, and three employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Printed Circuit Assembly (Electronic Assembly) Manufacturing. These are establishments ''primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.'' The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 868 establishments in this category operated with payroll during 2002. Of these, 839 employed under 500, and 18 employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Other Electronic Component Manufacturing. The SBA developed a small business size standard of 500 or fewer employees for this category of manufacturing. According to Census Bureau data, 1,627 establishments in this category operated with payroll during 2002. Of these, 1,616 employed under 500, and eight employed 500 to 999. The Commission estimates that the majority of these establishments are small entities.

Fiber Optic Cable Manufacturing. These establishments manufacture ''insulated fiber-optic cable from purchased fiber-optic strand.'' The SBA developed a small business size standard of 1,000 or fewer employees for this category of manufacturing. According to Census Bureau data, 96 establishments in this category operated with payroll during 2002. Of these, 95 employed under 1,000, and one employed 1,000 to 2,499. The Commission estimates that the majority or all of these establishments are small entities.

Other Communication and Energy Wire Manufacturing. These establishments manufacture ''insulated wire and cable of nonferrous metals from purchased wire.'' The SBA developed a small business size standard of 1,000 or fewer employees for this category of manufacturing. According to Census Bureau data, 356 establishments in this category operated with payroll during 2002. Of these, 353 employed under 1,000, and three employed 1,000 to 2,499. The Commission estimates that the majority or all of these establishments are small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Disability Access Requirements. (*See* FCC 07–110 at paragraphs 16–20, 25–31). The Commission requires providers of interconnected VoIP services and specialized equipment, and CPE manufacturers, to comply with the disability access requirements contained in 47 CFR Part 6. Covered entities must maintain records pertaining to their disability access compliance efforts and designate, and submit contact information for, an agent for service of disability access-related inquiries or complaints. In addition, the rules we adopt today: (1) Require manufacturers of specialized interconnected VoIP equipment or CPE to ensure that their equipment is designed, developed and fabricated to be accessible to individuals with disabilities, if readily achievable, and, where such accessibility is not readily achievable, to ensure that the equipment is compatible with existing peripheral devices or specialized CPE, if readily achievable; (2) require interconnected VoIP providers to ensure that their service is accessible to individuals with disabilities, if readily achievable, and, where such accessibility is not readily achievable, to ensure that the service is compatible with existing peripheral devices or specialized CPE, if readily achievable; (3) require covered manufacturers and service providers to evaluate the accessibility, usability, and compatibility of covered services and equipment throughout the design and development process; and (4) require covered manufacturers and service providers to ensure that information and documentation provided in connection with equipment or services be accessible to people with disabilities, where readily achievable, and that employee training, where provided at all, account for accessibility requirements.

TRS Requirements. (*See* FCC 07–110 at paragraphs 16, 32–33, 36–40). The Commission requires providers of interconnected VoIP service to comply with the TRS requirements contained in our regulations, 47 CFR 64.601 *et seq.* (subpart F). Among the TRS requirements that the Commission extends to interconnected VoIP providers, the Commission requires such providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules, and to offer 711 abbreviated dialing for access to relay services. These providers will contribute to the Interstate TRS Fund through monthly or annual payments into the Fund as specified in the Commission's TRS rules. Interconnected VoIP provider payments into the Fund will be assessed on the basis of revenue information these providers currently submit to the Universal Service Administrative Company (USAC) on the FCC Form 499–A.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Commission has considered how best to minimize any significant economic impact on small entities and, in FCC 07–110, has attempted to impose minimal regulation on small entities to the extent consistent with its goal of ensuring that individuals with disabilities have access to critical ''POTS-like'' communications services and equipment. The Commission has taken several steps to minimize the economic impact on small entities. For example, although the Commission requires covered entities to maintain records of their accessibility efforts that can be presented to the Commission to demonstrate compliance, the Commission does not delineate specific documentation or certification requirements for ''readily achievable'' analyses. In addition, by adopting general performance criteria, as opposed to accessibility standards or performance measurements specifying exactly how access must be achieved, the Commission's rules provide small entities flexibility in determining how best to manage their compliance with these rules. Moreover, by adopting the ''readily achievable'' standard that currently applies to telecommunications service providers and manufacturers, covered interconnected VoIP providers and manufacturers are required to render their services or products accessible only if doing so is ''easily accomplishable and able to be carried out without much difficulty or expense.'' Inasmuch as interconnected VoIP providers will be permitted to file the identical Telecommunications Reporting Worksheet (FCC Form 499–A) for the TRS reporting requirements that these providers currently file in connection with the USF reporting requirements, there will be no increased reporting burden on small businesses. Finally, interconnected VoIP providers whose interstate end-user revenues are deemed *de minimis* under the Commission's TRS rules and procedures in a given Fund year, will be required to contribute only $25 for that year. These measures should substantially alleviate any economic burdens on small entities.

In taking the actions described above, the Commission undertook to assess the interests of small businesses in light of the overriding public interest in, and statutory goal of, making critical communications services accessible by and to all Americans. Therefore, the Commission concluded that it was important for all providers of

interconnected VoIP service and covered manufacturers, including small businesses, to comply with the rules adopted in FCC 07–110, and the Commission rejected alternative solutions that would have exempted small businesses from these requirements. The record indicated that exempting small carriers from these requirements would compromise the Commission's goal of ensuring access to critical communications services for *all* Americans.

Congressional Review Act

The Commission will send a copy of FCC 07–110, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of FCC 07–110, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of FCC 07–110 and FRFA (or summaries thereof) will also be published in the **Federal Register.**

Ordering Clauses

Pursuant to the authority contained in sections 1–4, 225, 251, 255, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 225, 251, 255, and 303(r), the report and order is adopted.

Pursuant to the authority contained in sections 1–4, 225, 251, 255, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 225, 251, 255, and 303(r), part 6 of the Commission's rules, 47 CFR part 6, is amended.

Pursuant to the authority contained in sections 1–4, 225, 251, 255, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 225, 251, 255, and 303(r), part 64 of the Commission's rules, 47 CFR part 64, is amended.

The rules and requirements contained herein shall become effective October 5, 2007, except for the amendments to 47 CFR 6.11(a) and (b), 6.18(b), 6.19, 64.604(a)(5), 64.604(c)(1) through (c)(3), 64.604(c)(5)(iii)(C), 64.604(c)(5)(iii)(E), 64.604(c)(5)(iii)(G), 64.604(c)(6)(v)(A)(*3*), 64.604(c)(6)(v)(G), 64.604(c)(7), and 64.606(b), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). These rules and requirements *shall become effective* upon OMB approval. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules and requirements.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 6

Communications equipment, Individuals with disabilities, Telecommunications.

47 CFR Part 64

Individuals with disabilities, Telecommunications relay services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 6 and 64 as follows:

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

■ 1. The authority citation for part 6 is revised to read as follows:

Authority: 47 U.S.C. 151–154, 251, 255, and 303(r).

■ 2. Section 6.1 is amended by revising paragraphs (b) and (c) and adding paragraphs (d) and (e) to read as follows:

§ 6.1 Applicability.

* * * * *

(b) Any manufacturer of telecommunications equipment or customer premises equipment;

(c) Any telecommunications carrier;

(d) Any provider of interconnected Voice over Internet Protocol (VoIP) service, as that term is defined in § 9.3 of this chapter; and

(e) Any manufacturer of equipment or customer premises equipment that is specially designed to provide interconnected VoIP service and that is needed for the effective use of an interconnected VoIP service.

■ 3. Section 6.3 is amended by revising paragraph (c); redesignating paragraphs (e) through (k) as paragraphs (f) through (l), respectively; adding a new paragraph (e); and revising newly redesignated paragraphs (j) and (k) to read as follows:

§ 6.3 Definitions.

* * * * *

(c) *The term customer premises equipment* shall mean equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. For purposes of this part, the term customer premises equipment shall include equipment employed on the premises of a person (other than a carrier) that is specially designed to provide interconnected VoIP service and that is needed for the effective use of an interconnected VoIP service.

* * * * *

(e) *The term interconnected VoIP service* shall have the same meaning as in § 9.3 of this chapter.

* * * * *

(j) *The term telecommunications equipment* shall mean equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades). For purposes of this part, the term telecommunications equipment shall include equipment that is specially designed to provide interconnected VoIP service and that is needed for the effective use of an interconnected VoIP service as that term is defined in § 9.3 of this chapter.

(k) *The term telecommunications service* shall mean the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. For purposes of this part, the term telecommunications service shall include ''interconnected VoIP service'' as that term is defined in § 9.3 of this chapter.

* * * * *

■ 4. Section 6.11 is amended by adding a note to paragraphs (a) and (b) to read as follows:

§ 6.11 Information, documentation, and training.

(a) * * *

* * * * *

Note to paragraph (a): The application of the reporting or recordkeeping provisions included in paragraph (a) of this section to interconnected VoIP providers and to manufacturers of equipment that is specially designed to provide interconnected VoIP service will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers and related manufacturers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers and related equipment manufacturers after it obtains OMB approval.

(b) * * *

Note to paragraph (b): The application of the reporting or recordkeeping provisions included in paragraph (b) of this section to interconnected VoIP providers and to manufacturers of equipment that is specially designed to provide interconnected VoIP service will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers and related manufacturers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers and related equipment manufacturers after it obtains OMB approval.

* * * * *

■ 5. Section 6.18 is amended by adding a note to paragraph (b) to read as follows:

§ 6.18 Procedure; designation of agents for service.

* * * * *

(b) * * *

Note to paragraph (b): The application of the reporting or recordkeeping provisions included in paragraph (b) of this section to interconnected VoIP providers and to manufacturers of equipment that is specially designed to provide interconnected VoIP service will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers and related manufacturers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers and related equipment manufacturers after it obtains OMB approval.

■ 6. Section 6.19 is amended by adding a note to section 6.19 to read as follows:

§ 6.19 Answers to informal complaints.

* * * * *

Note to section 6.19: The application of the reporting or recordkeeping provisions included in § 6.19 to interconnected VoIP providers and to manufacturers of equipment that is specially designed to provide interconnected VoIP service will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers and related manufacturers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers and related equipment manufacturers after it obtains OMB approval.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 7. An authority citation for subpart F is added to read as follows:

Authority: 47 U.S.C. 151–154, 225, 255, and 303(r).

■ 8. Section 64.601 of subpart F is amended by:

■ a. Revising the section heading;
■ b. Redesignating the introductory text as paragraph (a) introductory text;
■ c. Redesignating paragraphs (1) through (18) as paragraphs (a)(1) through (a)(18);
■ d. Redesignating newly designated paragraphs (a)(9) through (a)(18) as paragraphs (a)(10) through (a)(19), respectively;
■ e. Adding a new paragraph (a)(9); and
■ f. Adding a new paragraph (b) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(9) Interconnected VoIP service. An interconnected Voice over Internet protocol (VoIP) service is a service that:

(i) Enables real-time, two-way voice communications;

(ii) Requires a broadband connection from the user's location;

(iii) Requires Internet protocol-compatible customer premises equipment (CPE); and

(iv) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

* * * * *

(b) For purposes of this subpart, all regulations and requirements applicable to common carriers shall also be applicable to providers of interconnected VoIP service.

■ 9. Section 64.604 is amended by adding a note to paragraphs (a)(5), (c)(1) through (c)(3), (c)(5)(iii)(C), (c)(5)(iii)(E), (c)(5)(iii)(G), (c)(6)(v)(A)(*3*), (c)(6)(v)(G) and (c)(7) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(5) * * *

Note to paragraph (a)(5): The application of the reporting or recordkeeping provisions included in paragraph (a)(5) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(c) * * *

(1) * * *

* * * * *

Note to paragraph (c)(1): The application of the reporting or recordkeeping provisions included in paragraph (c)(1) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(2) * * *

* * * * *

Note to paragraph (c)(2): The application of the reporting or recordkeeping provisions included in paragraph (c)(2) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(3) * * *

Note to paragraph (c)(3): The application of the reporting or recordkeeping provisions included in paragraph (c)(3) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(5) * * *

(iii) * * *

(C) * * *

Note to paragraph (c)(5)(iii)(C): The application of the reporting or recordkeeping provisions included in paragraph (c)(5)(iii)(C) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(E) * * *

Note to paragraph (c)(5)(iii)(E): The application of the reporting or recordkeeping provisions included in paragraph (c)(5)(iii)(E) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(G) * * *

Note to paragraph (c)(5)(iii)(G): The application of the reporting or recordkeeping provisions included in paragraph (c)(5)(iii)(G) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(6) * * *

(v) * * *

(A) * * *

(*3*) * * *

Note to paragraph (c)(6)(v)(A)(*3*): The application of the reporting or recordkeeping provisions included in paragraph (c)(6)(v)(A)(*3*) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(G) * * *

Note to paragraph (c)(6)(v)(G): The application of the reporting or recordkeeping provisions included in paragraph (c)(6)(v)(G) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

* * * * *

(7) * * *

Note to paragraph (c)(7): The application of the reporting or recordkeeping provisions included in paragraph (c)(7) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

■ 10. Section 64.606 is amended by adding a note to paragraph (b) to read as follows:

§ 64.606 Furnishing related customer premises equipment.

* * * * *

(b) * * *

* * * * *

Note to paragraph (b): The application of the reporting or recordkeeping provisions included in paragraph (b) of this section to interconnected VoIP providers will be submitted for approval to the Office of Management and Budget (OMB). They are not effective as to interconnected VoIP providers until OMB approval has been obtained. The FCC will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule as to interconnected VoIP providers after it obtains OMB approval.

[FR Doc. E7–15086 Filed 8–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–311; FCC 06–180]

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective dates of rules published in the **Federal Register** on March 21, 2007. The rules relate to section 621 of the Communications Act of 1934, 47 U.S.C. 541, which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services.

DATES: The final rule published on March 21, 2007 (72 FR 13189), adding 47 CFR 76.41, is effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov* of the Media Bureau, Policy Division, (202) 418–1573.

SUPPLEMENTARY INFORMATION: In a Report and Order released on March 5, 2007, FCC 06–180, and published in the **Federal Register** on March 21, 2007, 72 FR 13189, the Federal Communications Commission adopted a new rule which contained information collection requirements subject to the Paperwork Reduction Act. The Report and Order stated that the rule changes requiring OMB approval would become effective immediately upon announcement in the **Federal Register** of OMB approval. On July 25, 2007, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 76.41. This information collection is assigned OMB Control No. 3060–1103. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rule changes requiring OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15138 Filed 8–3–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU66

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Idaho Springsnail (*Pyrgulopsis(=Fontelicella) idahoensis*) From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS, Service, or we), under the Endangered Species Act of 1973, as amended (Act), hereby remove the Idaho springsnail (*Pyrgulopsis*(=*Fontelicella) idahoensis*) from the Federal List of Endangered and Threatened Wildlife (List). This determination is based on a thorough review of all available data, which indicate that the Idaho springsnail is not a discrete taxonomic entity and does not meet the definition of a species under the Act. It is now considered to be part of a more widely distributed taxon, the Jackson Lake springsnail. Because the Idaho springsnail is not recognized as a species, as defined by the Act, we have determined that it is not a listable entity and are removing it from the List.

DATES: This rule is effective September 5, 2007.

FOR FURTHER INFORMATION CONTACT: Susan Burch, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, ID 83709 (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

The Idaho springsnail (*Pyrgulopsis*(=*Fontelicella*) *idahoensis;* Hydrobiidae) was first described by Pilsbry (1933, pp. 11–12) and placed in the genus *Amnicola*. Subsequently, Greg and Taylor (1965, pp. 103–110) placed

the Idaho springsnail—along with the Harney Lake springsnail (*P. hendersoni*), and Jackson Lake springsnail (*P. robusta*)—in the newly created *Fontelicella* genus and *Natricola* subgenus. After several taxonomic revisions, the subgenus *Natricola* was subsumed under the genus *Pyrgulopsis* (Hershler and Thompson 1987, pp. 28–31), the largest genus of freshwater mollusks in North America, comprised of over 120 described species (Liu and Hershler 2005, p. 284). The genus occurs in much of eastern North America, throughout western North America, and in parts of northern Mexico (Hershler and Thompson 1987, p. 30). The genus expresses its greatest diversity in the Great Basin of the western United States, where most species are endemic to springs, spring systems, and drainage basins (Hershler and Sada 2000, p. 367; Hershler and Sada 2002, p. 255).

In 2004, Hershler and Liu (2004, pp. 78–79) revised the taxonomic status of four *Pyrgulopsis* springsnail species—the Idaho springsnail, Harney Lake springsnail, Jackson Lake springsnail, and Columbia springsnail (*P.* species A (unnamed))—by combining them into a single species and, following standard naming conventions, naming this combined taxon for the first taxon to be described among the four previously recognized species, the Jackson Lake springsnail (Walker 1908, p. 97). The authors reviewed morphological characters, mitochondrial DNA sequences, and nuclear DNA sequences to establish the revised taxonomic classification.

The methods employed by Hershler and Liu (2004, pp. 67–70) are considered contemporary in the field of genetics and are consistent with those used by numerous authors reconstructing phylogenies based on molecular evidence in general (Raahauge and Kristensen 2000, pp. 87–89; Jones *et al.* 2001, pp. 281; Attwood *et al.* 2003, pp. 265–266), and with western hydrobiid snails in particular (Hershler *et al.* 2003, pp. 358–359; Liu *et al.* 2003, pp. 2772–2775; Hurt 2004, pp. 1174–1177; Liu and Hershler 2005, p. 285). Further, it is the position of the American Malacological Society that the Hershler and Liu (2004) revised taxonomy sets the standard for understanding this group of springsnails until evidence is presented to refute this classification (Leal *in litt.* 2004). Therefore, Hershler and Liu (2004, pp. 66–81) represents the best available scientific and commercial data on the taxonomic status of the four previously recognized *Pyrgulopsis* springsnails. These springsnails are now considered to be a single species, the Jackson Lake springsnail—a species we recently determined, in a 12-month finding (71 FR 56938), does not warrant listing under the Act.

Previous Federal Actions

We published the final rule listing the Idaho springsnail as endangered on December 14, 1992 (57 FR 59244). At the time of listing we believed that the species was restricted to small populations in permanent, flowing waters of the mainstem Snake River from rm 518 (rkm 834) to rm 553 (rkm 890). In that rule, we described range reduction, the threat of dam construction, operation of existing hydroelectric dams, deteriorating water quality from multiple sources, and potential competition with the invasive New Zealand mudsnail (*Potamopyrgus antipodarum*) as the major threats to the species. We have not designated critical habitat for the Idaho springsnail.

On June 28, 2004, we received a petition from the Idaho Office of Species Conservation and the Idaho Power Company (IPC) requesting that the Idaho springsnail be delisted based on a recent taxonomic revision of the species. The petitioners also provided new Idaho springsnail scientific information, and contrasted this new information with information used in the 1992 Idaho springsnail listing decision (57 FR 59244). The petitioners stated that, based on this new information, threats to the Idaho springsnail identified in the 1992 listing rule have been eliminated, are being actively addressed by State and private entities, or are no longer relevant.

On August 5, 2004, we received a petition from Dr. Peter Bowler, the Biodiversity Conservation Alliance, the Center for Biological Diversity, the Center for Native Ecosystems, the Western Watersheds Project, and the Xerces Society, requesting that the Jackson Lake springsnail, Harney Lake springsnail, and Columbia springsnail be listed as either threatened or endangered species, either as individual species or, together with the Idaho springsnail, as a single new species. The listing petition discussed the recent taxonomic revision and acknowledged that the Jackson Lake springsnail, Harney Lake springsnail, Columbia springsnail, and Idaho springsnail may be one species, but contended that, whether considered individually or as one species, all four springsnails warranted the protection of the Act. (16 U.S.C. 1531 *et seq.*) The petition cited habitat loss and degradation from development of springs, domestic livestock grazing, and groundwater withdrawal, among other factors, as threats to the continued existence of these springsnails.

On April 20, 2005, we published combined 90-day petition findings (70 FR 20512), stating that both petitions provided substantial information suggesting that delisting of the Idaho springsnail, or listing of the Jackson Lake springsnail (both the new and the old taxonomic grouping), the Harney Lake springsnail, and the Columbia springsnail, may be warranted.

On September 28, 2006, we published a warranted 12-month finding on the petition to delist the endangered Idaho springsnail along with a not warranted 12-month finding on the petition to list the Jackson Lake springsnail (both the new and the old taxonomic grouping), Harney Lake springsnail, and Columbia springsnail. Concurrent with these findings we published a proposed rule to remove the Idaho springsnail from the List of Endangered and Threatened Wildlife due to the change in its taxonomic status (71 FR 56938).

Summary of Comments and Recommendations

In our September 28, 2006, combined 12-month finding and proposed rule (71 FR 56938), we requested that all interested parties submit comments or information concerning the proposed delisting of the Idaho springsnail. We provided notification of this document through e-mail, telephone calls, letters, and news releases faxed and/or mailed to the appropriate Federal, State, and local agencies, county governments, elected officials, media outlets, local jurisdictions, scientific organizations, interested groups, and other interested parties. We also posted the document on our regional Web site.

We accepted public comments on the proposal for 60 days, ending November 27, 2006. By that date, we received comments from three parties, specifically one law firm representing the State of Idaho's Office of Species Conservation and IPC, and two organizations.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with the genus *Pyrgulopsis*, who possess a current knowledge of the geographic region where the species occurs, and/or are familiar with the principles of conservation biology. We received comments from four peer reviewers, three of whom are associated with academic research institutions and one who is employed by the U.S. Geological Survey (USGS).

We reviewed all comments received from peer reviewers and the public for substantive issues and new information regarding the proposed delisting of the Idaho springsnail. Substantive comments received during the comment period are addressed below.

We also received several comments from both the public and peer reviewers concerning threats to the Jackson Lake springsnail because our proposed rule to delist the Idaho springsnail due to taxonomic revision was published jointly with our 12-month finding on a petition to list the Jackson Lake springsnail (71 FR 56938). However, we addressed the threats to the Jackson Lake springsnail in our 12-month finding and found that listing was not warranted. Therefore, comments on the threats to the Jackson Lake springsnail are outside the scope of the proposed rule to delist the Idaho springsnail and those comments are not addressed in this final rule.

Public Comments

(1) *Comment:* The Idaho springsnail is more widespread than previously known at the time of its listing and is more resilient and less vulnerable to certain habitat-altering activities than previously thought.

Response: Although the Idaho springsnail is no longer recognized as a discreet taxon, the formerly recognized species is now known from more locations than at the time of listing and appears to be more resilient and less vulnerable to certain habitat-altering activities than previously thought. We appreciate the efforts of those who collected and synthesized information to expand our understanding of *Pyrgulopsis* taxonomy and ecology.

(2) *Comment:* Despite their conclusions, the data presented by Hershler and Liu (2004) illustrate the geographic, morphological, and genetic divergence of the Idaho springsnail from other springsnails in the region, and therefore the Idaho springsnail should continue to be protected under the Act.

Response: In a recent scientific article by Hershler and Liu (2004), published in the Veliger (an international, peer-reviewed scientific quarterly published by the California Malacozoological Society), the authors revised the taxonomic status of the Idaho springsnail, combining it with three other groups of *Natricola* springsnails. Hershler and Liu (2004, p. 77) concluded ''three independent data sets (morphology, mitochondrial, and nuclear DNA sequences) congruently suggest that these four *Natricola* snails do not merit recognition as distinct species according to various currently applied concepts of this taxonomic rank.'' For the reasons stated in the Background section of this final rule, we believe that Hershler and Liu (2004, pp. 66–81) represents the best available scientific and commercial data on the taxonomic status of the four *Natricola* springsnails and that the Idaho springsnail no longer constitutes a distinct species and does not warrant protection under the Act.

(3) *Comment:* The ecological and evolutionary divergence of the Idaho springsnail is significant and would easily qualify it for continued protection as a distinct population segment under the Act.

Response: Section 4(a)(1) of the Act outlines the factors for which we may list an endangered or threatened species. Section 3 of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''any species which is likely to become an endangered species throughout all or a significant portion of its range.'' Section 3 of the Act also defines a species to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Because springsnails are invertebrates, they do not qualify for protection as a distinct population segment under the Act.

(4) *Comment:* The Service should specify in its final rule that delisting of the Idaho springsnail is warranted due to recovery and original data for classification in error.

Response: Section 4(a)(1) of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to, or removing them from, Federal lists. The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) The species is extinct or has been extirpated from its previous range; (2) the species has recovered and is no longer endangered or threatened; or (3) investigations show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error. Since the time of the Idaho springsnail listing in 1992, genetics research and additional survey effort have revealed that it is not a distinct species, but is now part of a combined taxon that is widely distributed (occurring in Wyoming, Oregon, Idaho, and Washington) and occurs in a variety of habitat types.

We acknowledge that numerous recovery actions were implemented for the Idaho springsnail, and we commend the State of Idaho, IPC, and other conservation partners for their ongoing efforts to conserve listed species, but the primary reason we are removing the Idaho springsnail from the List is its taxonomic reclassification.

Peer Review Comments

(1) *Comment:* Data presented in the combined 12-month finding and proposed rule support the case for combining the Idaho springsnail under the Jackson Lake springsnail as recommended by Hershler and Liu (2004), but further ecological, biological, and population genetic evidence would greatly strengthen this case.

Response: We acknowledge that more scientific inquiry and subsequent information may strengthen the case for Hershler and Liu's (2004) taxonomic revisions with the *Pyrgulopsis* genus; however, our charge is to use the best available commercial and scientific information in our assessments. Hershler and Liu (2004) published their taxonomic review of the Idaho springsnail, the Harney Lake springsnail, the Jackson Lake springsnail, and the Columbia springsnail in a peer-reviewed scientific journal and determined that they were all one species. No other peer-reviewed scientific studies have been published that challenge the veracity or conclusions of Hershler and Liu (2004). Furthermore, it is the position of the American Malacological Society that the Hershler and Liu (2004) revised taxonomy sets the standard for understanding this group of springsnails (Leal in litt. 2004). Therefore, we believe that Hershler and Liu (2004) currently represents the best scientific information available with respect to Idaho springsnail taxonomy.

(2) *Comment:* The Service appears to be delisting the Idaho springsnail solely because it is more wide-ranging than thought at the time of listing, regardless of the fact that we know relatively little about the species as a whole.

Response: Although the range of the Jackson Lake springsnail was one factor that contributed to our ''not warranted'' petition finding for that species (see 71 FR 56938), our decision to delist the Idaho springsnail is based on the fact that it is not currently recognized as a valid species as defined by the Act.

Delisting Analysis

After a review of all information available, we are removing the Idaho springsnail from the List of Endangered and Threatened Wildlife. Section 4(a)(1) of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the

procedures for adding species to or removing them from Federal lists. The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error.

New scientific information has become available since we listed the Idaho springsnail in 1992. Most pertinent among this new information is a taxonomic reappraisal of *Natricola* snails, published by Hershler and Liu (2004), in a peer-reviewed scientific journal. Their study indicated that this formerly recognized species has been subsumed by a more widely distributed taxon. Because the Idaho springsnail is no longer considered a species as defined by the Act, it does not qualify for listing under the Act. The original classification data related to *Pyrgulopsis* taxonomy, although considered the best available information at the time of listing, are now thought to be in error.

When a listed species is subsumed by another entity, we believe it is prudent to examine the status of the new entity before delisting the subsumed taxon. In our combined 12-month finding and proposed rule we considered whether listing the Jackson Lake springsnail was warranted, and found that it was not (71 FR 56938).

Effects of This Rule

This action removes the Idaho springsnail from the List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly under sections 7 and 9, no longer apply to the Idaho springsnail. Federal agencies no longer are required to consult with the Service under section 7 of the Act on actions they fund, authorize, or carry out that may affect the Idaho springsnail. There is no designated critical habitat for the Idaho springsnail.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with actions adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. Therefore, we have solicited information from Native American Tribes during the comment period and informational briefing to determine potential effects on them or their resources that may result from the delisting of the Idaho springsnail.

References

A complete list of all references cited is available on request from the Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709.

Author

The primary authors of this document are staff of the U.S. Fish and Wildlife Service (see References Section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17 [AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended].

■ 2. Amend § 17.11(h) by removing the entry ''Springsnail, Idaho (*Fontelicella idahoensis*)'' under ''SNAILS'' from the List of Endangered and Threatened Wildlife.

Dated: July 26, 2007.

Randall Luthi,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–15111 Filed 8–2–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket number 070718330–7330–02; I.D. 022807F]

RIN 0648–AU73

Fisheries Off West Coast States; Highly Migratory Species Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend vessel identification regulations of the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS). The current regulatory text requires all commercial fishing vessels and recreational charter vessels fishing under the HMS FMP to display their official numbers on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck (horizontal or flat surface) so as to be visible from enforcement vessels and aircraft. The final rule exempts HMS recreational charter vessels from complying with the vessel identification requirements. The regulation is intended to relieve a restriction for which the costs outweigh the benefits. Current state and Federal (U.S. Coast Guard) marking requirements are sufficient for law enforcement personnel to adequately identify HMS recreational charter vessels at-sea and the added burden to vessel owners of additional vessel marking requirements was deemed unnecessary.

DATES: This final rule is effective September 5, 2007.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, 760–431–9440, ext. 303.

ADDRESSES: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 4213.

SUPPLEMENTARY INFORMATION: On April 7, 2004, NMFS published a final rule to implement the HMS FMP (69 FR 18444)

that included regulatory text at 50 CFR 660.704 requiring display of vessel identification markings for commercial fishing vessels and recreational charter fishing vessels that fish for HMS off, or land HMS into ports of, the States of California, Oregon, and Washington. The identification markings are consistent in size, shape, and location with vessel identification markings required on commercial fishing vessels operating under the Pacific Fishery Management Council's (Council) Groundfish FMP. The marking requirements at 50 CFR 660.704(b) state that the official number must be affixed to each vessel in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

The inclusion of HMS recreational charter vessels as part of the vessel identification requirements in the HMS FMP is not consistent with how vessel marking requirements are applied in the Groundfish FMP. This final rule exempts HMS recreational charter vessels from the marking requirements at 50 CFR 660.704(b), similar to exemptions granted under the Groundfish FMP. Additional information on the Council's recommendation to exempt HMS recreational charter vessels is contained in the proposed rule (72 FR 19453) for this action and will not be repeated here.

Comments and Responses

During the comment period for the proposed rule, NMFS received two comments.

Comment 1: A Washington State HMS recreational charter boat owner/operator wrote in favor of the proposed rule based on his opinion that current state and federal marking requirements are more than adequate to properly identify the HMS recreational charter fleet. He recommended adoption of the proposed vessel marking exemption without modification.

Response: NMFS agrees with the premise that HMS charter recreational vessels are adequately marked under existing state and federal marking requirements. Providing this exemption to the existing marking requirements would not impede law enforcement personnel in properly identifying HMS recreational charter vessels.

Comment 2: A licensed boat captain from Alaska wrote against the proposed exemption based on his presumption that exempting vessel marking requirements would allow unmarked vessels on the ocean thereby hindering law enforcement personnel in properly identifying boats that violate existing laws and regulations.

Response: The HMS recreational charter vessel marking exemption will not repeal applicable state and Federal (e.g., US Coast Guard) marking requirements already in place. The exemption is a repeal of additional HMS FMP marking requirements that are not necessary for enforcement.

Classification

NMFS has determined that the final rule is consistent with the HMS FMP and is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification or the economic impact of the rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated July 31, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Section 660.704 is revised to read as follows:

§ 660.704 Vessel identification.

(a) *General.* This section only applies to commercial fishing vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington. This section does not apply to recreational charter vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington.

(b) *Official number.* Each fishing vessel subject to this section must display its official number on the portand starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(c) *Numerals.* The official number must be affixed to each vessel subject to this section in block Arabic numerals atleast 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm)in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

[FR Doc. E7–15227 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XB81

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Trawl Catcher Vessels Participating in the Rockfish Entry Level Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch for trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of Pacific ocean perch allocated to trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2007, through 2400 hrs, A.l.t., September 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management

Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.83(a)(1)(i), allocations of entry level rockfish to trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area are first made from the Pacific ocean perch TAC. Trawl catcher vessels participating in the rockfish entry level program are allocated northern rockfish and pelagic shelf rockfish only if the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for the trawl catcher vessels. NMFS has determined that the 2007 TAC of Pacific ocean perch meets or exceeds the total allocation of rockfish allowable for the trawl catcher vessels.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific ocean perch allocated to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 347 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch allocated to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch for trawl catcher vessels participating in the rockfish entry level fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 31, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.83 and is exempt from review under Executive Order 12866.

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

Dated: August 1, 2007.

Emily Menashes,

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

[FR Doc. 07–3829 Filed 8–1–07; 2:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XB79

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch and Pelagic Shelf Rockfish in the Western Regulatory Area in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to fully use the 2007 total allowable catch (TAC) of Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2007, through 1200 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., August 16, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

Mail to: P.O. Box 21668, Juneau, AK 99802;

Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;

FAX to 907–586–7557;

E-mail to *inseason.fakr@noaa.gov* and include in the subject line of the e-mail the document identifier: wgpopre.fo.wpd (E-mail comments, with or without attachments, are limited to 5 megabytes); or

Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the Pacific ocean perch fishery in the Western Regulatory Area in the GOA under § 679.20(d)(1)(iii) on July 22, 2007 (72 FR 40772, July 25, 2007) and the pelagic shelf rockfish fishery in the Western Regulatory Area in the GOA on July 23, 2007 (72 FR 40773, July 25, 2007).

NMFS has determined that as of July 31, 2007 approximately 790 mt remain in the 2007 Pacific ocean perch directed fishing allowance and 939 mt remain in the 2007 pelagic shelf rockfish directed fishing allowance in the Western Regulatory Area in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the 2007 TAC of Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area in the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area in the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and

opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific ocean perch and pelagic shelf rockfish fisheries in the Western Regulatory Area in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 31, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific ocean perch and pelagic shelf rockfish in the Western Regulatory Area in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until August 16, 2007.

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 31, 2007.

Emily Menashes,

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

[FR Doc. 07–3828 Filed 8–1–07; 2:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 150
Monday, August 6, 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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket Number 2007–0043]

Privacy Act of 1974: Implementation of Exemptions; Automated Targeting System

AGENCY: Privacy Office, Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is amending its regulations to exempt certain records from particular provisions of the Privacy Act. Specifically, the Department proposes to exempt certain records of the Automated Targeting System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. This notice is a republication of the Treasury Department exemption regulation (title 31, Code of Federal Regulations, part 1) which previously covered the Automated Targeting System as part of the Treasury Enforcement Communications System.

DATES: Written comments must be submitted on or before September 5, 2007.

ADDRESSES: You may submit comments, identified by DOCKET NUMBER DHS–2007–0043 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–572–8790), Chief, Privacy Act Policy and Procedures Branch, Bureau of Customs and Border Protection, Office of International Trade, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records in the Automated Targeting System (ATS). ATS performs screening of both inbound and outbound cargo, travelers, and conveyances. As part of this screening function and to facilitate DHS's border enforcement mission, ATS compares information received with CBP's law enforcement databases, the Federal Bureau of Investigation Terrorist Screening Center's the Terrorist Screening Database (TSDB), information on outstanding wants or warrants, information from other government agencies regarding high-risk parties, and risk-based rules developed by analysts using law enforcement data, intelligence, and past case experience. The modules also facilitate analysis of the screening results of these comparisons.

ATS originally was designed as a rules-based program to identify such cargo; it did not apply to travelers. Today, ATS includes the following separate components: ATS–N, for screening inbound or imported cargo; ATS–AT, for outbound or exported cargo; ATS–L, for screening private passenger vehicles crossing at land border ports of entry using license plate data; ATS–I, for cooperating with international customs partners in shared cargo screening and supply chain security; ATS–TAP, for assisting tactical units in identifying anomalous trade activity and performing trend analysis; and ATS–P, for screening travelers and conveyances entering the United States in the air, sea, and rail environments.

ATS–Passenger (ATS–P), one of six modules contained within ATS, maintains Passenger Name Record (PNR) data (data provided to airlines and travel agents by or on behalf of air passengers seeking to book travel) that has been collected by CBP as part of its border enforcement mission. ATS–P's screening relies upon information from the following databases: Treasury Enforcement Communications System (TECS), Advanced Passenger Information System (APIS), Non Immigrant Information System (NIIS), Suspect and Violator Indices (SAVI), and the Visa databases (maintained by the Department of State) with the PNR information that it maintains.

With respect to ATS–P module exempt records are the risk assessment analyses and business confidential information received in the PNR from the air and vessel carriers. No exemption shall be asserted regarding PNR data about the requester, obtained from either the requester or by a booking agent, brokers, or another person on the requester's behalf. This information, upon request, may be provided to the requester in the form in which it was collected from the respective carrier, but may not include certain business confidential information of the air carrier that is also contained in the record, such as use and application of frequent flier miles, internal annotations to the air fare, etc. For other ATS modules the only information maintained in ATS is the risk assessment analyses and a pointer to the data from the source system of records.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS will claims the following exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Moreover, DHS will add these exemptions to Appendix C to 6 CFR part 5, DHS Systems of Records Exempt from the Privacy Act. Such exempt records or information are law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations

and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS' and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information.

Additionally, DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of such investigations and others who could interfere with investigatory activities. Specifically, the exemptions are required to: withhold information to the extent it identifies witnesses promised confidentiality as a condition of providing information during the course of the law enforcement investigation; prevent subjects of such investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the privacy of third parties; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; and safeguard sensitive information.

The exemptions proposed here are standard law enforcement exemptions exercised by a large number of federal law enforcement agencies.

Nonetheless, DHS will examine each separate request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy, Sensitive information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to part 5, add the following new paragraph 5:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

5. **DHS/CBP–006**, Automated Targeting System. Certain records or information in the following system of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (e)(5), and (8); (f), and (g). With respect to the ATS–P module, exempt records are the risk assessment analyses and business confidential information received in the PNR from the air and vessel carriers. No exemption shall be asserted regarding PNR data about the requester, obtained from either the requester or by a booking agent, brokers, or another person on the requester's behalf. This information, upon request, may be provided to the requester in the form in which it was collected from the respective carrier, but may not include certain business confidential information of the air carrier that is also contained in the record, such as use and application of frequent flier miles, internal annotations to the air fare, etc. For other ATS modules the only information maintained in ATS is the risk assessment analyses and a pointer to the data from the source system of records. These exemptions also apply to the extent that information in this system of records is recompiled or is created from information contained in other systems of records subject to such exemptions pursuant to 5 U.S.C. 552a(j)(2), and (k)(2). After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in

which it is contained. Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons: (a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected terrorist by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (c)(4) (Accounting for Disclosure, notice of dispute) because certain records in this system are exempt from the access and amendment provisions of subsection (d), this requirement to inform any person or other agency about any correction or notation of dispute that the agency made with regard to those records, should not apply.

(c) From subsections (d)(1), (2), (3), and (4) (Access to Records) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement, counterterrorism, and investigatory records. Compliance with these provisions could alert the subject of an investigation to the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to law enforcement, including matters bearing on national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism or law enforcement investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(d) From subsection (e)(1) (Relevancy and Necessity of Information) because it is not always possible for DHS or other agencies to know in advance what information is relevant and necessary for it to complete screening of cargo, conveyances, and passengers. Information relating to known or suspected terrorists is not always collected in a manner that permits immediate verification or determination of relevancy to a DHS purpose. For example, during the early stages of an investigation, it may not be possible to determine the immediate relevancy of information that is collected—only upon later evaluation or association with further information, obtained subsequently, may it be possible to establish particular relevance to a law enforcement program. Lastly, this exemption is required because DHS and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(e) From subsection (e)(2) (Collection of Information from Individuals) because application of this provision could present a serious impediment to counterterrorism or law enforcement efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, and law enforcement investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his own activities.

(f) From subsection (e)(3) (Notice to Subjects), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism or law enforcement efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(g) From subsections (e)(4)(G), (H) and (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(h) From subsection (e)(5) (Collection of Information) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in its screening processes is as complete, accurate, and current as possible. In addition, in the collection of information for law enforcement and counterterrorism purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts.

(i) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(j) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d). Access to, and amendment of, system records that are not exempt or for which exemption is waived may be obtained under procedures described in the related SORN or Subpart B of this Part.

(k) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 31, 2007

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E7–15198 Filed 8–3–07; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AI08

Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information; Reopening of Public Comment Period and Notice of Availability of Proposed Procedures for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Reopening of public comment period and notice of availability of proposed procedures for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is reopening the public comment period for an additional 30 days on a proposed rule published on June 11, 2007. The NRC is also making available for comment proposed procedures that would allow potential parties to NRC adjudications, as well as their representatives, to gain access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI).

DATES: The comment period on the proposed rule expires on August 10, 2007. The comment period on the proposed procedures that would allow potential parties to NRC adjudications, as well as their representatives, to gain access to SUNSI or SGI expires on September 5, 2007. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

If you are commenting on the proposed rule, please include the following number RIN 3150–AI08 in the subject line of your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher 301–415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

If you are commenting on the proposed procedures please include the following phrase ''proposed SUNSI/SGI access procedures'' in the subject line of your comments. The proposed procedures can be viewed and downloaded electronically via the NRC's public Web site at *http://ruleforum.llnl.gov/cgi-bin/rulelist?type=ipcr.* The proposed procedures also may be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Mail comments to: U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration. E-mail comments to: *nrcrep@nrc.gov.* Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. Fax comments to: 301–415–5144.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The ADAMS accession number for the procedures is ML071910149.

FOR FURTHER INFORMATION CONTACT: Patrick Moulding, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2549, e-mail *pam3@nrc.gov.*

SUPPLEMENTARY INFORMATION: On June 11, 2007 (72 FR 32018), the NRC published for public comment a proposed rule that would provide for expedited review by the Commission on orders on requests by potential parties for access to certain SUNSI and SGI. A 30-day comment period was provided for the proposed rule. The original comment period for the proposed rule expired on July 11, 2007. The NRC has reopened the comment period, which now expires on August 10, 2007.

Commission regulations in 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' govern the conduct of NRC adjudicatory proceedings. Potential parties who have requested or who may request a hearing or petition to intervene in a hearing under 10 CFR part 2 may need access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI as defined in 10 CFR 73.2 to meet Commission requirements for hearing requests or for intervention. The Commission is seeking comment on proposed procedures to allow potential parties to submit information requests and enter into protective agreements prior to becoming a party to a proceeding so that those who demonstrate a legitimate need for SUNSI or SGI can receive relevant documents to prepare a valid contention. The proposed procedures reflect the longstanding practice of staff access determinations in the first instance, subject to review by a presiding officer if contested. The proposed procedures also describe how the public will be informed of this process. The proposed procedures address:

(1) When and where to submit requests for access to SUNSI and SGI that is possessed by the NRC; [1]

(2) Who will assess initially whether the proposed recipient has shown a need for SUNSI (or need to know for SGI) and a likelihood of establishing standing;

(3) Who will decide initially whether the proposed recipient is qualified (i.e., trustworthy and reliable) to receive SGI;

(4) Use of nondisclosure affidavits/agreements and protective orders; and

(5) Time periods for making standing, need, and access determinations, producing documents, submitting contentions, and seeking review of adverse determinations.

These proposed procedures also include a ''pre-clearance'' process that would permit a potential party who may seek access to SGI to initiate the necessary background check in advance of a notice of opportunity for hearing.

Dated at Rockville, Maryland, this 30th day of July 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–15189 Filed 8–3–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 535

[Docket ID OTS–2007–0015]

RIN 1550–AC17

Unfair or Deceptive Acts or Practices

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

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: OTS is reviewing its regulations relating to unfair or deceptive acts or practices to determine whether and, if so, to what extent, additional regulation is needed to ensure customers of OTS-regulated entities are treated fairly. This ANPR

[1] The proposed procedures do not address information possessed solely by a licensee or applicant.

seeks input and information on issues OTS is considering as part of this review.

DATES: Comments must be submitted by November 5, 2007.

ADDRESSES: You may submit comments, identified by OTS–2007–0015, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http:www.regulations.gov,* select ''Office of Thrift Supervision'' from the agency drop-down menu, then click submit. Select Docket ID ''OTS–2007–0015'' to submit or view public comments and to view supporting and related materials for this advance notice of proposed rulemaking. The ''User Tips'' link at the top of the page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2007–0015.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2007–0015.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.
- *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS–2007–0015'' to view public comments for this advance notice of proposed rulemaking.
- *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Glenn Gimble, Senior Project Manager, Compliance and Consumer Protection Division, (202) 906–7158; Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906–6459; or Richard Bennett, Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Purpose and Goals of This ANPR

The mission of OTS is ''to supervise savings associations and their holding companies in order to maintain their safety and soundness and compliance with consumer protection laws, and to encourage a competitive industry that meets America's financial services needs.'' [1] Consistent with our mission, OTS is issuing this ANPR to determine whether the agency should expand its current prohibitions against unfair or deceptive acts or practices.

The ANPR identifies some of the issues that may warrant OTS's review. The discussion is not exhaustive of all the issues that could be raised. OTS invites commenters to respond to the questions presented and to offer comments or suggestions on any other issues related to unfair or deceptive acts or practices, including what other steps, OTS might undertake instead of or in addition to further rulemaking in this area. OTS recognizes that the financial services industry and consumers have benefited from consistency in rules and guidance as the federal banking agencies have adopted uniform or very similar rules in many areas. OTS is mindful of the goal of consistent interagency standards as it considers issues relating to unfair or deceptive acts and practices.

II. Legal Background

The primary legal bases for this rulemaking are the Federal Trade Commission Act (FTC Act), 15 U.S.C. 41–58, and the Home Owners' Loan Act (HOLA), 12 U.S.C. 1461 *et seq.*

A. The FTC Act

1. Statutory Provisions

Under section 18(f)(1) of the FTC Act, 15 U.S.C. 57a(f)(1), OTS is responsible for prescribing regulations to prevent unfair or deceptive acts or practices by savings associations in or affecting commerce, including acts or practices that are unfair or deceptive to consumers.[2] In granting this authority, Congress allowed OTS great flexibility in determining the appropriate regulatory approach.

Section 18(f)(1) also provides that OTS's regulations may take a variety of approaches ''including'' (but not limited to) regulations ''defining with specificity'' which acts or practices are unfair or deceptive, as well as regulations ''containing requirements prescribed for the purposes of preventing such acts or practices.'' Thus, in addition to listing specific acts or practices that are unfair or deceptive OTS may also impose measures designed to prevent such acts or practices from occurring.[3] The use of the word ''including'' reveals that even these two regulatory approaches are not meant to be the only options for OTS rulemaking. For example, OTS could issue principles-based regulations that articulate general principles and standards for evaluating whether acts or practices are unfair or deceptive, similar to OTS's principles-based Advertising rule (12 CFR 563.27). This provision of the FTC Act assigns the same rulemaking authority to the Board of Governors of the Federal Reserve System (Board) with respect to banks and to the National Credit Union Administration (NCUA) with respect to federal credit unions.

Separately and additionally, section 18(f)(1) provides that whenever the Federal Trade Commission (FTC) uses its authority in section 18(a)(1)(B) to prescribe a rule defining with specificity which acts or practices are unfair or deceptive, within 60 days after such rule takes effect OTS generally must promulgate substantially similar regulations prohibiting savings associations from engaging in

[1] OTS Mission Statement, available at *http://www.ots.treas.gov/mission.cfm?catNumber=39.*

[2] We note some outdated language in the statute, but find that it has no bearing on OTS's rulemaking authority. First, the statute refers to OTS's predecessor agency, the Federal Home Loan Bank Board (FHLBB), rather than to OTS. However, in section 3(e) of the HOLA, Congress transferred this rulemaking power of the FHLBB among others to the Director of OTS. 12 U.S.C. 1462a(e). Second, the statute refers to ''savings and loan institutions'' in some provisions and ''savings associations'' in other provisions. Although ''savings associations'' is the term currently used in the HOLA, see e.g., 12 U.S.C. 1462(4), the terms ''savings and loan institutions'' and ''savings associations'' can be and are used interchangeably.

[3] The legislative history gives as an example an FTC rule that mandates certain testing procedures to determine the octane rating of gasoline to avoid unfair or deceptive octane ratings being posted on gasoline pumps. Senate Conference Report No. 93–1408, December 18, 1974 (to accompany S. 356), reprinted in 1974 U.S.C.C.A.N. 7702, 7764.

substantially similar acts or practices and imposing similar requirements. Thus, this provision specifies procedures to ensure that the regulations of the OTS—at a minimum—are consistent with regulations the FTC may prescribe. It does not limit OTS's rulemaking authority or set a ceiling on the acts or practices that OTS can address in its regulations. However, it does set a floor for OTS's regulation, subject to two exceptions.[4] Section 18(f)(1) assigns the same rulemaking authority to the Board with respect to banks and to the NCUA with respect to federal credit unions.

The two grants of rulemaking authority to OTS in section 18(f)(1) give OTS exclusive authority to promulgate unfair or deceptive acts or practices regulations applicable to savings associations. Section 5(a)(2) of the FTC Act, 15 U.S.C. 45(a)(2), expressly provides that the FTC's power to prevent unfair or deceptive acts or practices in or affecting commerce does not apply to savings associations, banks, or federal credit unions among others.

Section 18(f)(3) expressly provides that OTS is to enforce the regulations it promulgates under section 18(f) through section 8 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818. Section 8 of the FDIA authorizes OTS to take appropriate enforcement actions against savings associations for violations of any ''law, rule, or regulation.'' This enforcement authority includes enforcement actions for violations of section 5 of the FTC Act.[5] Section 18(f)(6) clarifies that OTS may use other authority it possesses to issue rules governing enforcement of the regulations it prescribes under section 18(f) regardless of any FTC Act rules issued by the Board.

2. OTS Unfair or Deceptive Acts or Practices Rulemaking Under the FTC Act to Date

OTS has exercised its rulemaking authority in the area of unfair or deceptive acts or practices to parallel the FTC's rulemakings. The FTC issued its Credit Practices Rule over 20 years ago. 49 FR 7740 (March 1, 1984). The FTC's rule took effect on March 1, 1985. Shortly after that effective date, the FHLBB (OTS's predecessor agency) issued a substantially similar rule. 50 FR 19325 (May 8, 1985). OTS's Credit Practices Rule (12 CFR part 535) is also similar to that of the Board (12 CFR part 227) and the NCUA (12 CFR part 706).

OTS's Credit Practices Rule protects consumers by prohibiting certain unfair or deceptive acts and practices by a savings association in connection with consumer credit:[6]

1. Entering into, or enforcing provisions in a consumer credit obligation a savings association purchases, containing any of the following unfair credit practices (subject to certain exceptions): (a) A cognovit or confession of judgment; (b) an executory waiver or limitation of exemption from attachment on real or personal property; (c) an assignment of wages or other earnings; or (d) a nonpossessory security interests in household goods other than a purchase-money security interest.

2. Misrepresenting the nature or extent of cosigner liability or entering into a consumer credit transaction prior to notifying any cosigner about the extent of the cosigner's liability; and

3. Imposing a delinquency charge on a payment, when the only delinquency is due to late fees and delinquency charges on a prior payment, and the payment otherwise qualifies as a full and timely payment of any principal and interest owed.[7]

B. HOLA

1. Statutory Provisions

While the FTC Act grants OTS exclusive authority to promulgate unfair or deceptive acts or practices regulations applicable to savings associations, HOLA gives OTS authority to promulgate regulations, including regulations on unfair or deceptive acts or practices, applicable to a variety of other entities within the savings association and savings and loan holding company structure. These other entities would also be subject to FTC rules on unfair or deceptive acts or practices.[8]

Under HOLA, OTS has the authority to regulate and examine savings associations, subsidiaries owned in whole or part by a savings association, service corporations owned in whole or in part by a savings association, savings and loan holding companies, subsidiaries of savings and loan holding companies other than a bank or subsidiary of a bank, and certain service providers.[9] However, regulation of

[4] One exception is if OTS finds that such acts or practices are not unfair or deceptive. This portion of section 18(f)(1) assigns the Board (with respect to banks) and the NCUA (with respect to federal credit unions) the same ability to make findings creating exceptions. The second exception is if the Board finds that implementation of similar regulations by banks, savings associations, or federal credit unions would seriously conflict with essential monetary and payments systems policies and the Board publishes such a finding and the reasons for it in the **Federal Register**.

[5] OTS Op. Chief Counsel (June 9, 2006) at 11 n.52, available at *http:// www.ots.treas.gov/docs/5/ 56218.pdf* and OTS Op. Chief Counsel (October 25, 2004) at 10 n.37, available at *http:// www.ots.treas.gov/docs/5/560404.pdf*.

Section 18(f)(5), 15 U.S.C. 57a(f)(2), clarifies that the Office of the Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation may exercise, in addition to section 8 of the FDIA, any other authority conferred on them by law and that, with respect to these agencies, a violation of any regulation prescribed under section 18(f) constitutes not just a regulatory violation, but a statutory violation as well. While this language does not reference OTS, section 8 itself authorizes OTS to take enforcement action for a violation of regulations, including applicable FTC Act regulations.

[6] The rule also applies to an operating subsidiary of a federal savings association. See 12 CFR 559.3(h)(1).

''The term 'consumer' means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, and who applies for or is extended 'consumer credit' as defined in § 561.12 of [OTS's regulations].'' 12 CFR 535.1(b) (definition of a consumer). In turn, OTS's section 561.12 regulation provides:

''The term consumer credit means credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security: Provided, the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in a savings association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.''

For further information about OTS's Credit Practices rule see OTS Examination Handbook section 1355 (December 1999), available at *http:// www.ots.treas.gov/docs/4/422242.pdf*.

[7] OTS's Credit Practices Rule allows OTS to determine, upon application by an appropriate state agency, that provisions of the rule will not be in effect in a state that administers and enforces a state requirement or prohibition that affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the rule. 12 CFR 535.5. According to OTS records, it has granted one such application, to the State of Wisconsin. 51 FR 45879 (December 23, 1986).

[8] Section 133(a)–(b) of the Gramm-Leach-Bliley Act, Pub. L. 106–102 (Nov. 12, 1999), clarified that while certain subsidiaries and affiliates of savings associations would not be deemed to be savings associations for purposes of the FTC Act, OTS could exercise its other authority over these entities under federal banking law. 15 U.S.C. 41 note.

[9] 12 U.S.C. 1462a(b)(2), 1463(a), 1464(a), 1464(d)(7)(A), 1464(d)(7)(D), 1467a(b), 1467a(g), 1467a(o)(7), and 1820(d); 12 CFR 559.3(o)(1), 559.3(o)(2), 563.170, and 584.1(g). OTS exercises enforcement authority over these entities under 12 U.S.C. 1464(d), 1464(d)(7)(C), 1467a(g), 1467a(o), 1813(q)(4), 1818 and 12 CFR 559.3(h)(1).

Service providers are subject to OTS regulation and examination to the extent they perform authorized services for: (1) A savings association; (2) a subsidiary of a savings association; or (3) a ''savings and loan affiliate or entity'' (i.e., a savings and loan holding company or a subsidiary other than a bank or subsidiary of that bank that is wholly-or partially-owned by a savings and loan holding company) that is regularly examined or subject to examination by the Director of OTS. 12 U.S.C. 1464(d)(7)(D). Some service providers are

functionally regulated subsidiaries is subject to the functional regulation principles in the Gramm-Leach-Bliley Act.[10]

OTS is considering using its rulemaking authority under HOLA to issue regulations on unfair or deceptive acts or practices that would cover savings associations, non-functionally regulated subsidiaries owned in whole or part by a savings association, service corporations owned in whole or in part by a savings association, savings and loan holding companies, and non-functionally regulated subsidiaries of savings and loan holding companies other than a bank or subsidiary of a bank. OTS is not contemplating covering service providers directly with such a rulemaking at this time. Of course, savings associations and others covered directly by the rule would remain responsible for compliance with the rule, even if they outsource operations to a third party.

Exercising HOLA authority in this manner would be consistent with HOLA's mandate that OTS ensure safety and soundness, since engaging in unfair or deceptive acts or practices can pose risk, including reputation risk, compliance risk, and legal risk. HOLA also assigns the Director of OTS a broad mandate to prescribe such regulations as he may determine necessary for carrying out the HOLA *and all other laws within his jurisdiction.* 12 U.S.C. 1462a(b)(2) (emphasis added). The other laws within OTS's jurisdiction include over thirty federal consumer protection statutes and regulations. OTS has jurisdiction to examine for compliance with and enforce these statutes and regulations, including section 5 of the FTC Act.

2. OTS Consumer Protection Rulemaking Under HOLA to Date

In recognition of OTS's consumer protection mission and the mandate that the Director give primary consideration to the best practices of thrift institutions in the United States (12 U.S.C. 1464(a)), the agency has supplemented its Credit Practices Rule with other regulations issued under HOLA and other statutes. These rules are unique among the federal banking agencies in the way they protect consumers.

One example is OTS's long-standing Advertising Rule, which prohibits savings associations from using advertising or making any representation that is inaccurate in any particular manner or that in any way misrepresents a savings association's services, contracts, investments, or financial condition. The rule encompasses all forms of advertising, including print or broadcast media, displays or signs, stationery, and all other promotional materials.[11] OTS enforces its Advertising rule under section 8 of the FDIA.[12]

OTS has also used HOLA to impose consumer protections not otherwise mandated by federal law for home loans made by federal savings associations. These protections encompass regulation of late charges, prepayment penalties, and adjustments to the interest rate, payment, balance or term to maturity. For example, a federal savings association may not assess a late charge on a home loan for any payment received within 15 days of the due date.

OTS has also issued a Nondiscrimination Rule (12 CFR part 528), which extends beyond the federal fair lending laws by prohibiting discrimination not covered by those laws. For example, OTS's Nondiscrimination Rule covers all services offered by a savings association, not just lending. 12 CFR 528.2. OTS's Nondiscrimination Rule also prohibits discrimination in lending on the basis of handicap and familial status regardless of whether or not the loan is residential real estate-related, whereas the Equal Credit Opportunity Act does not prohibit discrimination on these bases and the Fair Housing Act, while it prohibits discrimination on these bases, only covers residential real estate-related transactions. 12 CFR 528.2. Further, the rule imposes a requirement prescribed for the purposes of preventing lending discrimination by aiding in assessing fair lending compliance; it requires savings association and other lenders who file Home Mortgage Disclosure Act (HMDA) Loan Application Registers with OTS to enter the reason for denials, whereas this information is otherwise optional under HMDA. Compare 12 CFR 528.6 with 12 CFR 203.5(c)(1).

OTS recognizes that acts or practices that are unfair or deceptive might also violate other statutes or regulations addressing similar conduct. Conversely, an act or practice may be unfair or deceptive even though it does not violate other statutes or regulations addressing similar conduct.

C. Issues

Issue 1. Should OTS consider further rulemaking on unfair or deceptive acts or practices that would cover products and services in addition to consumer credit? If so, should the rule be limited to financial products and services and how should that scope be defined?

Issue 2. Should OTS consider further rulemaking on unfair or deceptive acts or practices that would cover more than just the savings association, but related entities as well?

III. Principles in Defining Unfair or Deceptive Acts or Practices

Part 535 of OTS's regulations address prohibited consumer credit practices. However, to date, OTS has not provided comprehensive guidance explaining which principles define unfair or deceptive acts or practices. Similarly, OTS has not provided comprehensive guidance on which specific acts or practices it considers unfair or deceptive other than those articulated in the Credit Practices rule. OTS is considering a variety of approaches to provide further definition, including the following, either individually or by combining two or more approaches.

A. FTC Model

OTS could adopt guidance issued by the FTC as OTS's standard and incorporate it into an OTS regulation.[13] We note that other federal banking agencies have used the FTC guidance in developing guidance on unfair or deceptive acts or practices for entities they regulate.[14]

In sum, the FTC guidance provides that acts or practices are unfair where: (1) The act or practice causes or is likely to cause substantial injury to consumers; (2) consumers cannot reasonably avoid the injury; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. Public policy is also considered in analyzing whether a particular act or practice is unfair. Acts or practices are deceptive where the act or practice involves a representation,

institution-affiliated parties (e.g., certain agents or independent contractors) for purposes of OTS enforcement authority. See 12 U.S.C. 1813(u) and 1818.

[10] Section 45 of FDIA, 12 U.S.C. 1831v, and section 10 of the Bank Holding Company Act, 12 U.S.C. 1848a, as added and amended by sections 112 and 113 of GLBA.

[11] This rule dates back nearly 50 years. See 23 FR 9917 (December 23, 1958).

[12] OTS Op. Acting Chief Counsel (September 3, 1993), available at 1993 OTS LEXIS 34.

[13] See FTC's Policy Statement on Unfairness, issued on December 17, 1980, available at *http://www.ftc.gov/policystmt/ad-unfair.htm*; FTC's Policy Statement on Deception, issued on October 14, 1983, available at *http://www.ftc.gov/bcp/policystmet/ad-decept.htm.*

[14] See Board and FDIC guidance entitled, ''Unfair or Deceptive Act or Practices by State-Chartered Banks,'' issued on March 11, 2004, available at *http://www.fdic.gov/news/news/financial/2004/fil2604a.html* and OCC guidance in Advisory Letter 2002–3, ''Guidance on Unfair or Deceptive Acts or Practices'' issued on March 22, 2002, available at *http://www.occ.treas.gov/ftp/advisory/2002–3.doc.*

omission, or other practice that (1) misleads or is likely to mislead the consumer; (2) the consumer reasonably interprets under the circumstances; and (3) is material.

B. Converting Guidance Into Rules

OTS, both individually and on an interagency basis, has issued several important pieces of guidance to the industry on consumer protection issues. OTS could convert all or portions of this guidance into regulatory requirements under the rubric of unfair or deceptive acts or practices. For example, the recently issued interagency Statement on Working with Mortgage Borrowers encourages institutions to consider prudent workout arrangements that increase the potential for financially stressed residential borrowers to keep their homes for those borrowers who have demonstrated a prior willingness and ability to repay the loan according to its terms.[15] OTS could identify, as a principle, that failing to consider and implement reasonable workout arrangements is an unfair practice and incorporate such a finding into a rulemaking.

Other recent guidance OTS could similarly draw from includes:

- Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609 (October 4, 2006).
- Interagency Statement on Subprime Mortgage Lending, 72 FR 37569 (July 10, 2007).
- OTS Guidance on Overdraft Protection Programs, 70 FR 8428 (February 18, 2005).
- OTS Guidance on Gift Card Programs, OTS CEO Memorandum 254 (February 28, 2007).

C. Other Federal Agency Models

OTS could consider issuing guidelines along the lines of the OCC's Guidelines Establishing Standards for Residential Mortgage Lending Practices.[16] These Guidelines advise national banks against becoming involved, directly or indirectly, in residential mortgage lending activities involving abusive, predatory, unfair or deceptive lending practices. The Guidelines list as examples equity stripping, fee packing, loan flipping, refinancing special mortgages, and encouragement of default. Other sections of the guidelines discuss prudent consideration of certain loan terms, conditions and features that may, under particular circumstances, be susceptible to abusive, predatory, unfair or deceptive practices. Among the practices listed are financing single premium credit insurance, negative amortization, balloon payments in short-term transactions, and prepayment penalties that are not limited to the early years of the loan, particularly in subprime loans.

OTS could also consider the approach the Department of Housing and Urban Development (HUD) has taken in connection with setting housing goals for secondary market mortgage purchases by Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac.[17] HUD defines ''HOEPA mortgages'' to mean mortgage loans above the HOEPA thresholds but including loans to finance the acquisition or initial construction of a consumer's principal dwelling and open-end credit plans, which are both otherwise excluded from HOEPA.[18] HUD defines ''mortgages with unacceptable terms and conditions'' to include loans with excessive fees (generally total points and fees charged to a borrower exceeding the greater of five percent of the loan amount or $1,000), prepayment penalties except in limited circumstances, prepaid single premium credit life insurance, or failure of the lender to adequately consider the borrower's ability to make payments.[19]

HUD's regulations provide that GSE purchases of mortgages in either category do not count toward meeting the GSEs' goals for purchasing mortgages.[20] OTS could consider restricting OTS-regulated entities from originating (or purchasing) such loans as unfair or deceptive.

D. State Law Models

OTS could prohibit specific unfair or deceptive acts or practices of the types listed in various state unfair or deceptive acts or practices statutes. For example, the Michigan Consumer Protection Act prohibits dozens of specific acts or practices such as causing a probability of confusion or misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction or gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.[21]

For mortgage lending, OTS could also prohibit specific unfair or deceptive acts or practices of the types listed in various state predatory lending laws. For example, North Carolina's predatory lending law[22] covers all consumer home loans (first and second liens and manufactured housing). It limits prepayment penalties, financing credit insurance, flipping, and default incentives. It describes a class of high cost home loans with high points and fees or annual percentage rate (APR), and for those loans it requires consumer counseling and prohibits financing fees and points in the loans.[23] The North Carolina law expressly provides that making a loan in violation of the law constitutes an unfair or deceptive act or practice under North Carolina law.[24]

E. Targeted Practices Approach

Under this approach, OTS could simply list a number of specific practices that it would prohibit as unfair or deceptive, such as in the area of credit card lending, residential mortgage lending, gift cards, and deposit accounts. For example, OTS could consider listing the following under this approach:

1. Credit Card Lending

a. Imposing an interest rate increase that is triggered by adverse information unrelated to the credit card account or card issuer. This practice is commonly referred to as ''universal default'' or, more recently as, adverse action pricing in contrast to long-established risk based pricing.

b. Imposing an over-the-limit-fee that is triggered by the imposition of a penalty fee, such as a late fee.

[15] OTS CEO Memorandum # 255 (April 17, 2007,) available at *http://www.ots.treas.gov/docs/2/25255.pdf.*

[16] 12 CFR part 30, Appendix C.

[17] It is the duty of an independent office within HUD, the Office of Federal Housing Enterprise Oversight (OFHEO), to ensure that these GSEs are adequately capitalized and operating in a safe and sound manner. 12 U.S.C. 4511 and 4513; 12 CFR 1700.1. Except for that authority of OFHEO and other matters relating to safety and soundness, the Secretary of HUD has general regulatory power over these GSEs to ensure that the purposes of their chartering acts and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Pub. L. 102–550) are accomplished. 12 U.S.C. 4541; 24 CFR 81.1. See also HUD's Regulation of Fannie Mae and Freddie Mac, available at *http://www.hud.gov/offices/hsg/gse/gse.cfm.*

[18] 24 CFR 81.2(b).

[19] 24 CFR 81.2(b).

[20] CFR 81.16(c)(12).

[21] MCLS § 445.902 (2007).

[22] 1999 N.C. Sess. Laws 332 as amended by 2003 N.C. Sess. Laws 401, available at *http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/PDF/1999–2000/SL1999–332.pdf* and *http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/PDF/2003–2004/SL2003–401.pdf.*

[23] OTS notes, however, that the impact of the North Carolina law and other state predatory lending laws is a matter of some disagreement. Among many studies is one from the Government Accountability Office (GAO), which reported in 2004 that the impact of North Carolina's laws on high cost loans and licensing of brokers was uncertain. GAO, Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending, GAO–04–280 (January 2004), available at *http://www.gao.gov/new.items/d04280.pdf.*

[24] N.C. Gen. Stat. section 24–10.2(e)(2007).

c. Charging penalty fees in consecutive months based on previous late or over the limit transactions, not on a new or additional transaction offense.

d. Requiring as a condition of a credit card account, a consumer's waiver of his or her right to a court trial and consent to binding mandatory arbitration.

e. Applying payments first to balances subject to a lower rate of interest before applying to balances subject to higher rates of interest or applying payments first to fees, penalties, or other charges before applying them to principal and interest.

2. Residential Mortgage Lending

a. Repetitive refinancing of the same mortgage loan by the same lender whereby the consumer's equity is used to finance the refinancing and from which transaction fees are paid and whereby the consumer does not financially benefit from the terms of the new loan over the terms of the old loan.

b. Encouraging a consumer to default on a loan as a prerequisite to refinancing the loan.

c. Imposing changes in loan terms upon default, such as imposing significant interest rate increases or a balloon payment.

d. Layering discretionary pricing on top of pricing that has already taken risk into account, for example, where a branch or loan officer charges more points than called for by the rate sheet provided by the institution's central office.

e. Force placing hazard insurance without first giving reasonable notice to borrowers to cure a deficiency.

f. Failing to employ reasonable loss mitigation measures prior to initiating foreclosure.

3. Gift Cards

a. Imposing fees that exceed a certain amount or percentage of the original gift amount.

b. Setting an expiration date less than one year from the date of issuance.

4. Deposit Accounts

Freezing accounts containing federal benefit payments upon receipt of attachment or garnishment orders and setting off of debts owed to the financial institution from federal benefit payments deposited in accounts.[25]

[25] House Committee on Financial Services Chairman Frank has expressed concerns about these practices and certain interstate debt collection practices. See Letter from Chairman Frank to OTS *et al.*, June 21, 2007, available at *http://www.house.gov/apps/list/press/financialsvcs_dem/press2062707.shtml.*

F. Issues on Alternative Models and Approaches

Issue 3. What would be the impact on the industry and consumers of any of the various models and approaches discussed?

Issue 4. OTS's current Credit Practices rule lists specific acts or practices that are unfair or deceptive *per se*; it prohibits such practices regardless of the specific facts or circumstances. Would it be appropriate for OTS to determine that additional acts or practices are unfair or deceptive *per se* regardless of the specific facts or circumstances?

Issue 5. Should OTS consider a principles-based approach to a potential rulemaking that can evolve as products, practices and services change? If so, what principles should OTS consider in determining that a specific act or practice is unfair or deceptive? Please provide examples.

Issue 6. Are the principles in the FTC guidance appropriate for the thrift industry? Should OTS consider adopting and incorporating them as part of an enhanced rule on unfair or deceptive acts or practices that includes standards to determine whether a particular act or practice is unfair or deceptive? Are any of the other models or approaches discussed in part III of this **SUPPLEMENTARY INFORMATION** appropriate for OTS to consider? What other models, approaches, or principles should OTS consider?

Issue 7. Can the acts or practices encompassed within any particular model or approach described in part III of this **SUPPLEMENTARY INFORMATION** be conducted in a manner that is not unfair or deceptive to the consumer? If so, how?

Issue 8. The FTC has taken enforcement actions for violations of section 5 of the FTC Act. Should OTS draw specific examples of unfair or deceptive practices from FTC enforcement actions? If so, which examples?

Issue 9. How would the practices in OTS's current Credit Practices rule and those identified in part III of this **SUPPLEMENTARY INFORMATION** fit into any of those approaches?

Issue 10. Are the acts or practices currently listed in the Credit Practices rule the only ones that are capable of targeting specific conduct without allowing for easy circumvention or having unintended consequences?

Issue 11. Has the current rule been easy to circumvent or created unintended consequences? What would be the impact, in this regard, of including additional acts or practices in the rule?

IV. Advertising

As referenced in Part II.B.2 of this **SUPPLEMENTARY INFORMATION**, OTS's Advertising Rule (12 CFR 563.27) prohibits savings associations from using advertising or making any representation that is inaccurate in any particular manner or that in any way misrepresents a savings association's services, contracts, investments, or financial condition. The rule encompasses all forms of advertising, including print or broadcast media, displays or signs, stationery, and all other promotional materials. OTS has previously articulated two principles in interpreting its Advertising rule:

1. The rule prohibits both misstatements of material facts and omissions of material facts.[26] For example, it prohibits false representations to the public about a savings association's deposit accounts, including misrepresentations regarding the extent of FDIC insurance coverage.[27]

2. The rule prohibits statements that, while technically accurate, would mislead a consumer. For example, it prohibits stating that money can be withdrawn from a passbook account at any time without also indicating that such withdrawals will result in a loss of interest.[28]

OTS is considering whether to expand its advertising rule by providing more comprehensive guidance. One approach OTS is considering would be to incorporate materials from FTC advertising guides. FTC has issued advertising guides related to bait advertising (16 CFR part 238), the use of the word ''free'' and similar representations (16 CFR part 251), deceptive pricing (16 CFR part 233), advertising warranties and guarantees (16 CFR part 239), and endorsements and testimonials (16 CFR part 255).[29] OTS recognizes, however, that parts of these guides may not directly relate to the provision of financial products and services or be appropriate for a rule.

Issues

Issue 12. Should OTS expand its regulations on advertising to incorporate guides on advertising the FTC has

[26] FHLBB Memorandum R–51a (September 9, 1981), available at 1981 FHLBB LEXIS 33.

[27] OTS Op. Acting Chief Counsel (September 3, 1993), available at 1993 OTS LEXIS 34.

[28] FHLBB Inter-Office Communication (January 18, 1977), available at 1977 FHLBB LEXIS 219. For more information about this rule see OTS Examination Handbook section 1355 (December 1999), available at *http://www.ots.treas.gov/docs/4/422261.pdf.*

[29] These FTC guides and other FTC guidance on unfair or deceptive advertising are summarized in a useful FTC publication entitled Advertising Practices, Frequently Asked Questions: Answers for Small Business (April 2001), available at *http://www.ftc.gov/bcp/conline/pubs/buspubs/ad-faqs.pdf.*

issued under the FTC Act? If so, which examples or principles should OTS consider?

Issue 13. What other acts or practices that may not currently be covered by OTS's advertising regulation should OTS consider prohibiting as unfair or deceptive in the advertising or marketing of products or services offered by OTS supervised entities?

Issue 14. What would be the impact on the industry and consumers of expanding OTS's advertising regulation?

V. Process for Resolving Questions Concerning Unfair Acts or Practices

OTS recognizes that: (1) No set of principles or standards, no matter how effectively crafted, will lend themselves to an easy determination in every case as to whether a practice would violate a regulation on unfair or deceptive acts or practices; and (2) no established list of acts or practices deemed unfair or deceptive per se will ever be complete or current. OTS also recognizes that the overwhelming majority of institutions and the individuals employed by those institutions wish and seek to operate fairly with respect to the products and services they offer to their customers and other consumers.

Furthermore, OTS is keenly aware of the subjectivity and burden involved in applying a set of principals or standards to a set of particular facts in any given case. For this reason, OTS has a longstanding practice whereby institutions (primarily through OTS regional offices) or consumers (primarily through OTS's Consumer Affairs or External Affairs functions) confer with OTS about a particular practice or a program about which they have questions. We expect this process to continue with respect to unfair or deceptive acts and practices questions or concerns.

Executive Order 12866

OTS does not know now whether it will propose changes to its regulations and, if so, whether these changes will constitute a significant regulatory action under Executive Order 12866. This ANPR neither establishes nor proposes any regulatory requirements. OTS has submitted a notice of planned regulatory action to OMB for review. Because this ANPR does not contain a specific proposal, information is not available with which to prepare a regulatory analysis. OTS will prepare a preliminary regulatory analysis if it proceeds with a proposed rule that constitutes a significant regulatory action.

Accordingly, OTS solicits comment, information, and data on the potential effects on the economy of changes to its regulations that commenters may recommend. OTS will carefully consider the costs and benefits associated with this rulemaking.

Dated: July 31, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–15179 Filed 8–3–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28882; Directorate Identifier 2007–NM–035–AD]

RIN 2120–AA64

Airworthiness Directives; Goodrich Evacuation Systems Approved Under Technical Standard Order (TSO) TSO–C69b and Installed on Airbus Model A330–200 and –300 Series Airplanes, Model A340–200 and –300 Series Airplanes, and Model A340–541 and –642 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to Goodrich evacuation systems approved under TSO–C69b and installed on certain Airbus Model A330–200 and –300 series airplanes, Model A340–200 and –300 series airplanes, and Model A340–541 and –642 airplanes. The existing AD currently requires inspecting to determine the part number of the pressure relief valves on the affected Goodrich evacuation systems, and corrective action if necessary. For certain airplanes, this proposed AD would require an additional inspection to determine the part number of the pressure relief valves, and corrective action if necessary. This proposed AD results from a report indicating that, during maintenance testing, the pressure relief valves on the affected Goodrich evacuation systems did not seal when activated, which caused the pressure in the escape slide/raft to drop below the minimum allowable raft mode pressure. We are proposing this AD to prevent loss of pressure in the escape slides/rafts after an emergency evacuation, which could result in inadequate buoyancy to support the raft's passenger capacity during ditching, and increase the chance for injury to raft passengers.

DATES: We must receive comments on this proposed AD by September 20, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* 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:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Goodrich, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, AZ 85040, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tracy Ton, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5352; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2007–28882; Directorate Identifier 2007–NM–035–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On May 31, 2006, we issued AD 2006–12–08, amendment 39–14633 (71 FR 33606, June 12, 2006), for Goodrich evacuation systems approved under TSO–C69b and installed on certain Airbus Model A330–200 and –300 series airplanes, Model A340–200 and –300 series airplanes, and Model A340–541 and –642 airplanes. [A correction of that AD was published in the **Federal Register** on June 28, 2006 (71 FR 36674).] That AD requires inspecting to determine the part number of the pressure relief valves on the affected Goodrich evacuation systems, and corrective action if necessary. That AD resulted from a report indicating that, during maintenance testing, the pressure relief valves on the affected Goodrich evacuation systems did not seal when activated, which caused the pressure in the escape slide/raft to drop below the minimum allowable raft mode pressure. We issued that AD to prevent loss of pressure in the escape slides/rafts after an emergency evacuation, which could result in inadequate buoyancy to support the raft's passenger capacity during ditching, and increase the chance for injury to raft passengers.

Relevant Service Information

We have reviewed Goodrich Service Bulletin 25–355, Revision 1, dated July 24, 2006 (Goodrich Service Bulletin 25–355, dated July 25, 2005, was referred to as the appropriate source of service information for accomplishing the required actions specified in AD 2006–12–08). The procedures in Revision 1 of the service bulletin are essentially the same as the original except Revision 1 adds the following inspection for certain airplanes: For Model A340–500 airplanes having evacuation system part number (P/N) 4A3928–( ), inspect for pressure relief valve P/N 4A3791–6 and replace with P/N 4A3641–26 if necessary.

Revision 1 of the service bulletin also corrects certain serial numbers and part numbers specified in the tables in paragraph 1.A. Effectivity of the service bulletin.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–12–08 and would retain the requirements of the existing AD. For certain airplanes, this proposed AD would also require an additional inspection to identify a different pressure relief valve and corrective action if necessary.

Costs of Compliance

There are about 689 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 27 airplanes of U.S. registry.

The actions that are required by AD 2006–12–08 and retained in this proposed AD take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $2,160, or $80 per airplane.

All airplanes affected by the new proposed action are currently operated by non-U.S. operators under foreign registry. If an affected airplane is imported and placed on the U.S. Register in the future, the new proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14633 (71 FR 33606, June 12, 2006) corrected at 71 FR 36674, June 28, 2006, and adding the following new airworthiness directive (AD):

Goodrich (Formerly BF Goodrich): Docket No. FAA–2007–28882; Directorate Identifier 2007–NM–035–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 20, 2007.

Affected ADs

(b) This AD supersedes AD 2006–12–08.

Applicability

(c) This AD applies to Goodrich Evacuation Systems Approved Under Technical Standard Order (TSO) TSO–C69b, as installed on Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, –213, –311, –312, and –313 airplanes; and Model A340–541 and –642 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report indicating that, during maintenance testing, the pressure relief valves on the affected Goodrich evacuation systems did not seal when activated, which caused the pressure in the escape slide/raft to drop below the minimum allowable raft mode pressure. We are issuing this AD to prevent loss of pressure in the escape slides/rafts after an emergency evacuation, which could result in inadequate buoyancy to support the raft's passenger capacity during ditching, and increase the chance for injury to raft passengers.

Compliance

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

Restatement of Requirements of AD 2006–12–08

Inspection for Certain Part Number (P/N)

(f) For all airplanes: Within 36 months after July 17, 2006 (the effective date of AD 2006–12–08): Perform an inspection to determine the part number (P/N) of the pressure relief valve on the Goodrich evacuation systems in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 25–355, dated July 25, 2005, or Goodrich Service Bulletin 25–355, Revision 1, dated July 24, 2006. After the effective date of this AD, only Goodrich Service Bulletin 25–355, Revision 1, dated July 24, 2006, may be used.

(1) If any pressure relief valve having P/N 4A3791–3 is installed, before further flight, replace the valve with a new or serviceable valve having P/N 4A3641–1 and mark the girt adjacent to the placard, in accordance with the Accomplishment Instructions of the service bulletin.

(2) If any pressure release valve having P/N 4A3641–1 is installed, before further flight, mark the girt adjacent to the placard in accordance with the Accomplishment Instructions of the service bulletin.

Part Installation for Airplanes Identified in Original Issue of the Service Bulletin

(g) As of July 17, 2006, no person may install a pressure relief valve having P/N 4A3791–3, on any airplane equipped with Goodrich evacuation systems identified in Goodrich Service Bulletin 25–355, dated July 25, 2005.

New Requirements of This AD

Inspection for Certain Other P/N

(h) For Model A340–541 airplanes: Within 36 months after the effective date of this AD, perform an inspection to determine the P/N of the pressure relief valve on the Goodrich evacuation systems in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 25–355, Revision 1, dated July 24, 2006.

(1) If any pressure relief valve having P/N 4A3791–6 is installed, before further flight, replace the valve with a new or serviceable valve having P/N 4A3641–26 and mark the girt adjacent to the placard, in accordance with the Accomplishment Instructions of the service bulletin.

(2) If any pressure release valve having P/N 4A3641–26 is installed, before further flight, mark the girt adjacent to the placard in accordance with the Accomplishment Instructions of the service bulletin.

Parts Installation for All Airplanes

(i) As of the effective date of this AD, no person may install a pressure relief valve having P/N 4A3791–3, on any airplane equipped with Goodrich evacuation systems identified in Goodrich Service Bulletin 25–355, Revision 1, dated July 24, 2006.

(j) As of the effective date of this AD, no person may install a pressure relief valve having P/N 4A3791–6, on any airplane equipped with Goodrich evacuation systems identified in Goodrich Service Bulletin 25–355, Revision 1, dated July 24, 2006.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2006–12–08 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15222 Filed 8–3–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28881; Directorate Identifier 2006–NM–263–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes, Equipped with a Tail Cone Evacuation Slide Container Installed in Accordance With Supplemental Type Certificate (STC) ST735SO

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, equipped with tail cone evacuation slide containers as specified above. This proposed AD would require modifying the tail cone slide. This proposed AD also would require additional tail cone drops and slide deployments, and repair if necessary. This proposed AD results from several reports of inadvertent tail cone deployments in which the tail cone slide failed to deploy. We are proposing this AD to ensure that the tail cone evacuation slide deploys correctly; failure of the slide to deploy during an emergency evacuation could result in injury to flightcrew and passengers.

DATES: We must receive comments on this proposed AD by September 20, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web site:* Go to *http://www.regulations.gov* and follow

the instructions for sending your comments electronically.

- *Mail:* 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:* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Northwest Airlines, Inc., 7500 Airline Drive, Minneapolis, Minnesota, 55450–1101, Mail Stop: 8953, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28881; Directorate Identifier 2006–NM–263–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received several reports that the tail cone emergency slide failed to deploy on McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, equipped with tail cone evacuation slide containers installed in accordance with supplemental type certificate (STC) ST735SO. Although we are doing further investigation and analysis, it appears that the failures resulted from either the slide container not clearing the immediate area around the slide when the slide deployment handle is pulled, or contaminated Velcro attachments that allow the slide container lanyard to separate without pulling the container off and activating the inflation bottle.

STC ST735SO for the tail cone emergency slide containers was surrendered to the Los Angeles Aircraft Certification Office (ACO), FAA, on January 21, 2003. Therefore, there is no manufacturer's service information related to this proposed AD. The affected operator must submit a method of compliance to the FAA for approval.

Failure of the slide to deploy during an emergency evacuation could result in injury to flightcrew and passengers.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing this AD, which would require operators to modify the tail cone slide in accordance with a method approved by the FAA. One approved method is Northwest Airlines STC ST01967CH, issued March 19, 2007. STC ST01967CH describes the modification of the DC–9 tail cone slide. (STC ST01967CH refers to Northwest Airlines, Drawing 9B25–41477, Revision B, dated September 14, 2006; and Northwest Airlines, Drawing 9B25–90399, Revision D, dated December 21, 2006; as additional sources of service information for modifying the tail cone slide.) This proposed AD also would require additional tail cone drops and slide deployments to be done no earlier than 150 flight cycles and no later than 24 months after modifying the tail cone slide, for a minimum of 10 percent of an operator's fleet of affected airplanes (if fewer than 10 airplanes in the fleet: at least 1 airplane). If the tailcone and slide deployment is unsuccessful, this proposed AD would require repair in accordance with a method approved by the FAA.

Costs of Compliance

There are about 400 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 300 airplanes of U.S. registry. The tail cone drops/slide deployments would take about 16 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $1,300 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is about $774,000, or $2,580 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2007–28881; Directorate Identifier 2006–NM–263–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 20, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes, certificated in any category, equipped with a tail cone evacuation slide container installed in accordance with supplemental type certificate (STC) ST735SO.

Unsafe Condition

(d) This AD results from several reports of inadvertent tail cone deployments in which the tail cone slide failed to deploy. We are issuing this AD to ensure that the tail cone evacuation slide deploys correctly; failure of the slide to deploy during an emergency evacuation could result in injury to flightcrew and passengers.

Compliance

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

Initial Actions To Address Slide Deployment Failures

(f) Within 24 months after the effective date of this AD: Modify the tail cone slide in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Northwest Airlines STC ST01967CH, issued March 19, 2007, is one approved method.

Note 1: STC ST01967CH refers to Northwest Airlines, Drawing 9B25–41477, Revision B, dated September 14, 2006; and Northwest Airlines, Drawing 9B25–90399, Revision D, dated December 21, 2006; as additional sources of service information for modifying the tail cone slide.

Repeat Deployment and Terminating Action

(g) Within 150 flight cycles after doing the modification required by paragraph (f) of this AD, or within 150 days after the effective date of this AD, whichever occurs later: Do additional tail cone drops and slide deployments on a minimum of 10 percent of an operator's fleet of affected airplanes (if fewer than 10 airplanes in the fleet: At least one airplane).

(1) If the tailcone and slide deployments are successful according to the applicable McDonnell Douglas DC–9 maintenance manual, no further action is required by this AD.

(2) If any tailcone and slide deployment is unsuccessful according to the applicable McDonnell Douglas DC–9 maintenance manual, before further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on July 30, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–15237 Filed 8–3–07; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0610; FRL–8448–7]

Revisions to the Arizona State Implementation Plan, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP). This revision concerns reductions of particulate matter (PM) emissions from the paving of unpaved road and use of these reductions to satisfy the offset requirements under the new source review provisions of the Clean Air Act as amended in 1990 (CAA or the Act). We are proposing to approve a local rule to assure that the PM emission reductions resulting from the road paving meet the criteria for valid offsets under the Act.

DATES: Any comments on this proposal must arrive by September 5, 2007.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0610, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy

location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947–4114, *Wong.Lily@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Maricopa County Air Quality Department Rule 242, ''Emission Offsets Generated by the Voluntary Paving of Unpaved Roads.'' In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 20, 2007.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. E7–15119 Filed 8–3–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 410, 411, 413, 414, 415, 418, 423, 424, 482, 484, 485, and 491

[CMS–1385–CN]

RIN 0938–AO65

Medicare Program; Proposed Revisions to Payment Policies Under the Physician Fee Schedule, and Other Part B Payment Policies for CY 2008; Proposed Revisions to the Payment Policies of Ambulance Services Under the Ambulance Fee Schedule for CY 2008; and the Proposed Elimination of the E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction notice.

SUMMARY: This document corrects several technical and typographical errors in the proposed rule that was issued on July 2, 2007 and appeared in the July 12, 2007 **Federal Register** (72 FR 38122). The proposed rule addressed Medicare Part B payment policy, including the physician fee schedule (PFS) that is applicable for calendar year (CY) 2008. The proposed rule also addressed refinements to relative value units (RVUs) and physician self-referral issues. Specifically, the errors pertain to the following provisions: Drug compendia, telehealth services, competitive acquisition program (CAP), end-stage renal disease (ESRD), physician self-referral issues, therapy standards and requirements, Physician Quality Reporting Initiative, and the payment impact on physician fee schedule services.

FOR FURTHER INFORMATION CONTACT: Diane Milstead (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 07–3274 (72 FR 38122), the proposed rule entitled ''Medicare Program; Proposed Revisions to Payment Policies Under the Physician Fee Schedule, and Other Part B Payment Policies for CY 2008; Proposed Revisions to the Payment Policies of Ambulance Services Under the Ambulance Fee Schedule for CY 2008; and the Proposed Elimination of the E-Prescribing Exemption for Computer-Generated Facsimile Transmissions'' (hereinafter referred to as the CY 2008 PFS proposed rule), there were technical and typographical errors that are identified and corrected in this correction notice.

II. Correction of Errors

In FR Doc. 72–3274 of July 12, 2007 (72 FR 38211), make the following corrections:

A. Corrections to the Preamble

1. On page 38122, 3rd column, 14th full paragraph, line 1 the phrase ''Karen Rinker (410) 786–0189'' is corrected to read ''Karen Rinker (410) 786–0189 or Kate Tillman (410) 786–9252''.

2. On page 38123, 1st column, 1st full paragraph, line 1, the phrase ''Lisa Ohrin (410) 786–4565'' is corrected to read ''Lisa Ohrin (410) 786–4565 or Joanne Sinsheimer (410) 786–4620''.

3. On page 38125, 1st column, after line 72, the phrase ''SLPs Speech-language pathologists'' is added.

4. On page 38145, 1st column, 1st full paragraph, lines 21 and 22, the phrase ''96118 through and 99620'' is corrected to read ''96118 through 96120''.

5. On page 38154, 3rd column, 1st paragraph, line 39, ''suppler'' is corrected to read ''supplier''.

6. On page 38155, 1st column, 1st full paragraph, line 24, ''physician's office have also been used to'', is corrected to read ''physician's office to''.

7. On page 38158, 3rd column, 2nd full paragraph, line 5, ''participating CAP'' is corrected to read ''participating CAP''.

8. On page 38159, 3rd column, 1st full paragraph, line 6, the phrase ''using prefilling'' is corrected to read ''using prefilled''.

9. On page 38160, 1st column, 1st full paragraph, line 14, the phrase ''pharmacy laws'' is corrected to read ''pharmacy laws)''.

10. On page 38164, 1st column, 1st full paragraph, line 14, the phrase ''REPORT TO CONGRESS'' is corrected to read ''Report to Congress''.

11. On page 38179, 3rd column, line 3, the phrase ''The physician or other supplier's'' is corrected to read ''The physician's or other supplier's''.

12. On page 38180,

a. Second column, lines 54 and 55, the phrase ''or through some other means'' is corrected to read ''or through some other means)''.

b. Third column, 2nd full paragraph, line 10, ''an anti-markup'' is corrected to read ''an anti-markup provision''.

c. Third column, 3rd full paragraph, lines 4 and 5, ''a DHS'' is corrected to read ''a designated health service''.

13. On page 38181, 3rd column, 1st full paragraph, lines 5 and 6, ''a DHS'' is corrected to read ''a designated health service''.

14. On page 38182,

a. Second column, last paragraph, lines 2 and 3, the phrase ''the prohibition of physician referrals'' is corrected to read ''the prohibition on physician referrals''.

b. Third column, 1st full paragraph, lines 4 and 5, the phrase ''such as a magnetic resonance imaging (MRI) machine)'' is corrected to read ''such as an MRI machine)''.

15. On page 38183,

a. First column, 1st full paragraph,

(1) Lines 6 and 7, the phrase ''by a physician lessor to the entity.'' is corrected to read ''by a physician lessor to the entity lessee.''

(2) Line 17, ''for patient referred'' is corrected to read ''for patients referred''.

b. Second column, 1st full paragraph,

(1) Lines 3 and 4, the phrase ''where the parties have returned,'' is corrected to read ''where a party has returned,''.

(2) Lines 10 and 12, the phrase ''we might allow the parties to terminate the period of disqualification'' is corrected to read ''the period of disallowance may terminate''.

16. On page 38184,

a. First column, 1st full paragraph, line 26 the phrase ''§ 411.354(d)(1) read,'' is corrected to read ''§ 411.354(d)(1) stated:''.

b. Third column,

(1) First full paragraph,

(a) Lines 16 and 17, the phrase ''that we finalize'' is corrected to read ''that we may finalize''.

(b) Line 19, the phrase ''standing on the shoes'' is corrected to read ''standing in the shoes''.

(2) Second full paragraph, line 9, the phrase ''or a personal services'' is corrected to read ''or a personal service''.

17. On page 38184, 3rd column, 2nd full paragraph, line 14 through page 38185, 1st column, 1st partial paragraph, line 7, the sentence ''One commenter stated that we should exercise our discretion in pursuing minor violations and the failure to meet the procedural requirements of an exception (such as obtaining all required signatures prior to commencement of the agreement for personal services) and technical violations.'' is corrected to read ''One commenter stated that we should exercise our discretion in pursuing minor violations and any violations involving a failure to meet the procedural or form requirements of an exception (such as obtaining all required signatures prior to commencement of the agreement for personal services).''

18. On page 38185,

a. First column, 1st full paragraph,

(1) Lines 9 through 11, the phrase ''to address only inadvertent, violations in which an agreement fails to satisfy the procedural of ''form'' requirements of an exception of the statute or regulations'' is corrected to read ''to address only inadvertent violations in which an agreement fails to satisfy the procedural or ''form'' requirements of an exception in the statute or regulations''.

(2) Line 18, the phrase ''or set in advance'' is corrected to read ''or set in advance, etc.''

b. Second column,

(1) First partial paragraph, line 5, the phrase ''under the False Claims Act;'' is corrected to read ''under the False Claims Act);''.

(2) First full paragraph,

(a) Line 22, the phrase ''exception that meets'' is corrected to read ''exception meets''.

(b) Lines 23 and 24, the phrase ''method of compliance'' is corrected to read ''method for compliance''.

c. Third column,

(1) First partial paragraph, line 22, the phrase ''method of compliance'' is corrected to read ''method for compliance''.

(2) Second partial paragraph, last line, the phrase ''criteria as satisfying'' is corrected to read ''as satisfying''.

19. On page 38186,

a. First column, 1st partial paragraph, lines 16 and 17, the phrase ''satisfy a procedural of ''form'' requirement'' is corrected to read ''satisfy a procedural or ''form'' requirement''.

b. Second column,

(1) First full paragraph,

(a) Line 6, the phrase ''prohibits the entity'' is corrected to read ''prohibit the entity''.

(b) Lines 28 through 32, ''The Internet-Only Manual (IOM) manual 100–01, Medicare General Information, Eligibility and Entitlement Manual, Pub. 100–01, at Chapter 5, section 10.3'' is corrected to read ''The CMS Internet-Only Manual (IOM), publication 100–01, Medicare General Information, Eligibility and Entitlement Manual, Chapter 5, section 10.3''.

(2) Second full paragraph, lines 12 and 13, the phrase ''the physician can potentially recognize'' is corrected to read ''the physician can potentially realize''.

20. On page 38187,

a. Second column, 3rd full paragraph, lines 21 and 22, the phrase ''transport; and (2) another person'' is corrected to read ''transport; (2) another person''.

b. Third column, 2nd full paragraph, line 8, the phrase ''under § 424.36(b)(1) through (5)'' is corrected to read ''under § 424.36(b)(1) through (5))''.

21. On page 38191,

a. Second column, last paragraph, last line, the phrase ''pathologists at § 484.4'' is corrected to read ''pathologists (SLPs) at § 484.4''.

b. Third column, 1st paragraph, lines 7 and 8 the phrase ''speech-language pathologists (SLPs)'' is corrected to read ''SLPs''.

22. On page 38200, in Table 16.—2007 PQRI Measures, after line 9, the table is corrected by adding the following sentence ''Age-Related Macular Degeneration—Dilated Macular Examination.''

23. On page 38212, 3rd column, 4th full paragraph, the second bullet that begins with the phrase ''Allowed Charges:'' and ends with the phrase ''allowed charges for the specialty'' is deleted.

24. On page 38217, 3rd column, 1st partial paragraph, lines 1 and 2, the phrase ''current 2006 payments and proposed 2007 payments.'' is corrected to read ''current 2007 payments and proposed 2008 payments.''

B. Correction to the Regulations Text

PART 409—[CORRECTED]

1. On page 38221, 1st column, last paragraph, and the second column, 1st partial paragraph, § 409.17 (a)(1)(ii) is corrected to read as follows:

§ 409.17 Physical therapy, occupational therapy, and speech-language pathology services.

(a) * * *

(1) * * *

(ii) Physical therapy, occupational therapy, or speech-language pathology services may be furnished by qualified physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, or speech-language pathologists who have been licensed, certified, registered or otherwise regulated as physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, or speech-language pathologists by the State in which practicing before January 1, 2008 and continue to furnish Medicare services at least part time without an interruption in furnishing services of more than 2 years.

* * * * *

PART 410—[CORRECTED]

2. On page 38222, in the 3rd column,

a. Lines 26 through 28, the amendatory statement for § 410.61 ''Section 410.61 is amended by revising paragraph (e)(1) to read as follows:'' is corrected to read ''Section 410.61 is amended by revising paragraph (e) to read as follows:''.

b. Lines 32 through 38, the regulatory language for § 410.61(e) is corrected to read as follows:

§ 410.61 Plan of treatment requirements for outpatient rehabilitation services.

* * * * *

(e) *Review of the plan.* The physician, nurse practitioner, clinical nurse specialist or physician's assistant reviews the plan as often as the individual's condition requires, but at least at every certification and recertification.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 31, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E7–15182 Filed 8–3–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 070719385–7397–01]

RIN 0648–AV59

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Revision of Vessel Monitoring System (VMS) Requirements for Commercial Gulf Reef Fish Vessels

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to revise VMS requirements applicable to the commercial reef fish fishery in the Gulf of Mexico (Gulf) and to revise the allowable methods for complying with the advance notification of landing requirement in the Gulf red snapper individual fishing quota (IFQ) program. Regarding the VMS program, this proposed rule would allow commercial reef fish vessel owners or operators to reduce the frequency of VMS transmissions while in port; extend the existing power-down exemption to include reef fish vessels while in port; and add a grandfather clause to address VMS units approved for use in the Gulf reef fish fishery. Regarding the IFQ program, this proposed rule would expand the allowable methods for communicating the required advance notification of landing. The intended effects of this proposed rule are to resolve an unanticipated technological problem with the VMS draining power from vessels that are in port without access to external power sources; provide a grandfather clause for previously approved Gulf reef fish VMS units; and facilitate compliance with the advance notification of landing requirement in the IFQ program.

DATES: Written comments must be received on or before August 21, 2007.

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

- E-mail: *0648–AV59.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AV59.
- 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 documents supporting this proposed rule, which include a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) may be obtained from NMFS at the address above.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jason Rueter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; email *Jason.Rueter@noaa.gov* and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone 727–824–5305; fax 727–824–5308; e-mail *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Gulf Reef Fish VMS

Background

The final rule to implement Amendment 18A to the FMP (71 FR 45428, August 9, 2006) requires an owner or operator of a vessel with a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat with a commercial reef fish vessel permit even when under charter, to ensure an operating VMS approved by NMFS for the Gulf of Mexico reef fish fishery is on board at all times. This requirement is applicable regardless of whether the vessel is underway unless exempted by NMFS. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. The effective date for that VMS requirement was May 6, 2007 (72 FR 10088, March 7, 2007). The August 9, 2006 final rule also requires that, unless exempted under the power down exemption, a VMS must transmit a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day.

These regulatory requirements are also set forth in the NOAA Enforcement Vessel Monitoring System Requirements document, which is available from the NMFS Office for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833.

Need for VMS Revisions

NMFS has recently been advised by a number of commercial reef fish vessel owners and operators that the amount of power drawn by some of the VMS units when complying with the requirements for continuous operation and hourly transmissions can drain all power from a vessel that is not underway and has no access to an external power source. In some circumstances, this could result in failure of critical vessel safety equipment such as bilge pumps, thereby potentially jeopardizing vessel and crew safety. VMS manufacturers have confirmed the potential for power drain under such circumstances and are pursuing technological solutions, i.e., configuring VMS units to include the capability to reduce frequency of transmissions.

The current regulations provide for an exemption from the continuous VMS operation and hourly transmission requirements, but only for vessels that are ''out of the water'' for more than 72 hours or vessels that sign out of the VMS program for a minimum of 1 month and do not embark on any trip until the VMS is turned back on and verified by NMFS VMS personnel. These current exemptions do not address the power drain issue for vessels that remain in the water, in port, for more than 72 hours but less than 1 month; nor do they address vessels that may be ''out of the water'' , e.g., dry-docked or trailered, for less than 72 hours. Additional rulemaking is necessary to address these situations and avoid power loss and potential vessel and crew safety issues.

Proposed VMS Revisions

This proposed rule would revise the VMS requirements applicable to Gulf of Mexico commercial reef fish vessels to establish an ''in-port'' exemption to the hourly transmission requirement and to expand the current power-down exemption to include vessels ''in port'' for more than 72 consecutive hours. For the purposes of the Gulf of Mexico VMS requirements, ''in port'' would be defined to mean secured at a land-based facility, or moored or anchored after the

return to a dock, berth, beach, seawall, or ramp.

Specifically, this proposed rule would provide an ''in-port'' exemption that would allow vessels ''in port'' to transmit vessel location information every 4 hours rather than hourly. This would address the power-drain issue for vessels that are ''in port'' (whether the vessel is in the water or out of the water, consistent with the definition of ''in port'') for less than 72 consecutive hours or for vessels that may be ''in port'' somewhat longer than 72 hours but whose owner or operator elects not to obtain the broader power-down exemption. The proposed expansion of the current power-down exemption, which is limited to vessels ''out of the water'', to include vessels ''in port'' for more than 72 consecutive hours would address the power-drain issue for vessels that remain in the water, within the definition of ''in port.'' Some such vessels use port locations that do not provide access to external power sources, and the existing VMS requirements could result in excessive power drain and potential vessel safety issues. NMFS believes, after discussion with VMS manufacturers, some of the affected fishery participants, and NMFS law enforcement personnel, that these limited exemptions would adequately address the unanticipated power-drain issue while maintaining the necessary enforcement capability.

Finally, this proposed rule would allow continued use of a VMS unit that was previously approved for the Gulf reef fish fishery if that unit is subsequently removed from the approved list of approved VMS units. At the end of such a VMS unit's service life, it would have to be replaced with a currently approved unit.

Gulf Red Snapper IFQ

Background

The final rule to implement Amendment 26 to the FMP (71 FR 67447, November 22, 2006) established an IFQ program for the commercial red snapper sector of the Gulf reef fish fishery. One of the requirements of the IFQ program is an advance notification of landing. Currently, an owner or operator of a vessel landing IFQ red snapper is responsible for calling NMFS Office for Law Enforcement (OLE) at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Reliance on a single notification method, e.g., telephone, has proven to be impractical in some circumstances -e.g., cell phone range is sometimes inadequate. Additional options for complying with the advance notification of landing are needed.

Proposed Revisions to the IFQ Advance Notification Requirement

This proposed rule would authorize new electronic methods, in addition to the current telephone method, that would be acceptable for complying with the advance notification of landing requirement. Under this proposed rule, authorized methods for contacting NMFS and submitting the report would include calling NMFS Office for Law Enforcement at 1–866–425–7627, completing and submitting to NMFS the advance notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at *ifq.sero.nmfs.noaa.gov*. As new technology becomes available, NMFS would add other authorized methods for complying with the advance notification requirement via appropriate rulemaking. NMFS would list all authorized methods on the IFQ website at *ifq.sero.nmfs.noaa.gov* along with instructions for completing the report. This proposed expansion of allowable methods for advance notification of landing is intended to facilitate compliance and improve monitoring of the fishery.

Other Non-substantive Revisions Related to VMS

This proposed rule would: (1) rearrange the codified text in § 622.9(a)(2), relating to VMS requirements for the Gulf reef fish fishery, in a more logical order; (2) remove the existing power-down exemption option for vessels not making any trip for more than 1 month because this would be covered by the proposed exemption for vessels ''in port'' for more than 72 consecutive hours; and (3) clarify that the VMS requirements apply throughout the Gulf of Mexico including the adjacent states, e.g., requirements also apply to vessels with commercial vessel permits for Gulf reef fish that are dry-docked or trailered on land.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

This proposed rule would allow vessels ''in port'' to send a VMS position report once every 4 hours, rather than every hour, and extend the VMS power-down exemption to vessels that are ''in port,'' subject to obtaining a letter of exemption and following OLE notification and confirmation procedures, rather than require removal of the vessel from the water (dry-docking) for the exemption. This proposed rule would also allow continued use of a VMS unit that was previously approved for the Gulf reef fish fishery if that unit is subsequently removed from the approved list. This grandfathering is limited to the life of the grandfathered VMS unit. Once the grandfathered unit is no longer functional, a VMS unit from the approved list is required. Finally, this proposed rule would broaden allowable methods for advance notification of landing in the commercial red snapper fishery.

The objectives of this proposed rule are to address an unanticipated technological problem in the VMS requirements for the Gulf of Mexico commercial reef fish fishery that could result in power drainage of vessels ''in port'' that lack an external power source, include a grandfather clause in the VMS requirements, and expand the methods for advance notification of landing in the commercial red snapper fishery. The Magnuson-Stevens Act provides the legal basis for the rule.

The VMS components of the proposed rule would apply to all vessels permitted to operate in the Gulf of Mexico commercial reef fish fishery. Some for-hire vessels also participate in the commercial reef fish fishery, and this sector is included in the following description of affected entities. The advance notification of landing component of the proposed rule would apply to only that subset of the commercial reef fish fishery vessels that also operate in the commercial red snapper fishery.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S.

including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined average annual total receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries).

Approximately 1,145 vessels are estimated to be permitted to operate in the Gulf of Mexico commercial reef fish fishery. Over the period 2001–2003, an average of 1,050 vessels per year landed an average total of 19.2 million lb (8.7 million kg) gutted weight (GW) of Gulf reef fish per year with an ex-vessel value of $50.75 million (2006 dollars). Median annual reef fish landings were 5,705 lb (2,588 kg) per vessel. The median vessel took 12 trips per year, spent approximately 31 days at sea annually, and derived approximately 98 percent of its gross revenues from reef fish harvests. Median gross revenues from all species harvested by these vessels, which includes non-reef fish species, were approximately $19,000 (2006 dollars) for each of the 3 years.

The commercial reef fish fishery is conducted using two primary gears, longlines and hand or vertical lines. Within the longline fleet, over the same period (2001–2003), an average of 166 vessels per year landed an average total of approximately 6.5 million lb (3.0 million kg) GW of reef fish per year with an ex-vessel value of approximately $17.64 million (2006 dollars). The median vessel took 14 trips per year, spent 113–121 days at sea annually, and derived approximately 97 percent of its gross revenues from reef fish harvests. Median gross revenues per year from all species harvested by these vessels ranged from approximately $109,000 (2006 dollars) to $115,000 (2006 dollars).

Within the vertical-line fleet, over the same period (2001–2003), an average of 899 vessels per year landed an average total of approximately 11.6 million lb (5.3 million kg) GW of reef fish per year with an ex-vessel value of approximately $30.44 million (2006 dollars). The median vessel took 14 trips per year, spent 33–35 days at sea annually, and derived approximately 97 percent of its gross revenues from reef fish harvests. Median gross revenues from all species harvested by these vessels were approximately $15,000 (2006 dollars) for each of the 3 years.

Alternative estimates derived from 1994 fishery data of the performance of vessels in this fishery show annual average gross and net revenues per vessel range from approximately $27,000 (2006 dollars) in gross revenues and $5,000 (2006 dollars) in net revenues for low-volume handline vessels to approximately $133,000 (2006 dollars) ($25,000 net) for high-volume longline vessels. These values are comparable to the more recent estimates of ex-vessel revenues and provide insight to net revenue estimates, which are not available from the more recent data.

Vessels that operate in the commercial red snapper fishery are part of the commercial reef fish fishery and are included in the description of the reef fish vessels provided above. With the implementation of the two-class license system in the red snapper fishery in 1998, 764 vessels were licensed to participate in the commercial red snapper fishery, though only 616 vessels recorded landings through 2004. Summary statistics specific to the red snapper fishery comparable to those of the reef fish fishery as a whole are not available. Further, substantial changes in the composition and characteristics of the commercial red snapper fleet are anticipated to develop under the individual fishing quota (IFQ) program implemented in January 2007. Projections of fleet size under the IFQ program, expected to result from consolidation of quota shares, do not exceed 100 vessels. Total fleet-wide net revenues to owners, captain and crew from all species harvested by vessels operating in the red snapper fishery are estimated to range from approximately $14.5 million (2006 dollars) to approximately $26 million (2006 dollars) under annual total allowable catch (TAC) levels for harvest from all sectors of 5.0 million lb (2.3 million kg) and 9.12 million lb (4.14 million kg), respectively, of which the commercial fishery is allocated 51 percent of the TAC. Based on these revenue projections, the average net revenue per vessel would range from $145,000 to $260,000 (2006 dollars) if the fleet consolidates to 100 vessels, or $290,000 to $520,000 (2006 dollars) if the fleet consolidates to 50 vessels.

Approximately 237 vessels permitted to participate as for-hire vessels (charterboats or headboats) also possess commercial reef fish permits. While these vessels are included in the description of commercial vessels provided above, in general, for-hire vessels would be expected to have different production profiles than vessels that operate exclusively as commercial vessels. Production characteristics likely vary by the extent to which a vessel operated primarily as a commercial vessel or a for-hire vessel. However, information is only available on the for-hire fleet as a whole, and production characteristics for vessels that operate in both commercial fisheries and the for-hire fishery are unknown. On average, charterboats, which charge a fee on a boat-wide basis, generate approximately $82,000 (2006 dollars) in annual revenues and approximately $39,000 in annual operating profits. The average headboat, which charges a fee on the individual passenger (head) basis, generates approximately $431,000 (2006 dollars) in annual revenues and approximately $361,000 in annual operating profits.

Some fleet activity exists in the commercial red snapper fishery and in the commercial finfish fisheries in general, but the extent of such activity is unknown. The maximum number of reef fish permits reported owned by the same entity is six permits. Additional affiliation may exist between permits (and the revenues associated with those permits) and an entity, but cannot be identified using existing data. Given the average economic performance provided above, NMFS determines that all entities operating in the Gulf of Mexico commercial reef fish fishery are, for purposes of this analysis, small business entities.

The proposed rule would reduce current electronic reporting requirements when a vessel is ''in port'' and simplify conditions for power-down exemptions. The requirement for these vessels to have a type-approved VMS unit would remain, and the operation of these units does not require specialized skill. The email notification requirements and power-down exemption application procedures would remain unchanged and do not require special skills. The expansion of landing notification methods would encompass other electronic means. The commercial red snapper IFQ program was designed around and requires an electronic environment in order to set up accounts and manage transactions. Therefore, the new methods are unlikely to require new or special skills by fishery participants. Further, no single method would be required, such that a participant could select the method that best fits his skills and circumstances.

No duplicative, overlapping, or conflicting Federal rules have been identified.

All Gulf of Mexico commercial reef fish permitted vessels would be affected by the proposed rule. Because all said

entities have been determined for the purpose of this analysis to be small business entities, it is determined that this proposed rule would be expected to affect a substantial number of small entities. Because all entities that would be affected by this proposed rule have been determined to be small business entities, the issue of disproportionality of impacts between large and small entities does not arise.

No direct or indirect adverse economic effects on any affected entities are expected to occur as a result of this proposed rule. Therefore, no reductions in profitability for any entities would be expected. The proposed rule would reduce the frequency with which the required VMS units would be required to send an electronic location signal when vessels are ''in port'' and not actively fishing. This would be expected to reduce the power requirements for vessel operation, reducing the likelihood of battery drainage and compromised vessel operation and safety. The proposed rule would also expand qualification conditions for vessels seeking power-down exemptions to the VMS operating requirements to apply to vessels being ''in port'' and not require removal of the vessel from the water (dry-docking). This would be expected to further reduce the power requirements and compliance costs to qualify for exemption, because vessels could remain on the water. The grandfather clause allowing the continued use of a VMS unit that is removed from the list of type-approved units would be expected to reduce the need to replace units before the end of their service life, allowing vessels to receive the full economic benefits of their units. Finally, expanding the methods that vessels in the commercial red snapper fishery can use to satisfy the advance landing notification requirements would be expected to reduce the likelihood that unloading and sale of their harvests would be delayed, thereby avoiding the costs of such delay and increasing the profitability of their operation.

The alternative considered to the proposed rule is the status quo, or no action. The status quo would maintain current VMS program requirements, maintain the current unanticipated technological problem associated with potential power drainage, require vessels to replace VMS units that were previously type-approved but are removed from the approved list, and limit vessels in the commercial red snapper fishery to a single method of satisfying the advance landing notification requirement. Thus, the status quo would not achieve the NMFS objectives.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA)that have been approved by OMB under Control Number 0648–0544 for VMS reporting requirements and Control Number 0648–0551 for Gulf red snapper IFQ reporting requirements. Public reporting for the VMS-related requirements is estimated to average 24 seconds for transmission of position reports and 10 minutes for submission of requests for power-down exemptions. Public reporting for the IFQ-related advance notification of landing is estimated to average 3 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing burden hours, to NMFS (see **ADDRESSES**) and by email to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 31, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.9, paragraph (a)(2) is revised to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) * * *

(2) *Gulf reef fish*. The VMS requirements of this paragraph (a)(2) apply throughout the Gulf of Mexico and adjacent states.

(i) *General VMS requirement*. An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit even when under charter, must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times, regardless of whether the vessel is underway, unless exempted by NMFS under the power down exemptions specified in paragraph (a)(2)(iv) of this section. These regulatory requirements are also set forth in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico which is available from NMFS, Office for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS OLE maintains a current list of approved VMS units and communication providers which is available from the VMS Support Center, NMFS OLE, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910 or by calling toll free 888–219–9228. If a VMS unit approved for the Gulf reef fish fishery is removed from the approved list by NMFS OLE, a vessel owner who purchased and installed such a VMS unit prior to its removal from the approved list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a VMS unit's service life, it must be replaced with a currently approved unit for the fishery.

(ii) *Hourly reporting requirement*. An owner or operator of a vessel subject to the requirements of paragraph (a)(2) of this section must ensure that the required VMS unit transmits a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day unless exempted under paragraphs (a)(2)(iii) or (iv)of this section.

(iii) *In-port exemption*. While in port, an owner or operator of a vessel with a type-approved VMS unit configured with the 4-hour reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section. Once the vessel is no longer in port, the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section applies. For the purposes of paragraph (a)(2) of this section, ''in port'' means

secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(iv) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in paragraph (a)(2)(i) of this section can be exempted from that requirement and may power down the required VMS unit if--

(A) The vessel will be continuously out of the water or in port, as defined in paragraph (a)(2)(iii) of this section, for more than 72 consecutive hours;

(B) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (a)(2)(iv)(C) and (D) of this section.

(C) Prior to each power down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's e-mail, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(D) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives an e-mail confirmation of the power-down authorization from NMFS OLE.

(v) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. This information may be reported to NMFS using the toll-free number, 888–219–9228, or via an attached VMS terminal.

* * * * *

3. In § 622.16, paragraph (c)(3)(i) is revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(3) * * *

(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1–866–425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement via appropriate rulemaking. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

* * * * *

[FR Doc. E7–15231 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070706268–7275–01]

RIN 0648–AV21

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 7

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement Framework Adjustment 7 (Framework 7) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), developed by the Mid-Atlantic Fishery Management Council (Council). Framework 7 would broaden the FMP stock status determination criteria for summer flounder, scup, and black sea bass, while maintaining objective and measurable criteria for identifying when the FMP stocks are overfished or approaching an overfished condition. The framework action would also establish acceptable categories of peer review for providing new or revised stock status determination criteria for the Council to use in its annual management measures for each species. This action is necessary to ensure that changes or modification to the stock status determination criteria constituting the best available peer reviewed scientific information are accessible for the management of these three species in as timely a manner as is possible. The intended effect of this action is to improve the timeliness and efficiency of incorporating the best available scientific information, consistent with National Standards 1 and 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), into the management processes for the three species covered by the FMP.

DATES: Written comments must be received no later than 5 p.m. local time on September 5, 2007.

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

- E-mail: *FSB.framework7@noaa.gov*. Include in the subject line the following identifier: ''Comments on FSB Framework Adjustment 7.''
- 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 FSB Framework Adjustment 7.''
- Fax: (978) 281–9135

Copies of Framework Adjustment 7 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. The framework document is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Background

The current stock status determination criteria for these three species are found in Amendment 12 to the FMP. To modify or replace these stock status determination criteria, the Council must enact a framework adjustment or an amendment to the FMP.

The regulations at §§ 648.100, 648.120, and 648.140 outline the respective annual management processes for summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), and black sea bass (*Centropristas striata*). Stock assessment information is updated annually as part of the management process that is used to derive annual catch limits (e.g., Total Allowable Landings (TAL)). In addition, assessments for these three stocks undergo periodic formal scientific peer review as part of the Northeast Fisheries Science Center's (NEFSC) Stock Assessment Workshop (SAW) and Stock Assessment Review Committee (SARC) process. These and other periodic formal peer reviews conducted for these stocks may result in recommendations to revise or use different stock status determination criteria as different or new approaches are applied to previously existing data, or to new, previously unexamined data. These recommendations can be incorporated into the management scheme through a framework adjustment or amendment to the FMP. Given the time necessary to develop FMP framework adjustments and amendments, it is likely that, should such new stock status determination criteria result from a formal SAW/SARC peer review, the new criteria would not be available for the Council's use for one or more annual management review cycles (i.e., a 1- to 2–yr delay).

In addition, groups outside the NEFSC, including but not limited to the Council, the Atlantic States Marine Fisheries Commission (Commission), academic institutions, and other interested parties have periodically contracted with outside parties or conducted in-house formal peer reviews of the stock status determination criteria for these species. In such instances, it has not been clear how the results of these independently conducted peer reviews should be viewed by the Council in regards to National Standard 2 of the Magnuson-Stevens Act, which specifies that management decisions shall be based upon the best scientific information available. Furthermore, there have been instances where the results of scientific peer review conducted by any of the aforementioned groups were not clear. Peer review panelists may have disagreed on results and presented a majority and minority opinion; results may have lacked specific recommendations or had insufficient clarity to utilize the information provided in the annual management process; or, in some instances, the results of a peer review may have been to reject, for management purposes, changes proposed to the existing stock status determination criteria. In such situations, the Council has been left to decide what information then constituted the best available information.

In response, the Council has developed and submitted for review by the Secretary of Commerce, Framework 7 to the FMP. This framework, if adopted, would enact the following actions, designed to improve the time frame in which peer reviewed information can be utilized in the management process, as well as providing guidance on peer review standards and how to move forward in the management process when peer review results are not clear. The principal actions proposed by Framework 7 are to:

1. Redefine, in more general terms, while maintaining objective and measurable criteria, the stock status determination criteria for each species;

2. Define what constitutes an acceptable level of peer review; and

3. Provide guidance on how the Council may engage its Scientific and Statistical Committee (SSC) to conduct additional review of information when approved peer review processes fail to provide a consensus recommendation or clear guidance for management decisions.

These changes, proposed in Framework 7, are discussed in detail in the following sections.

Redefined Stock Status Determination Criteria

Framework 7 would redefine the stock status determination criteria for each of the three species in the FMP. The maximum fishing mortality rate (F) threshold for each of the species in the FMP is defined as $F_{\text{Maximum Sustainable Yield (MSY)}}$ (or a reasonable proxy thereof) as a function of productive capacity, and based upon the best scientific information, consistent with National Standards 1 and 2. Specifically, F_{MSY} is the fishing mortality rate or level associated with the relevant MSY level of each stock. The maximum fishing mortality rate threshold (F_{MSY}), or a reasonable proxy thereof, may be defined as a function of (but not limited to): total stock biomass, spawning stock biomass, or total egg production; and may include males, females, both, or combinations and ratios thereof, that provide the best measure of productive capacity for each of the species managed under the FMP. Exceeding the established fishing mortality rate threshold constitutes overfishing.

The minimum stock size threshold for each of the species in the FMP is defined as 1/2 Biomass $(B)_{MSY}$ (or a reasonable proxy thereof) as a function of productive capacity, and based upon the best scientific information, consistent with National Standards 1 and 2. The minimum stock size threshold (1/2 B_{MSY}) or a reasonable proxy may be defined as (but not limited to): total stock biomass, spawning stock biomass, or total egg production; and may include males, females, both, or combinations and ratios thereof, that provide the best measure of productive capacity for each of the species managed under the FMP. The minimum stock size threshold is the level of productive capacity associated with the relevant 1/2 B_{MSY} level. Should the measure of productive capacity for the stock or stock complex fall below this minimum threshold, the stock or stock complex is considered overfished. The target for rebuilding is specified as B_{MSY} (or reasonable proxy thereof) at the level of productive capacity associated with the relevant MSY level, under the same definition of productive capacity as specified for the minimum stock size threshold.

Under Framework 7, the stock status determination criteria are proposed to be made more general by removing specific references to how minimum stock size threshold and biomass are calculated. By making the stock status determination criteria more general the results of peer reviewed best available science could be more readily adopted through the annual specification setting process. For example, in 2006, the NMFS Office of Science and Technology convened a peer review panel to provide scientific advice on the summer flounder stock. The results of this review, contained in the Summer Flounder Assessment and Biological Reference Point Update for 2006, recommended that spawning stock biomass be utilized as a means for assessing the status of the summer flounder stock. This recommendation was a change from the existing stock status definitions for summer flounder contained in Amendment 12, which use total stock biomass. If Framework 7 is approved and implemented, the Council would be able to utilize the recommendations of the 2006 summer flounder peer review in the management (i.e., specification setting) process as the best available scientific information. The existing Amendment 12 stock status determination criteria for scup and black sea bass would remain unchanged until such time that recommendations

for changes or modifications are recommended by a formal peer review. For all three species, the Council would still provide specific definitions for the stock status determination criteria in documents supporting annual management measures, future framework adjustments, and amendments including, where necessary, information on changes to the definitions.

Peer Review Standards

While the NEFSC SAW/SARC process remains the primary process utilized in the Northeast Region to develop scientific stock assessment advice, including stock status determination criteria for federally managed species, Framework 7 proposes several additional scientific review bodies and processes that would constitute an acceptable peer review level to develop scientific stock assessment advice for the three species stock status determination criteria.

Guidance on Unclear Scientific Advice Resulting From Peer Review

In many formal peer reviews, the terms of reference provided in advance of the review instruct the reviewers to formulate specific responses on the adequacy of information and to provide detailed advice on how that information may be used for fishery management purposes. As such, most stock assessment peer reviews result in clear recommendations on stock status determination criteria for use in the management of these three stocks. However, there are occasional peer review results where panelists disagree and no consensus recommendation is made regarding the information. The terms of reference may not be followed and no recommendations for the suitability of the information for management purposes may be made. In such instances, it is unclear what then constitutes the best available information for management use.

Framework 7 proposes that, when clear consensus recommendations are made by any of the acceptable peer review groups, the information is clearly the best available and may be utilized by the Council in the management process for these three species. Similarly, when the consensus results of a peer review are to reject proposed changes to the stock assessment methods or the stock status determination criteria, Framework 7 proposes that the previous information on record would still continue to constitute the best available information and should be used in the management process.

When peer review recommendations lack consensus, are unclear, or do not make recommendations on how the information is to be used in the management process, Framework 7 proposes that the Council engage its SSC or a subset of the SSC with appropriate stock assessment expertise, to review the information provided by the peer review group. The SSC would then seek to clarify the information and provide advice to the Council to either modify, change, or retain the existing stock status determination definitions as the best available information for use in the development of management measures.

The process of how the Council utilizes its SSC may change in the future. The 2006 reauthorization of the Magnuson-Stevens Act requires each Council's SSC to provide ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, maximum sustained yield, achieving rebuilding targets, etc. Framework 7 does not contemplate how the Council may modify its management process to satisfy this requirement of the reauthorized Magnuson-Stevens Act, as guidance for so doing is still being developed by NMFS and the Council. Framework 7 does not bring this FMP into compliance with the new Magnuson-Stevens Act requirements, nor does it conflict with those requirements as it addresses a separate issue. Once appropriate guidance has been developed for complying with the new Magnuson-Stevens Act requirements, the Council's standard operating procedures and/or an amendment to the FMP may be enacted to clarify how the SSC will provide scientific advice for management decisions. Framework 7 will continue to pertain to the SSC's function in clarifying peer reviews on stock status determination criteria only. Under Framework 7, the primary peer review mechanism for northeast region stock assessments will remain the established NEFSC SAW/SARC process. The Council's SSC would only be utilized in the specific instances as previously outlined within the preamble of this proposed rule (see Guidance on Unclear Scientific Advice Resulting from Peer Review section). Both such peer review processes are consistent with the Office of Management and Budget's Information Quality Bulletin for Peer Review.

The measures outlined above are the only changes proposed by the Council in Framework 7. The no action alternative examined by the Council is to maintain the status quo regarding the stock status determination criteria, which would require a framework adjustment or amendment to the FMP to effect changes to the definitions in Amendment 12, would leave the standards for peer review undefined, and would not specify how the SSC may be used to clarify ambiguous results of scientific peer reviews for these three stocks.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Regional Administrator has determined that this proposed rule is an administrative framework adjustment to the FMP and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule deals only with how the best available, peer reviewed scientific information can be incorporated more quickly and efficiently into the Council's process for crafting management measures for the three species under the FMP. This is achieved by broadening the descriptions of the stock status determination criteria in the FMP so that updated and peer reviewed information can be more readily adopted for use in the management process. The proposed change is to how the stock status determination criteria are defined and does not propose any change to the existing determination criteria. Additionally, the framework identifies acceptable levels of peer review that must be satisfied before new or revised information is accepted as the best available science.

These are administrative changes to the FMP that serve to improve the quality of data used in management decisions, consistent with National Standards 1 and 2 of the Magnuson-Stevens Act. As such, the rule will not have significant direct or indirect economic impacts on small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: July 31, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E7–15211 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 150

Monday, August 6, 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

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California, August 20, 2007. The meeting will include routine business and a presentation on the Community Wildfire Protection Plan by the Fire Safe Council of Siskiyou County.

DATES: The meeting will be held August 20, 2007, from 4 p.m. until 5:30 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka California.

FOR FURTHER INFORMATION CONTACT: Bob Talley, Forest RAC coordinator, Klamath National Forest, (530) 841–4423 or electronically at *rtalley@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: July 30, 2007.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 07–3825 Filed 8–3–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–848)

Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Jeff Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5193 and (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2006, the Department of Commerce (Department) published a notice of initiation of four new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC), covering the period September 1, 2005, through August 31, 2006. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 63284 (October 30, 2006). One of the four new shipper reviews covers Shanghai Now Again International Trading Co., Ltd. (Shanghai Now Again), an exporter of subject merchandise. On March 26, 2007, Shanghai Now Again withdrew its request for a new shipper review. Shanghai Now Again explained that the U.S. Food and Drug Administration (FDA) had recently rejected its only entry of subject merchandise made during the period of review. Shanghai Now Again stated that, since the FDA's rejection resulted in no sale being made during the period of review, it was withdrawing its request for a new shipper review. No other party requested a new shipper review of Shanghai Now Again.

Rescission of Review

19 CFR 351.214(f)(1) provides that the Department may rescind a new shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Although Shanghai Now Again withdrew its request after the 60-day deadline, we find it reasonable to accept the withdrawal because we have not yet committed significant resources to the new shipper review of Shanghai Now Again. Specifically, we have not calculated a preliminary margin for Shanghai Now Again nor have we verified Shanghai Now Again's data. Further, no party has opposed Shanghai Now Again's withdrawal from this review. For these reasons, we are rescinding the 2005–2006 new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC with respect to Shanghai Now Again in accordance with 19 CFR 351.214(f)(1).

Assessment

The Department will instruct Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Shanghai Now Again, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue liquidation instructions to CBP 15 days after the publication of this notice.

Dated: July 30, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–15214 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Charles Riggle, AD/CVD Operations, Office 8, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–0650, respectively.

Initiation of Investigation

The Petition

On June 18, 2007, the Department of Commerce (''Department'') received a petition on imports of certain new pneumatic off-the-road tires (''certain OTR tires'') from the People's Republic of China (''PRC'') filed in proper form by Titan Tire Corporation, a subsidiary of Titan International, Inc. (''Titan''), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (''USW''), (collectively, ''Petitioners'') on behalf of the domestic industry producing certain OTR tires. The period of investigation (''POI'') is October 1, 2006 through March 31, 2007.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioners alleged that imports of certain OTR tires from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States. The Department issued supplemental questions to Petitioners on June 21 and 22, 2007. Petitioners filed an amendment to the petition on June 22, 2007 and responded to both questionnaires on June 27, 2007.

Scope of Investigation

The products covered by this investigation are certain OTR tires. For a full description of the scope of the investigation, please see the **Scope of Investigation** in Attachment I of this notice.

Comments on the Scope of the Investigation

During our review of the petition, we discussed the scope with Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. During this review, we noted that, while the Department typically prefers to rely upon physical characteristics to determine the scope of product coverage, the scope description proposed by Petitioners relied upon, in part, end-use applications as a method for determining scope coverage. As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit comments on the scope of the investigation, including whether the definition of covered merchandise should be based on end-use application, and whether additional Harmonized Tariff Schedule of the United States (''HTSUS'') numbers should be included in the scope description. The deadline for submitting such comments is fourteen calendar days after publication of this initiation notice. Rebuttal comments are due seven calendar days after the deadline for submitting comments on the scope of the investigation. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230—Attention: Laurel LaCivita, Room 4416. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain OTR tires constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* the *Antidumping Duty Investigation Initiation Checklist: Certain Off-the-Road Tires from the People's Republic of China (PRC),* Industry Support at Attachment II (AD Initiation Checklist), on file in the Central Records Unit (CRU), Room B–099 of the main Department of Commerce building. On July 6, 2007, the Department extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 732(c)(4)(D) of the Act, because it was ''not clear from the petitions whether the industry support criteria have been met * * *'' *See Extension of the Deadline for Determining the Adequacy of the Antidumping Duty and Countervailing Duty Petitions: New Pneumatic Off-the-Road Tires from the People's Republic of China,* 72 FR 38816 (July 16, 2007). On July 16, 2007, we issued polling questionnaires to all

known domestic producers of certain OTR tires identified in the petitions and by the Department's research. The questionnaires are on file in the CRU. For a detailed discussion of the responses received, *see* AD Initiation Checklist at Attachment II.

Based on an analysis of the data collected, we determine that the Petitioners have demonstrated industry support representing over 50 percent of the total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, given that the Petitioners represent more than 50 percent of the total production of the domestic like product, the requirements of section 732(c)(4)(A)(ii) of the Act are also met. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* AD Initiation Checklist at Attachment II.

The Department finds that the Petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. *See* AD Initiation Checklist at Attachment II.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation on imports of certain OTR tires from the PRC. The source of data for the deductions and adjustments relating to the U.S. price as well as normal value (''NV'') for the PRC are also discussed in the AD Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

Petitioners relied on nineteen U.S. prices for certain OTR tires manufactured in the PRC and offered by U.S. distributors for sale in the United States. The prices provided were invoice prices for specific models of certain OTR tires falling within the scope of this petition for delivery to the U.S. customer during the POI. Petitioners deducted from the invoice prices the costs associated with exporting and delivering the product, which include ocean freight and insurance, and foreign brokerage and handling, distributor costs and profit, U.S. inland freight and, where applicable, U.S. duties. Petitioners did not deduct foreign-inland-freight charges or domestic brokerage and handling (in China) from the export price (''EP'') because such costs were included in the valuation of international movement expenses. *See* Volume I of the petition at Exhibit 5.

Normal Value

Petitioners stated that the PRC is a non-market economy (''NME'') and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is a NME. *See, e.g., Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for the purpose of initiating this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners selected India as the surrogate country. Petitioners argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate country because it is a market-economy country that is at a comparable level of economic development to that of the PRC and is a significant producer and exporter of certain OTR tires. *See* Volume I of the petition at Exhibits 6 and 7. Based on the information provided by Petitioners, we believe that their use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate-country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 calendar days after the date of publication of the preliminary determination.

Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on consumption rates for inputs used to produce certain OTR tires experienced by U.S. producers. In accordance with section 773(c)(4) of the Act, Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioners used official Indian government import statistics, excluding shipments from countries previously determined by the Department to be NME countries and excluding shipments into India from Indonesia, the Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they may maintain broadly-available, non-industry specific export subsidies. *See, e.g., Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 and Issues and Decision Memorandum at Comment 23 (May 15, 2007). Petitioners valued two separate inputs using Indonesian import statistics gathered from *Statistics Indonesia*, the official Indonesian import statistics, because it claimed that the Indian import values were aberrationally high. Citing *Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7515, 7516 (February 13, 2006) and *The Timken Company* v. *United States*, 59 F. Supp. 2d 1371, 1375–76 (CIT 1999) (sustaining the Department's practice of resorting to a second surrogate country when the values in the primary surrogate country are deemed to be inappropriate), Petitioners explained that the Department looks to secondary countries when a particular value in the primary country is questionable. *See* Volume I of the petition at Exhibit 8B.

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioners developed an inflation factor based on import prices into India as published in *Chemical Weekly*. See Volume II of the petition at Exhibit 8F. Where such information was unavailable, Petitioners used information from the wholesale price indices (''WPI'') in India as published in the *International Financial Statistics* (''IFS'') of the International Monetary Fund (''IMF'') for input prices during

the period preceding the POI. *Id.* In addition, Petitioners made currency conversions, where necessary, based on the average exchange rate for the POI, based on monthly exchange rates published by the U.S. Federal Reserve Board. *See* Volume I of the petition at Exhibit 5 and 8K.

We revised Petitioners' calculation of the surrogate values for material inputs to include more contemporaneous data than was provided in the petition, and to base our calculations on a single source of information. As a result, we valued raw material inputs using the weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas, available at *http://www.gtis.com/wta.htm* (''WTA'') for the period July through December 2006, which includes the first three months of the POI, and the three months immediately preceding the POI. We made no adjustments for inflation since the surrogate values for this period include a significant portion of the POI. In addition, we corrected the values for certain factors to correct clerical errors made by Petitioners in the transcription of the U.S. dollar values recorded for the POI by *Statistics Indonesia* into the normal value calculations. *See* Exhibits 8B and 8E of the petition and AD Initiation Checklist at Attachments V and V–R. We also calculated the surrogate values for two factors for which there were no imports into India during the period July to December 2006 using the most contemporaneous values available in the Indian WTA data. We made appropriate adjustments for inflation. *See* AD Initiation Checklist at Attachments V and V–R.

The Department calculates and publishes the surrogate values for labor to be used in NME cases on its Web site. Therefore, to value labor, Petitioners used a labor rate of $0.83 per hour, published on the Department's Web site, *http://ia.ita.doc.gov/wages*, in accordance with the Department's regulations. *See* 19 CFR 351.408(c)(3) and AD Initiation Checklist.

Petitioners valued electricity in the production of certain OTR tires based on the Indian electricity rate as reported in the *Key World Energy Statistics 2003*, published by the International Energy Agency for the year 2000. *See* Volume II of the petition at Exhibit 8J. Petitioners valued water by calculating the weighted-average rate of water for industrial use from various regions as reported by the Maharashtra Industrial Development Corporation at *http://midcindia.org*. dated June 1, 2003. *Id.* Petitioners valued natural gas using the rate published by the Gas Authority of India Ltd. Web site, a supplier of natural gas in India, covering the period January through June 2002. *Id.* In each case, Petitioners inflated these figures to the POI using information published in *IFS*. *See* Volume II of the petition at Exhibit 8I. We revised these calculations to take into account more current information concerning the WPI in India based on the *IFS* statistics. *See* AD Initiation Checklist at Attachments 5 and 5–H through 5–M.

For the NV calculations, Petitioners derived the figures for factory overhead, selling, general and administrative expenses, and profit from the financial ratios of seven Indian producers of merchandise that is either identical or similar to the domestic like product: Apollo Tyres Ltd. (''Apollo''), Balkrishna Industries Limited (''Balkrishna''), CEAT Limited (''CEAT''), Goodyear India (''Goodyear''), J.K. Industries Ltd. (''J.K. Industries''), MRF Limited (''MRF'') and TVS Srichakra Limited (''TVS''). The financial statements provided covered the periods of April 2004 to March 2005 (Apollo), October 2004 to September 2005 (J.K. Industries, MRF Ltd.), January to December 2005 (''Goodyear'') and April 2005 to March 2006 (CEAT, Balkrishna, Apollo and TVS). We accepted the information presented in the financial statements provided in Volume I of the petition at Exhibit 8N for Balkrishna, CEAT and TVS for the purposes of initiation, because these data appear to be the most contemporaneous and best information on such expenses currently available to Titan. We did not use the information from the financial statements for Apollo, Goodyear, J.K. Industries and MRF, because of the availability of more contemporaneous information from Balkrishna, CEAT and TVS.

We made one adjustment to Petitioners' calculations of the financial ratios: We excluded commissions from the calculation of selling, general and administrative expenses (''SG&A'') because commissions are ordinarily accounted for in the calculation of U.S. price. Therefore, in order to avoid double counting direct selling expenses, we omitted them from the calculation of the financial ratio for SG&A. *See* AD Initiation Checklist at Attachment V and V–Q.

Based on the data provided by Petitioners, there is reason to believe that imports of certain OTR tires from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of EP to the NV, calculated in accordance with section 773(c) of the Act, the estimated calculated dumping margins for certain OTR tires from the PRC range from 30.49 percent to 210.48 percent.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured by reason of the imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by the reduced market share, lost sales, reduced production and capacity utilization, reduced shipments, underselling and price depressing and suppressing effects, lost revenue and sales, reduced employment, decline in financial performance, decrease in capital expenditure, and increase in import penetration. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* AD Initiation Checklist at Attachment III.

Separate-Rates Application

On April 5, 2005, the Department modified the process by which exporters and producers may obtain separate-rate status in NME investigations. *See* Policy Bulletin 05.1: ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries,'' available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. The process now requires the submission of a separate-rate status application. Based on our experience in processing separate-rate applications in antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See Certain Steel Nails from the People's Republic of China and the United Arab Emirates: Initiation of Antidumping Duty Investigations*, 72 FR 38816 (July 16, 2007); *Initiation of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 72 FR 36663 (July 5, 2007); *and, Initiation of Antidumping Duty Investigations: Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea*, 71 FR 68537 (November 27, 2006). The specific requirements for submitting the

separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/* on the date of publication of this initiation notice in the **Federal Register**. Submission of the separate-rate application is due no later than August 20, 2007.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the petition. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline. Therefore, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies who manufacture and export subject merchandise to the United States, as well as to manufacturers who produce the subject merchandise for companies who were engaged in exporting subject merchandise to the United States during the POI. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rates application by the respective deadlines in order to receive consideration for separate-rate status. Appendix II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than August 20, 2007. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html*. The Department will send the quantity and value questionnaire to those exporters identified in Volume I of the petition at Exhibit 4, and to the PRC government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate-Rates and Combination Rates Bulletin states the following:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Separate-Rates and Combination Rates Bulletin, at 6.

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain OTR tires from the PRC, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain OTR tires from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 calendar days after the date of publication of this initiation notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of certain OTR tires from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 733(a)(2)(A)(i) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 30, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I—Scope of The Investigation

Attachment I—Scope of the Investigation for the Petitions Covering Certain New Pneumatic Off-the-Road Tires From the People's Republic of China

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[1] combine harvesters,[2] agricultural high clearance sprayers,[3] industrial tractors,[4] log-skidders,[5] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[6] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[7] front end loaders,[8] dozers,[9]

[1] Agricultural tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow farming equipment.

[2] Combine harvesters are used to harvest crops such as corn or wheat.

[3] Agricultural sprayers are used to irrigate agricultural fields.

[4] Industrial tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow industrial equipment.

[5] A log skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[6] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[7] Haul trucks, which may be either rigid frame or articulated (i.e., able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[8] Front loaders have lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

[9] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

lift trucks, straddle carriers,[10] graders,[11] mobile cranes, compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[12] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. The foregoing descriptions are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix Letter Designations

P—Identifies a tire intended primarily for service on passenger cars;

LT—Identifies a tire intended primarily for service on light trucks; and,

ST—Identifies a special tire for trailers in highway service.

Suffix Letter Designations

TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156'' or plus 0.250'';

MH—Identifies tires for Mobile Homes;

HC—Identifies a heavy duty tire designated for use on ''HC'' 15'' tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and

MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind used on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications; and, tires of a kind used for mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Appendix II—Quantity and Value Questionnaire

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (*See* scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2006, through March 31, 2007.

Market	Total quantity	Terms of sale	Total value
United States			
1. Export Price Sales			
2.			
a. Exporter name			
b. Address			
c. Contact			
d. Phone No.			
e. Fax No.			
3. Constructed Export Price Sales			
4. Further Manufactured Sales			
Total Sales			

[10] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[11] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[12] A counterbalanced lift truck is a rigid frame, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, etc.

Total Quantity

Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales

Please report all sales on the same terms, such as ''free on board'' at port of export.

Total Value

All sales values should be reported in U.S. dollars. Please provide any exchange rates used and their respective dates and sources.

Export Price Sales

Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated customer occurs before importation into the United States.

Please include any sales exported by your company directly to the United States.

Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

Please do not include in your figures any sales of merchandise manufactured in Hong Kong.

Constructed Export Price Sales

Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated customer occurs after importation. However, if the first sale to the unaffiliated customer is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.

Please include any sales exported by your company directly to the United States.

Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.

If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.

Please do not include in your figures any sales of merchandise manufactured in Hong Kong.

Further Manufactured Sales

Further manufacture or assembly (including re-packing) sales (further manufactured sales'') refers to merchandise that undergoes further manufacture or assembly in the United States before being sold to the first unaffiliated customer.

Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E7–15200 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Notice of Initiation of the Administrative Review of the Antidumping Duty Order on Silicon Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) received a timely request to conduct an administrative review of the antidumping duty order on silicon metal from the People's Republic of China (PRC). The anniversary month of this order is June. In accordance with the Department's regulations, we are initiating this administrative review.

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

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Kristina Horgan, 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) 482–1386 or (202) 482–8173, respectively.

Background

On June 1, 2007, the Department published in the **Federal Register** its Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 72 FR 30542 (Notice of Opportunity). In the Notice of Opportunity, the Department stated ''for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).'' *See* Notice of Opportunity, 72 FR at 30543.

The Department received a timely request from Globe Metallurgical Inc. (petitioner) in accordance with 19 CFR 351.213(b)(1) for an administrative review of the antidumping duty order on silicon metal from the PRC. Petitioner requested an administrative review for 18 companies. Therefore, the Department is hereby initiating an administrative review of the antidumping duty order on silicon metal from the PRC for the 18 companies for which the Department has received a request for review.

Initiation

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), we are initiating an administrative review of the antidumping duty order on silicon metal from the PRC (i.e., silicon metal originating in the PRC). We intend to issue the final results of this review on approximately June 30, 2008.

Antidumping duty proceeding	Period to be reviewed
PRC: [1] [2]	June 1, 2007 through May 31, 2007.
Alloychem Impex Corp.	
Bomet (Canada) Inc.	
Carbonsi Metallurgical Inc.	
Chemical and Alloy Inc.	
Coldstone Metals Inc.	

Antidumping duty proceeding	Period to be reviewed
Crown All Corporation.	
Ferro-Alliages & Mineraux Inc.	
Gather Hope International Co. Ltd.	
GE Silicones (Canada).	
Global Minerals (Canada).	
Global Minerals Corp.	
Hunan Provincial Import and Export Group Corp.	
IMMECC Resources Inc.	
Jiangxi Gangyuan Silicon Industry Co., Ltd.	
Lorbec Metals Ltd.	
MPM Silicones, LLC.	
Seaview Trading.	
Transtrading House Ltd.	

[1] If one of the below-named companies does not qualify for a separate rate, all other exporters of silicon metal from PRC that 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] Some companies may appear to be listed twice, but there are two addresses provided in the administrative review requests for similar named companies and, therefore, we are listing them separately.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://www.trade.gov/ia/*.

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: July 31, 2007.

James C. Doyle,

Office Director, AD/CVD Operations, Office 9.

[FR Doc. E7–15203 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–412–822

Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 30, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar (SSB) from the United Kingdom. *See Stainless Steel Bar from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 15106 (March 30, 2007) (*Preliminary Results*). This review covers one producer/exporter of the subject merchandise to the United States. The period of review (POR) is March 1, 2005, through February 28, 2006.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.'' In addition, the Department received information sufficient to warrant a successor–in-interest analysis in this administrative review. Based on this information, we determine that Enpar is the successor–in-interest to Firth Rixson Special Steels Ltd. for purposes of determining antidumping duty liability.

EFFECTIVE DATE: August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–4929 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter, Enpar Special Alloys Limited (formerly Firth Rixson Special Steels) (Enpar). On March 30, 2007, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on SSB from the United Kingdom. *See Preliminary Results*.

We invited parties to comment on our preliminary results of review. On April 27, 2007, we received case briefs from Enpar and Sandvik Bioline, a producer of SSB from the United Kingdom. We received a rebuttal brief from the petitioners (*i.e.*, Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., and Electralloy Corporation, a division of G.O. Carlson, Inc.) on May 2, 2007. On April 30, 2007, Enpar requested that the Department conduct a public hearing, but withdrew its hearing request on June 4, 2007. A meeting was held with Enpar's counsel on June 20, 2007, to discuss issues raised in Enpar's case brief.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

For purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled

products), and angles, shapes and sections.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Successor–In-Interest Analysis

We preliminarily determined that Enpar is the successor–in-interest to Firth Rixson Special Steels Ltd. Enpar explained in its questionnaire response that Firth Rixson Special Steels Ltd. was a subsidiary of the U.K.-based Firth Rixson Ltd. Firth Rixson Special Steels Ltd. and two other subsidiaries of the U.K.-based Firth Rixson Ltd., T.W. Pearson and Enpar, were combined in 2003 to form Enpar. Enpar has the same company registration number as that of Firth Rixson Special Steels Ltd., the registered office is the same for both companies, and three of Enpar's four directors were also directors of Firth Rixson Special Steels Ltd. We confirmed at verification that Enpar's business structure is the same as that of Firth Rixson Special Steels Ltd. Although certain upgrades have been made to the production facility, the supplier and customer bases and relationships remain the same. The only real change is the name of the subsidiary. Accordingly, we preliminarily found that Enpar should receive the same antidumping duty treatment with respect to SSB as the former Firth Rixson Special Steels Ltd.

Since the *Preliminary Results*, no party to this proceeding has commented on this issue and we have found no additional information that would compel us to reverse our preliminary finding. Thus, for purposes of these final results, we continue to find that Enpar is the successor–in-interest to Firth Rixson Special Steels Ltd. for purposes of determining antidumping duty liability.

Period of Review

The POR is March 1, 2005, through February 28, 2006.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether Enpar made home market sales of the foreign like product during the POR at prices below its costs of production (COP) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the Issues and Decision Memorandum accompanying this notice (the Decision Memo).

As a result of our cost test, we found 20 percent or more of Enpar's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B) - (D) of the Act. Therefore, for purposes of these final results, we found that Enpar made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these sales and used the remaining sales as the basis for determining normal value pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/* . The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted–average margin percentage exists for the period March 1, 2005, through February 28, 2006:

Manufacturer/Exporter	Percent Margin
Enpar Special Alloys Ltd. (formerly Firth Rixson Special Steels)	34.35

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department will issue assessment instructions directly to CBP 15 days after the date of publication of these final results of review. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, is not less than 0.50 percent). We calculated importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of SSB from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed company will be the rate shown above; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash

deposit rate for all other manufacturers or exporters will be 83.85 percent, the all–others rate established in the *Implementation of the Findings of the WTO Panel in US--Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix – Issues in Decision Memorandum

Issues

1. Average vs. Specific Material Costs
2. Calculation of Conversion Costs
3. Calculation of the All–Others Rate

[FR Doc. E7–15204 Filed 8–3–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–201–822

Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from respondent ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) and petitioners,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico. This administrative review covers imports of subject merchandise from Mexinox S.A. during the period July 1, 2005 to June 30, 2006.

We preliminarily determine that sales of S4 in coils from Mexico have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct United States Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5604 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 40560 (July 27, 1999). On July 3, 2006, the Department published a notice entitled *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 37890 (July 3, 2006), covering, *inter alia*, S4 in coils from Mexico for the period July 1, 2005 through June 30, 2006.

In accordance with 19 CFR 351.213(b)(1), Mexinox and petitioners requested that the Department conduct an administrative review. On August 30, 2006, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2005 through June 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006).

On September 13, 2006, the Department issued an antidumping duty questionnaire to Mexinox. Mexinox submitted its response to section A of the questionnaire on October 13, 2006, and its response to sections B through E of the questionnaire on November 20, 2006. On March 9, 2007, the Department issued its first supplemental questionnaire for sections A through C. Mexinox responded to this first supplemental questionnaire on April 10, 2007. The Department also issued a supplemental questionnaire for section D on April 25, 2007, to which Mexinox responded on May 21, 2007. On May 7, 2007, the Department issued a second supplemental questionnaire for sections A through C, as well as for section E, which pertains to an affiliated U.S. reseller, Ken–Mac Metals (Ken–Mac). Mexinox filed its response to this second supplemental questionnaire on May 21, 2007. Finally, the Department issued a second supplemental questionnaire covering section D on June 26, 2007, to which Mexinox responded on July 3, 2007.

Because it was not practicable to complete this review within the normal time frame, on February 20, 2007, we published in the **Federal Register** our notice of the extension of time limits for this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 7764 (February 20, 2007). This extension established the deadline for these preliminary results as July 31, 2007.

Period of Review

The period of review (POR) is July 1, 2005 through June 30, 2006.

[1] Petitioners are Allegheny Ludlum Corporation, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers of America.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: 1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; 2) sheet and strip that is cut to length; 3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more); 4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and 5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Tariff Act), we verified sales information provided by Mexinox, using standard verification procedures such as the examination of relevant sales and financial records. We will issue our verification report and allow parties to comment on the findings of that report prior to the issuing of our final results.

Sales Made Through Affiliated Resellers

A. U.S. Market

Mexinox USA, a wholly owned subsidiary of Mexinox S.A., which in turn is a subsidiary of ThyssenKrupp AG, sold subject merchandise in the United States during the POR to unaffiliated customers. Mexinox USA also made sales of subject merchandise to U.S. affiliate Ken–Mac. Ken–Mac is an operating division of ThyssenKrupp Materials Inc., which is a subsidiary of ThyssenKrupp USA, Inc., the primary holding company for ThyssenKrupp AG in the U.S. market. Ken–Mac purchased subject merchandise from Mexinox USA and further manufactured and/or resold the subject merchandise to unaffiliated customers in the United States. *See* Mexinox's October 13, 2006 section A questionnaire response at A–11, A–20 and A–27 through A–28. For purposes of this review, we have included both Mexinox USA's and Ken–Mac's sales of subject merchandise to unaffiliated customers in the United States in our margin calculation.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a wholly owned subsidiary of Mexinox S.A., resold the foreign like product as well as other merchandise in the home market. Mexinox S.A.'s sales to Mexinox Trading represented a small portion of Mexinox S.A.'s total sales of the foreign like product in the home market and constituted less than five percent of all home market sales. *See*, *e.g.*, Mexinox's October 13, 2006 section A questionnaire response at A–3 through A–4, and its May 21, 2007 supplemental questionnaire response covering sections A through C and E at Attachment A–28–B (quantity and value chart). Because sales to Mexinox Trading of the foreign like product were below the five–percent threshold established under 19 CFR 351.403(d), we did not require Mexinox S.A. to report Mexinox Trading's downstream sales to its first unaffiliated customer. This is consistent with our practice to date and the methodology we have employed in past administrative reviews of S4 in coils from Mexico. *See*, *e.g.*, *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006) (*2004–2005 Final Results*), and *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 73444 (December 12, 2005), and accompanying Issues and Decisions Memorandum at Comment 2 (*2003–2004 Final Results*).

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than normal value, we compared CEP sales made in the United States by both Mexinox USA and Ken–Mac to unaffiliated purchasers to NV as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act, we compared individual CEPs to monthly weighted–average NVs.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by Mexinox S.A. covered by the description in the ''Scope of the Order'' section above, and sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): 1) grade; 2) cold/hot rolled; 3) gauge; 4) surface finish; 5) metallic coating; 6) non–metallic coating; 7) width; 8) temper; and 9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's original September 13, 2006 questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on constructed value (CV), that of the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* section 773(a)(7)(A) of the Tariff Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002), and accompanying Issues and Decisions Memorandum at Comment 8; *see also Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review of Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Tariff Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decisions Memorandum at Comment 6.

We obtained information from Mexinox regarding the marketing stages involved in making its reported home market and U.S. sales to both affiliated and unaffiliated customers. Mexinox provided a description of all selling activities performed, along with a flowchart and tables comparing the LOTs among each channel of distribution and customer category for both markets. *See* Mexinox's October 13, 2006 section A questionnaire response at A–30 through A–37 and Attachments A–4–A through A–4–C; *see also* Mexinox's April 10, 2007 supplemental questionnaire response at pages 20 through 22 and Attachments A–20 and A–21.

Mexinox sold S4 in coils to end–users and retailers/distributors in the home market and to end–users and distributors/service centers in the United States. For the home market, Mexinox identified two channels of distribution described as follows: 1) direct shipments (i.e., products produced to order) and 2) sales from inventory. Within each of these two channels of distribution, Mexinox S.A. made sales to affiliated and unaffiliated distributors/retailers and end–users. *See* Mexinox's October 13, 2006 section A questionnaire response at A–3 and A–24 through A–25. We reviewed the intensity of all selling functions Mexinox claimed to perform for each channel of distribution and customer category. For certain activities, such as pre–sale technical assistance, processing of customer orders, sample analysis, prototypes and trial lots, freight and delivery, price negotiation/customer communications, sales calls and visits, and warranty services, the level of performance for both direct shipments and sales through inventory was identical across all types of customers. Only a few functions exhibited differences, including inventory maintenance/just–in-time performance, further processing, credit and collection, low volume orders and shipment of small packages. *See* Mexinox's April 10, 2007 supplemental questionnaire response at Attachment A–20. While we find differences in the levels of intensity performed for some of these functions, such differences are minor and do not establish distinct, multiple LOTs in Mexico. Based on our analysis of all of Mexinox S.A.'s home market selling functions, we find all home market sales were made at the same LOT, the NV LOT.

We then compared the NV LOT, based on the selling activities associated with the transactions between Mexinox S.A. and its customers in the home market, to the CEP LOT, which is based on the selling activities associated with the transaction between Mexinox S.A. and its affiliated importer, Mexinox USA. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Mexinox USA. *See* Mexinox's October 13, 2006 questionnaire response at A–30 through A–37 and Attachments A–4–A through A–4–C; *see also* Mexinox's April 10, 2007 supplemental questionnaire response at Attachment A–20. For example, in comparing Mexinox's selling activities, we find there are more functions performed in the home market which are not a part of CEP transactions (*e.g.*, pre–sale technical assistance, sample analysis, prototypes and trial lots, price negotiation/customer communications, sales calls and visits, credit and collection, and warranty services). For selling activities performed for both home market sales and CEP sales (*e.g.*, processing customer orders, freight and delivery arrangements), we find Mexinox S.A. actually performed each activity at a higher level of intensity in the home market. Based on Mexinox's responses, we note that CEP sales from Mexinox S.A. to Mexinox USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles ex–factory sales. In contrast, all sales in the home market occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. *See* Mexinox's October 13, 2006 questionnaire response at A–30 through A–37 and Attachments A–4–A through A–4–C; *see also* Mexinox's April 10, 2007 supplemental questionnaire response at Attachment A–20. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. sales were made at different LOTs, we examined whether an LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make an LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Because the data available do not form an appropriate basis for making an LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Tariff Act.

Constructed Export Price

Mexinox indicated it made CEP sales through its U.S. affiliate, Mexinox USA, in the following four channels of distribution: 1) direct shipments to

unaffiliated customers; 2) stock sales from the San Luis Potosi (SLP) factory; 3) sales to unaffiliated customers through Mexinox USA's warehouse inventory; and 4) sales through Ken–Mac. *See* Mexinox's October 13, 2006 section A questionnaire response at A–25 through A–27. Ken–Mac is an affiliated service center located in the United States which purchases S4 in coils produced by Mexinox S.A. and then resells the merchandise (after, in some instances, further manufacturing) to unaffiliated U.S. customers.

In accordance with section 772(b) of the Tariff Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We find Mexinox properly classified all of its U.S. sales of subject merchandise as CEP transactions because such sales were made in the United States through Mexinox USA or Ken–Mac to unaffiliated purchasers. We based CEP on packed prices to unaffiliated purchasers in the United States sold by Mexinox USA or its affiliated reseller, Ken–Mac. We accounted for billing adjustments, discounts and rebates where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act. These expenses included, where appropriate: foreign inland freight, foreign brokerage and handling, inland insurance, U.S. customs duties, U.S. inland freight, U.S. brokerage, and U.S. warehousing expenses. As directed by section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit costs, warranty expenses, and a certain expense of proprietary nature), commissions, inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act. We used the expenses as reported by Mexinox, with the exception of the U.S. indirect selling expense ratio which we recalculated. *See* ''Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review of S4 in Coils from Mexico'' (Preliminary Analysis Memorandum) from Maryanne Burke to the File dated July 31, 2007.

For sales in which the material was sent to an unaffiliated U.S. processor, we made an adjustment based on the transaction–specific further–processing expenses incurred by Mexinox USA. In addition, the U.S. affiliated reseller Ken–Mac performed some further manufacturing for its sales to unaffiliated U.S. customers. For these sales, we deducted the cost of further processing in accordance with section 772(d)(2) of the Tariff Act. In calculating the cost of further manufacturing for Ken–Mac, we relied upon Ken–Mac's reported cost of further manufacturing materials, labor and overhead. We also included amounts for further manufacturing general and administrative expenses (G&A), as reported in Mexinox's May 21, 2007 supplemental section D questionnaire response. *See* the Department's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - ThyssenKrupp Mexinox S.A. de C.V. from Frederick Mines to Neal M. Halper, dated July 31, 2007 (Cost Calculation Memorandum), and Preliminary Analysis Memorandum.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Mexinox's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. *See*, *e.g.*, Mexinox's May 21, 2007 supplemental questionnaire response covering sections A through C and E at Attachment A–28–B.

B. Affiliated–Party Transactions and Arm's–Length Test

Sales to affiliated customers in the home market not made at arm's–length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* section 773(f)(2) of the Tariff Act; *see*, *also* 19 CFR 351.102(b). Consistent with 19 CFR 351.403(c) and (d) and agency practice to date, ''the Department may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length.'' *See China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003). To test whether the sales to affiliates were made at arm's–length prices, we compared, on a model–specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts and rebates, movement charges and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002). We found one affiliated home market customer failed the arm's–length test and, in accordance with the Department's practice, we excluded sales to this affiliate from our analysis.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the most recently completed review for Mexinox of S4 in coils from Mexico (*see 2003–2004 Final Results*), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Mexinox. We relied on home market sales and COP information provided by Mexinox in its questionnaire responses, except where noted below:

ThyssenKrupp Nirosta GmbH (TKN) and ThyssenKrupp AST, S.p.A. (TKAST), hot–rolled stainless steel band (hot band) producers affiliated with Mexinox, sold hot band to Mexinox USA, which in turn sold hot band to Mexinox S.A.. Hot band is considered a major input to the production of stainless steel sheet and strip in coils. Section 773(f)(3) of the Tariff Act, the major input rule, states that ''in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater

than the amount that would be determined for such input under paragraph (2).'' We evaluated the transfer prices between Mexinox and its affiliated hot band suppliers on a grade–specific basis. Where available on the record, we used market prices for certain grades. However, market prices were not available for some grades of hot band purchased from affiliates. *See* Mexinox's section D supplemental questionnaire, dated July 3, 2007. Therefore, for each of these grades, as facts otherwise available, we constructed a market price using the available market prices and COP information for the hot band grade purchased from the same affiliated supplier. Specifically, we calculated the ratio of the available market prices to the COP for the hot band grade, and applied the ratio to the COP of the hot band grades with no market price. We noted that, for some grades of hot band the market price was higher than the transfer prices between Mexinox and its affiliates. Therefore, we increased the reported direct material costs to reflect the market price. We also recalculated Mexinox's G&A expense rate to include employee profit sharing in the numerator. *See* Cost Calculation Memorandum.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act; and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test for Mexinox revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below–cost sales from our analysis and used the remaining above–cost sales as the basis for determining NV.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of Mexinox's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the ''Cost of Production Analysis'' section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

E. Price–to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. Mexinox S.A. reported home market sales in Mexican pesos, but noted certain home market sales were invoiced in U.S. dollars during the POR. *See* Mexinox's November 20, 2006 section B questionnaire response at B–26. In our margin calculation we used the currency of the sale invoice at issue and applied the relevant adjustments in the actual currency invoiced or incurred by Mexinox. We accounted for billing adjustments, discounts and rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. As noted above in the ''Level of Trade'' section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

We used Mexinox's adjustments and deductions as reported, except for certain handling expenses and imputed credit expenses. We have recalculated the handling expenses incurred by Mexinox's home market affiliate, Mexinox Trading, and applied the revised ratio to those home market sales where Mexinox reported a handling expense. We calculated imputed credit expenses based on the short–term borrowing rate associated with the currency of each home market sale transaction. *See* Preliminary Analysis Memorandum. Our methodology for calculating handling charges and imputed credit expenses is consistent with past administrative reviews of this case. *See, e.g., 2004–2005 Final Results* and *2003–2004 Final Results*.

F. Price–to-CV Comparisons

If we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Tariff Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act.

Facts Available

In accordance with section 776(a)(1) of the Tariff Act, for these preliminary results we find it necessary to use partial facts available in those instances where the respondent did not provide certain information necessary to conduct our analysis.

In our September 13, 2006 questionnaire at G–6, we requested that Mexinox provide sales and cost data for all affiliates involved with the production or sale of the merchandise under review during the POR in both home and U.S. markets. In response, Mexinox stated that its affiliated U.S. reseller, Ken–Mac, sold subject merchandise in the United States during the POR which it had purchased from various suppliers. *See* Mexinox's October 13, 2006 section A questionnaire response at A–11. However, Mexinox explained to the Department that a small subset of subject merchandise which was resold by Ken–Mac to unaffiliated customers in the United States could not be traced to an original stock item or supplier. *See* Mexinox's November 20, 2006 section E

questionnaire response at KMC–2 and KMC–3. Mexinox further stated in its May 21, 2007 supplemental questionnaire response covering sections A through C and E at 23, that it was unable to identify the producer of those reported sale transactions (unattributed sales).

Because of the unknown origin of certain of Ken–Mac resales, Mexinox was not able to provide all the information necessary to complete our analysis. Pursuant to section 776(a)(1) of the Tariff Act, it is appropriate to use the facts otherwise available in calculating a margin on Ken–Mac's unattributed sales. Section 776(a)(1) of the Tariff Act provides that the Department will, subject to section 782(d) of the Tariff Act, use the facts otherwise available in reaching a determination if ''necessary information is not available on the record.'' For these preliminary results, we have calculated a margin on Ken–Mac's unattributed sales by applying the overall margin calculated on Mexinox's other U.S. sales of subject merchandise to the weighted–average price of Ken–Mac's unattributed sales. This methodology is consistent to date with that employed in past administrative reviews of S4 in coils from Mexico. *See, e.g., 2004–2005 Final Results* and *2003–2004 Final Results*.

Prior to applying the overall margin calculated on other sales/resales of subject merchandise to Ken–Mac's unattributed sales, we calculated the portion of the unattributed sales quantity that could be reasonably allocated to subject stainless steel merchandise purchased from Mexinox. We based our allocation on the relative percentage (by volume) of subject stainless steel merchandise that Ken–Mac had purchased from Mexinox as compared to the total stainless steel merchandise it had purchased from all vendors. *See* Mexinox's May 21, 2007 supplemental questionnaire response covering sections A through C and E at Attachment KME–12. The Department preliminarily finds Mexinox acted to the best of its ability in responding to the Department's request for information; therefore, the application of an adverse inference, as provided under section 776(b) of the Tariff Act, is not warranted in calculating a margin on Ken–Mac's unattributed sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted–average dumping margin exists for the period July 1, 2005 through June 30, 2006:

Manufacturer / Exporter	Weighted–Average Margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V.	2.82%

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309 (c). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than five days after the time limit for submitting the case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument and 3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such argument or at a hearing, within 120 days of publication of these preliminary results.

Duty Assessment

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. The total customs value is based on the entered value reported by Mexinox for all U.S. entries of subject merchandise initially purchased for consumption to the United States made during the POR. *See* Preliminary Analysis Memorandum. In accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results for which the reviewed company did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all–others rate of 30.85 percent, which is the all–others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 40560 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–15201 Filed 8–3–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–601

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Notice of Extension of Final Results of the 2005–2006 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–4474.

Background

On July 27, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC''), 71 FR 42626 (July 27, 2006). On March 26, 2007, the Department published its preliminary results on TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China Preliminary Results of Antidumping Duty Administrative Review and Notice of Rescission in Part and Intent to Rescind in Part*, 72 FR 14078 (March 26, 2007). The final results of this administrative review are currently due no later than July 24, 2007.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results in an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(2)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results within the 120-day period is not practicable because this review involves certain complex issues, such as a tariff classifications covered by the scope of the order and separate rates.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of review by 60 days until September 22, 2007, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). However, because September 22, 2007 falls on a Saturday, the final results will be due no later than September 24, 2007, the next business day.

This notice is published pursuant to sections 751(c) and 777(i) of the Act.

Dated: July 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–15210 Filed 8–3–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film from India for the period January 1, 2005 through December 31, 2005. We preliminarily determine that subsidies are being provided on the production and export of PET film from India. *See* the ''Preliminary Results of Administrative Review'' section, below. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this administrative review. *See* the ''Public Comment'' section of this notice, below.

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

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department published in the **Federal Register** the countervailing duty (CVD) order on PET film from India. *See Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*PET Film Order*). On July 3, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). On July 26, 2006 and July 31, 2006, the Department received requests to conduct an administrative review of the CVD order on PET film from India from MTZ Polyfilms, Ltd. (MTZ), Jindal Poly Films Limited of India (Jindal), formerly named Jindal Polyester Limited, Polyplex Corporation, Ltd. (Polyplex), and Garware Polyester, Ltd. (Garware), all of whom are Indian producers and exporters of subject merchandise. Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), (collectively, petitioners) did not file any requests for review.

On August 22, 2006, Polyplex withdrew its request for review of the CVD order of PET film from India. Since its withdrawal occurred prior to the date of initiation and because no other party requested a review of Polyplex, we did not include this company in the initiation of the administrative review. On August 30, 2006, the Department initiated an administrative review of the CVD order on PET film from India

covering MTZ, Jindal, and Garware, for the period January 1, 2005 through December 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). The Department issued questionnaires to the Government of India (GOI), Garware, MTZ, and Jindal on November 7, 2006. On November 28, 2006, pursuant to 19 CFR 351.213(d)(1), Jindal timely withdrew its request for an administrative review of the CVD order on PET film from India. Because no other party requested a review of Jindal, on April 10, 2007, the Department rescinded the administrative review of Jindal. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Notice of Partial Rescission of Administrative Review of the Countervailing Duty Order*, 72 FR 17838 (April 10, 2007).

On January 5, 2007, both the GOI and Garware submitted their questionnaire responses. MTZ submitted its questionnaire response on January 12, 2007. The Department issued its first supplemental questionnaires to the GOI, Garware, and MTZ on March 16, 2007.

On April 5, 2007, the Department extended the time limit for the preliminary results of the countervailing duty administrative review until July 31, 2007. *See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 72 FR 16769 (April 5, 2007).

On April 13, 2007, the GOI submitted its first supplemental response. Both Garware and MTZ submitted their first supplemental responses on April 16, 2007, and April 18, 2007, respectively. On June 11, 2007, the Department issued a second supplemental questionnaire to the GOI, Garware, and MTZ. The Department issued a third supplemental questionnaire to MTZ on June 13, 2007. The GOI submitted its response to the second supplemental questionnaire on June 25, 2007, and Garware responded on July 2, 2007. MTZ responded to the Department's second and third supplemental questionnaires on July 6, 2007.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Act), we intend to conduct verification of the GOI, Garware, and MTZ questionnaire responses following the issuance of the preliminary results.

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed Polyethylene Terephthalate Film, Sheet and Strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(d)(2)(i), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS's 1977 Class Life Asset Depreciation Range System, and as updated by the Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. Specifically, the party must establish that the difference between the AUL from the tables and the company-specific AUL or country-wide AUL for the industry under investigation is significant, pursuant to 19 CFR 351.524(d)(2)(i) and (ii). For assets used to manufacture plastic film, such as PET film, the IRS tables prescribe an AUL of 9.5 years.[1]

In the investigative segment of this proceeding, the Department determined that Garware had rebutted the presumption and applied a company-specific AUL of 19 years. *See Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film)*, 67 FR 34905 (May 16, 2002), and accompanying *Issues and Decision Memorandum*, at ''Allocation Period'' (*PET Film Final Determination*). Therefore, the Department is using an AUL of 19 years for Garware in allocating non-recurring subsidies. MTZ was not a respondent in the original investigation, nor was the company a respondent in any prior segment of this proceeding. In response to the Department's original questionnaire and its first supplemental questionnaire, MTZ proposed a company-specific AUL of 19.9 years for its plant and machinery. In Exhibits S–7 to S–8(c) of its first supplemental response, MTZ provided its depreciation schedule over the past 10 years, and a detailed list of assets for plant and machinery, respectively. However, MTZ has not demonstrated how the detailed list was tied to its depreciation schedule through the POR,[2] or how the depreciation schedule was ultimately tied to MTZ's 2005–2006 financial statements. Furthermore, MTZ did not provide an explanation of how it derived its depreciation schedule. Based on these concerns, we preliminarily determine that MTZ's calculation of its company-specific AUL should not be used to determine the appropriate allocation period for non-recurring subsidies. Rather, for purposes of these preliminary results we are using the IRS Tables. *Benchmark Interest Rates and Discount Rates.*

For programs requiring the application of a benchmark interest rate or discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient ''could actually obtain on the market'' the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates. The Department has previously determined that the Industrial Development Bank of India (IDBI) is a government-owned special purpose bank. *See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying *Issues and Decision Memorandum*, at *Comment 3*, (*Second PET Film Review—Final Results*). As such, the Department did not use loans from the IDBI reported by Garware. Further, in this review, the Department

[1] For our subsidy calculations, we round the 9.5 years up to 10 years.

[2] The detail for plant and machinery is only provided through March 2003.

preliminarily determines that the Industrial Finance Corporation of India (IFCI) and the Export-Import Bank of India (EXIM) [3] are government-owned special purpose banks. As such, the Department did not use loans from IFCI reported by Garware and MTZ, and loans from EXIM reported by Garware, in the benchmark calculations for this administrative review.

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government-provided, short-term loan program, the preference would be to use a company-specific annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required a rupee-denominated short-term loan benchmark rate to determine benefits received under the Pre-Shipment Export Financing and Post-Shipment Export Financing programs. MTZ reported that it did not receive any loans under the GOI Pre-Shipment and Post-Shipment Export Financing programs.[4]

Garware provided information on rupee-denominated and U.S. dollar-denominated short-term commercial loans outstanding during the period of review (POR). Garware reported that it did receive the following rupee-denominated short-term commercial loans: Supplier Bill Discounting (SBD); Local Bill Discounting (LBD); Working Capital Development Loans (WCDL); and Cash Credit (CC).

In previous reviews of this case, the Department has determined that Inland Bill Discounting (IBD) loans are more comparable to pre-shipment and post-shipment export financing loans than other types of rupee-denominated short-term loans. *See Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46485 (August 10, 2005) (*Second PET Film Review—Preliminary Results*) (unchanged in the final results); and *Issues Memorandum—First Review*, at 10. There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to use IBD (LBD) loans as the basis for the short-term rupee-denominated benchmark for all applicable programs for Garware.

Garware provided information on U.S. dollar-denominated working capital trade loans (WCTL) received during the POR to use as the basis for dollar-denominated short-term benchmark rates. Because these loans were obtained from government-owned special purpose banks, the Department is using a national average dollar-denominated short-term interest rate, as reported in the International Monetary Fund's publication ''International Financial Statistics'' (IMF Statistics) for Garware, in accordance with 19 CFR 351.505(a)(3)(ii).

For those programs requiring a rupee-denominated discount rate or the application of a rupee-denominated long-term benchmark rate, we used national average interest rates from the IMF Statistics, pursuant to 19 CFR 351.505(a)(3)(ii). With respect to long-term loans and grants allocated over time, the Department required benchmarks and discount rates to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) program. None of the respondents [5] reported comparable commercial long-term rupee-denominated loans for all required years. Normally, for those years for which we did not have company-specific information, the Department relies on comparable long-term rupee-denominated benchmark interest rates from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii). When there were no comparable long-term, rupee-denominated loans from commercial banks during either the year under consideration or the preceding year, the Department uses national average interest rates from the IMF Statistics, pursuant to 19 CFR 351.505(a)(3)(ii). Since neither Garware nor MTZ had long-term rupee-denominated benchmark interest rates from the immediately preceding year, we relied on the IMF statistics as benchmarks for the required years.

Cross-Ownership and Attribution of Subsidies

In the final determination of the investigation, the Department determined that cross-ownership exists between Garware and Garware Chemicals, Ltd., in accordance with 19 CFR 351.525(b)(6)(vi). *See PET Film Final Determination—Decision Memorandum,* at *Comment 15*. In the original questionnaire of the instant review, we asked Garware to identify all affiliated companies and to describe in detail the nature of its relationship with those companies. Garware responded that Garware Chemical, Ltd. (Garware Chemical) is an affiliated producer of Di-methyl Terephthalate (DMT), which is a primary input into the production of PET film. In the same response, Garware indicated that Garware Chemical did not receive a subsidy.[6] Garware's financial statements submitted in the same response indicate that Garware Chemical is an associate company of Garware and that Garware Chemical shares directors with Garware. These financial statements also indicate that Garware guaranteed Garware Chemical's loans and that Garware owns shares of Garware Chemical.[7]

In the first supplemental questionnaire, we requested Garware to provide more detail regarding Garware Chemical's supply of inputs in the production of subject merchandise. In its response, Garware clarified that Garware Chemicals is not a subsidiary company of Garware but an affiliated company.[8] In response to the Department's second supplemental questionnaire, in which we asked Garware to explain and provide documentation as to whether Garware Chemical had participated in GOI programs, Garware stated that Garware Chemical participated in three programs: The GOI's Export Promotion Capital Goods Scheme (EPCGS), the State of Maharashtra (SOM) Sales Tax Incentive Program, and the SOM Electricity Duty Exemption. In the same supplemental questionnaire we asked Garware to explain its affiliate relationship to Garware Chemical in more detail; however, it only stated that Garware Chemicals is an ''associate company,'' in response to our question. Garware did not provide any

[3] *Id.* This is based on information we obtained from the internet indicating this bank functions ''as the principal financial institution for coordinating the working of institutions engaged in financing export and import of goods and services * * *.''

[4] *See* MTZ's Original Questionnaire Response, at III–12 (January 12, 2007).

[5] MTZ provided the Department with limited information regarding its long-term benchmarks on three separate occasions: *See* MTZ's original questionnaire response of January 12, 2007; MTZ's First Supplemental Response, at 11–12, and Exhibit S–9 (April 18, 2007), and MTZ's Second Supplemental Response, at 7–8 and Exhibit S3–4a (July 2, 2007). The average interest rates provided in the first supplemental response are supported by bank ledger accounts including postings covering approximately ten years. MTZ did not demonstrate how the supporting documentation tied to its benchmark calculation. Further, MTZ stated that it provided support for the long-term interest rates from its banks in Exhibit S–9. MTZ did not clearly identify which supporting information pertains to its long-term loans. In its second supplemental response MTZ provided long-term loan information for 1995, 1996, and 1997, but MTZ did not calculate average long-term benchmarks for the POR.

[6] *See* Garware's original questionnaire response of January 5, 2007, at 1–2 and Exhibit 1.

[7] *See* Garware's original questionnaire response of January 5, 2007, Exhibit 3, Financial Statements 2005–2006, at 32 and 64–65.

[8] *See* Garware's first supplemental response of July 2, 2007, at 3–4.

explanation for its differentiation in terminology, *i.e.*, affiliate, subsidiary, and associate company. However, the record is clear that Garware owns a part of Garware Chemical, that Garware guaranteed Garware Chemical's loans, and that the two companies share at least one director. Based on these facts, we continue to find, as we did in the investigation, that Garware and Garware Chemical are cross-owned in accordance with 19 CFR 351.525(b)(6)(vi).

In order to attribute the benefits received by Garware Chemical to Garware, the Department needs Garware Chemical's sales information (*i.e.*, total sales less any sales to Garware). Since this information was not provided, the Department is using facts available, in accordance with section 776(a)(2)(A) of the Act, to calculate Garware's subsidy rates. Accordingly, for these preliminary results, we will attribute the subsidies received by Garware Chemical to Garware, pursuant to 19 CFR 351.525(b)(6)(iv) and (vi), without any adjustment to the sales denominator. However, we intend to provide Garware a final opportunity to submit the sales information necessary for these calculations.

Programs Preliminarily Determined To Be Countervailable

1. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes (*i.e.*, purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Companies may also establish pre-shipment credit lines upon which they draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of not more than 180 days.

In the investigation, the Department determined that the pre-shipment and post-shipment export financing programs conferred countervailable subsidies on the subject merchandise because: (1) The provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act in as much as the interest rates given under these programs are lower than commercially available interest rates; and (3) these programs are specific under section 771(5A)(B) of the Act because they are contingent upon export performance. *See PET Film Final Determination—Decision Memorandum* at ''Pre-Shipment and Post-Shipment Financing.'' There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

Garware was the only respondent who received benefits under this program during the POR. The benefit conferred by the pre-shipment and post-shipment loans is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan during the POR. Because pre-shipment loans are not tied to exports of subject merchandise, we calculated the subsidy rate for these loans by dividing the total benefit by the value of Garware's total exports during the POR. Because post-shipment loans are normally tied to specific shipments of a particular product to a particular country, we normally divide the total benefit from post-shipment loans tied to exports of subject merchandise to the United States by the value of total exports of subject merchandise to the United States during the POR. *See* 19 CFR 351.525(b)(4). However, Garware did not provide this type of detail for their post-shipment loans so we calculated the subsidy rate for these loans by dividing the total benefit by the value of Garware's total exports during the POR. *See* 19 CFR 351.525(b). On this basis, we preliminarily determine the countervailable subsidy from pre-shipment export financing to be 0.16 percent *ad valorem* for Garware. We also preliminarily determine the countervailable subsidy provided to Garware from post-shipment export financing to be 0.02 percent *ad valorem*.

2. Advance License Program (ALP)

Under the ALP, exporters may import, duty free, specified quantities of materials required to manufacture products that are subsequently exported. The exporting companies, however, remain contingently liable for the unpaid duties until they have fulfilled their export requirement. The quantities of imported materials and exported finished products are linked through standard input-output norms (SIONs) established by the GOI. During the POR, both Garware and MTZ used advance licenses to import certain materials duty free.

The Department previously found the 1997–2003 Export/Import Guidelines underlying the ALP to be not countervailable. *See PET Film Final Determination*, at ''Advance Licenses.'' However, in the 2003 administrative review, the Department examined the revised 2002–2007 Export/Import Policy Guidelines underlying the ALP and found the program to be countervailable because the GOI does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended, in accordance with 19 CFR 351.519(a)(4). *See Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006) (*Second PET Film Review—Final Results*), and accompanying *Issues and Decision Memorandum*, at ''Advance License Program'' and *Comment 1 (Issues Memorandum—Second Review)*. In that review, the Department found that the ALP confers a countervailable subsidy because: (1) A financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program, as the GOI exempts the respondents from the payment of import duties; (2) the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported products; thus, the entire amount of the import duty deferral or exemption earned by the respondent constitutes a benefit under section 771(5)(E) of the Act; and

(3) this program is contingent upon exportation and, therefore, is specific under section 771(5A)(B) of the Act. *See id*.

The Department identified a number of systemic deficiencies that led to its determination, specifically: (1) The lack of information related to verification or implementation of penalties and the failure to identify the number of companies during the POR that either did not meet export commitments under the ALP, were penalized for not meeting the export requirements under the ALP, or were penalized for claiming excessive credits; (2) the availability of ALP benefits for a broad category of ''deemed'' exports; and (3) the GOI's inability to provide the SION calculations for the PET film industry or any documentation demonstrating that the process outlined in its regulations was actually applied in calculating the PET film SION. In the investigation of *Certain Lined Paper from India*, the Department stated that it had examined certain monitoring procedures with respect to the GOI's tracking of inputs and exports through the Directorate General for Foreign Trade (DGFT), and the tracking of inputs imported duty-free under the ALP through a customs database. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from India*, 71 FR 45034 (August 8, 2006), at *Comment 10 (Lined Paper—Final Determination*). However, the Department ultimately determined that, in spite of these procedures, systemic issues continued to exist that demonstrate that the GOI lacks a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519. For example, while the Department confirmed at verification that the GOI had recently updated the SION for the lined paper industry, the GOI was unable to provide source documents concerning the initial formation and subsequent revision of the SION used for the lined paper industry, including the SION in effect during the POI. The Department further stated that neither the GOI nor the respondent claimed that the laws and procedures underlying the ALP had changed with respect to the issue of ''deemed exports'' during that investigation. Thus, the Department determined that the respondent failed to provide information demonstrating that the ALP was implemented and monitored effectively during the period of investigation (POI), and continued to find that the GOI had not demonstrated that it had carried out an examination of actual inputs involved to confirm which inputs were consumed in the production of the exported product, and in what amounts or that the ALP was reasonable and effective for the purposes intended. *See Lined Paper—Final Determination*, at *Comment 10*.

In this administrative review, the GOI indicated that it had revised its Foreign Trade Policy and Handbook of Procedures for ALP during the POR. Specifically, the GOI revisions, introduced May 13, 2005 and October 10, 2005, provided for a mechanism to review a SION and monitor a company's consumption and stocks of duty-free, imported or domestically procured, raw materials.

For instance, the GOI revised its Foreign Trade Policy and Handbook of Procedures to update its consumption register on inputs imported and inputs consumed to be filed by companies with the DGFT.[9] Further, the GOI noted that the Foreign Trade Policy and Handbook of Procedures, at sections 4.22 and 4.28, provides guidelines for the granting of extensions and levying of penalties.

In addition, the GOI argued that Chapter 4, paragraph 4.10 of the Foreign Trade and Policy Handbook provides for the review of SIONs. Paragraph 4.10.2 of the Foreign Trade and Policy Handbook states that:

> {a}t the beginning of the financial year or at any other time as the {Norms Committee (NC)} may find it necessary, the NC may identify the SIONs which in its opinion are required to be reviewed. The exporters are required to submit revised data in form given in 'Aayaat Niryaat Form' for such revisions. It is mandatory for the industry/exporter(s) to provide the production and consumption data etc. as may be required by DGFT/EPC for revision of SION.

Furthermore, the GOI reported in this proceeding that it revised the SION for PET film effective September 19, 2005. Exhibit S–12 of the GOI's first supplemental response[10] contains a ''Report on PET film Sub committee,'' summarizing the old versus the new ''actual''consumption of inputs, as provided by two producers/exporters of subject merchandise. The report indicates that for the first producer/exporter, the DGFT inspected the manufacturing facilities. Specifically, it states in Annexure I that the ''details of raw materials actually consumed for manufacture of unit quantity of resultant product was ascertained,'' and that the company maintains a register of consumption and stock of imported raw material in electronic form.

The Department has analyzed the changes introduced by the GOI to the ALP during 2005 and acknowledges certain improvements to the ALP system. However, we find that systemic issues continued to exist in the ALP system during the POR, all of which were enumerated in the *Second PET Film Review—Final Results* and the *Lined Paper—Final Determination*. For example, while the GOI pointed to provisions in the Handbook of Procedures that lay out the procedures for the granting of extensions and levying of penalties, the GOI did not demonstrate any enforcement of these deadlines and actual application of the penalty provisions. In addition, the GOI did not place any supporting documentation on the record of this review that demonstrates enforcement procedures for the DGFT and the Customs Authorities, respectively, as addressed in the *Issues Memorandum—Second Review*.

Furthermore, while the GOI points to certain provisions that provide for the review of SIONs, the GOI was not able to demonstrate the existence of a legal or regulatory requirement or process required for the NC to monitor the continued accuracy of the SION. Also, the GOI did not provide a layout of the regulatory procedures regarding the review of the SION or revision and selection of SIONs. *See Issues Memorandum—Second Review,* at ''Advance License Program.'' Instead, the GOI stated that the NC decides which SIONs are to be reviewed based on the inputs received from various concerned government authorities.[11] Thus, the GOI has not demonstrated that it has a process in place to ensure that all SIONs are reviewed regularly and consistently as part of the ALP monitoring system.

With regard to the specific SION for Pet Film, although the GOI provided some information regarding verification of this SION, *i.e.*, the quantity of raw materials consumed in the manufacture

[9] The revision pertains to Appendix 23, which replaced the previous version, Appendix 18 of the Foreign Trade Policy and Handbook of Procedures. Appendix 23 states the consumption and stock of inputs for each SION. It provides details of inputs, quantity imported, name of the finished product produced, quantity of the finished product, inputs actually consumed for the exported product, excess imports, if any, and actual consumption. Producers/exporters are required to file Appendix 23 with the DGFT at the beginning of each year.

[10] This exhibit was filed separately from the GOI's first supplemental response (April 13, 2007) on April 16, 2007. *Compare* GOI First Supplemental Response (April 13, 2007) *with* GOI First Supplemental Response—Exhibit–12 (April 16, 2007).

[11] *See* GOI Response of April 13, 2007, at 9.

of Pet Film by certain producers, they were not able to provide any information on how this data was used to derive the revised SION. For example, although we requested additional detail on how it arrived at the revised SION, the GOI did not provide us with any additional information, such as the supporting documentation, demonstrating how the total purchases of inputs, imported and procured domestically, by quantity and value, tie into consumption and total production quantity of subject merchandise. Despite repeated requests by the Department for more detailed information and explanations concerning the process for developing the revised SION for PET film, the GOI did not place pertinent information on the record, *e.g.*, an accounting for all inputs, by-products, and waste, and the supporting documentation for the revised SION.[12] The documentation provided by the GOI indicates that there are three processes by which subject merchandise can be produced.[13] However, the documentation lacks any description of the processes, and it does not include any calculations demonstrating how the revised SION for the production processes was determined.

In addition, the GOI's revisions to the ALP did not address the Department's concerns with respect to deemed exports. In the *Second PET Film Review—Final Results,* the Department found that these deemed export sales were not linked to the actual exportation of the subject merchandise, and provide for government discretion to bestow benefits under the program even more broadly. *See Issues Memorandum—Second Review,* at ''Advance License Program.'' The GOI has not provided the Department with any of its procedures that would confirm that all deemed exports are exported.[14]

Therefore, despite the changes to the ALP noted by the GOI, the Department finds that systemic problems continue to exist, and consequently we find that the GOI lacks a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended, as required under 19 CFR 351.519.

Pursuant to 19 CFR 351.524(c), the exemption of import duties on inputs consumed in production of an exported product normally provides a recurring benefit. Under this program, for 2005, Garware and MTZ did not have to pay certain import duties for inputs that were used in the production of subject merchandise. Thus, we treated the benefit provided under the ALP as a recurring benefit. To calculate the subsidy, we first determined the total value of duties exempted during the POR, including an amount for the Customs Education Cess duty, for each company. From this amount, we subtracted the required application fees paid for each license during the POR as an allowable offset in accordance with section 771(6) of the Act. We then divided the resulting net benefit by the appropriate value of export sales. Consistent with our calculations in the final results of the last administrative review,[15] ''deemed export'' sales should be included in the export sales denominator for the ALP program only when the Respondents applied for and were bestowed licenses during the POR based on both physical exports and deemed exports. However, both Garware and MTZ stated that their ALP licences were granted on physical exports, only; therefore, we have only used physical export sales in the denominator.[16] On this basis, we preliminarily determine the countervailable subsidy provided under the ALP to be 0.11 for Garware and 0.21 percent *ad valorem* for MTZ.

3. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to four to five times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In the investigation, the Department determined that import duty reductions provided under the EPCGS are a countervailable export subsidy because the scheme: (1) Provides a financial contribution pursuant to section 771(5)(D)(ii) in the form of revenue forgone for not collecting import duties; (2) respondents benefit under section 771(5)(E) of the Act in two ways by participating in this program; and (3) the program is contingent upon export performance, and is specific under section 771(A)(B) of the Act. *See PET Film Final Determination—Decision Memorandum,* at ''EPCGS.'' There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for these preliminary results, we continue to find this program countervailable.

The first benefit is the amount of unpaid import duties that would have to be paid to the GOI if accompanying export obligations are not met. The repayment of this liability is contingent on subsequent events, and in such instances, it is the Department's practice to treat any balance on an unpaid liability as an interest-free loan. *Id.* The second benefit is the waiver of duty on imports of capital equipment covered by those EPCGS licenses for which the export requirement has already been met. For those licenses for which companies demonstrate that they have completed their export obligations, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import exemption.

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, ''it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring * * *'' *See Countervailing Duties; Final Rule,* 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR 351.524(c)(2)(iii), we are treating these exemptions as non-recurring benefits.

Garware and MTZ reported that they imported capital goods under the EPCGS in years prior to the POR. As stated above, we preliminarily determine that cross-ownership between Garware and Garware Chemicals continues to exist. *See* ''Cross-Ownership and Attribution of Subsidies'' Section. Garware reported in

[12] *See* GOI Response of January 5, 2007, at II–51–56; GOI First Supplemental Response of April 13, 2007, at 9–11; and GOI Second Supplemental Response of June 25, 2007, at 8.

[13] GOI First Supplemental Response—Exhibit-12, at 5.

[14] *See* GOI Third Supplemental Response of June 25, 2007, at 11–12.

[15] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review,* 72 FR 6530 (February 12, 2007) (*Third PET Film Review—Final Results*), and accompanying I*ssues and Decision Memorandum,* at *Comment 1* (*Issues Memorandum—Third Review*).

[16] See Garware's and MTZ's second supplemental response of July 2, 2007 and July 6, 2007, respectively.

its second supplemental response of July 2, 2007 that Garware Chemical, an affiliated supplier of DMT, participated in this program; however, Garware did not provide information on Garware Chemical's imports of capital goods under the EPCGS, nor any of its affiliate's export information. The information on the record of this review consists of Garware Chemical's application of the license, license and amendments thereof. We are not able to discern from the information on the record, the benefits provided to Garware Chemical under EPCGS. We will pursue clarifying information for purposes of the final results of review. Therefore, for purposes of these preliminary results, we have only used information provided by Garware and MTZ in the subsidy calculations.

According to the information provided in their responses, Garware and MTZ received various EPCGS licenses, which were for equipment involved in the production of both subject merchandise and non-subject merchandise. Further, we note that neither Garware nor MTZ have demonstrated that their respective EPCGS licenses are tied to the production of a particular product within the meaning of 19 CFR 351.525(b)(5). As such, we find that each company's respective EPCGS licenses benefit all of the company's exports.

Garware and MTZ met the export requirements for certain EPCGS licenses prior to December 31, 2005 and the GOI formally waived the relevant import duties prior to December 31, 2005. For other licenses, however, Garware and MTZ have not yet met their export obligation as required under the program. Therefore, although Garware and MTZ have received a deferral from paying import duties when the capital goods were imported, the final waiver on the obligation to pay the duties has not yet been granted for many of these imports.

For both Garware's and MTZ's imports for which the GOI has formally waived the duties, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the waiver. To calculate the benefit received from the GOI's formal waiver of import duties on Garware's and MTZ's capital equipment imports prior to December 31, 2005, we considered the total amount of duties waived (net of any required application fees paid) to be the benefit. *See* section 771(6) of the Act. Further, consistent with the approach followed in the investigation, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Garware's and MTZ's outstanding import duties. *See PET Film Final Determination-Decision Memorandum,* at *Comment 5.* Next, we performed the ''0.5 percent test,'' as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted Garware and MTZ an import duty waiver. Those waivers with values in excess of 0.5 percent of Garware's and MTZ's total export sales in the year in which the waivers were granted were allocated using Garware's and MTZ's company-specific AUL or the AUL as prescribed by the IRS table, respectively, while waivers with values less than 0.5 percent of Garware's and MTZ's total export sales were allocated to the year of receipt. *See* ''Allocation Period'' section, above.

As noted above, import duty reductions that Garware and MTZ received on the imports of capital equipment for which they have not yet met export obligations may have to be repaid to the GOI if the obligations under the licenses are not met. Consistent with our practice and prior determinations, we will treat the unpaid import duty liability as an interest-free loan. *See* 19 CFR 351.505(d)(1); and *e.g., Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India,* 70 FR 13460 (March 21, 2005), and accompanying *Issues and Decision Memorandum,* at ''EPCGS,'' (*Final—Indian PET Resin*).

The amount of the unpaid duty liabilities to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POR, had not been formally waived by the GOI. Accordingly, we find the benefit to be the interest that Garware and MTZ would have paid during the POR had they borrowed the full amount of the duty reduction or exemption at the time of importation. *See, e.g., Second PET Film Review—Preliminary Results,* 70 FR at 46488 (unchanged in the final results); *see also Final—Indian PET Resin,* at ''EPCGS.''

As stated above, under the EPCGS program, the time period for fulfilling the export commitment expires eight years after importation of the capital good. Consequently, the date of expiration of the time period to fulfill the export commitment occurs at a point in time more than one year after the date of importation of the capital goods. Pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the weighted-average interest rate from all comparable commercial, long-term, rupee-denominated loans for the year in which the capital good was imported. *See* the ''Benchmarks Interest Rates and Discount Rates'' section above.

The benefit received under the EPCGS is the total amount of: (1) The benefit attributable to the POR from the grant of formally waived duties for imports of capital equipment for which respondents met export requirements by December 31, 2005, and/or (2) interest that should have been paid on the contingent liability loans for imports of capital equipment that have not met export requirements. To calculate the benefit from the formally waived duties for imports of capital equipment which met export requirements for Garware and MTZ, we took the total amount of the waived duties in each year and treated each year's waived amount as a non-recurring grant. We applied the grant methodology set forth in 19 CFR 351.524(d), using the discount rates discussed in the ''Benchmark Interest Rates and Discount Rates'' section above to determine the benefit amounts attributable to the POR.

To calculate the benefit from the contingent liability loans for both Garware and MTZ, we multiplied the total amount of unpaid duties under each license, including an amount for Customs Education Cess duty, by the long-term benchmark interest rate for the year in which the license was approved. We then summed these two amounts to determine the total benefit for each company. We then divided the benefit under the EPCGS by each company's total exports to determine a subsidy of 3.17 percent *ad valorem* for Garware and 20.77 percent *ad valorem* for MTZ.

4. Duty Entitlement Passbook Scheme (DEPS/DEPB)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post-export basis, provided that the GOI has established a SION for the exported product. DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPS credits are

valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned.

The Department has previously determined that the DEPS program is countervailable. *See, e.g., PET Film Final Determination—Decision Memorandum,* at ''DEPS.'' In the investigation, the Department determined that under the DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because (1) The GOI provides credits for the future payment of import duties; and (2), the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. *Id.* Therefore, under 19 CFR 351.519(a)(4) and section 771(5)(E) of the Act, the entire amount of import duty exemption earned during the POI constitutes a benefit. Finally, this program can only be used by exporters and, therefore, it is specific under section 771(5A)(B) of the Act. *Id.* No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS is countervailable.

In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we find that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. We calculated the benefit on an ''as-earned'' basis upon export because the DEPS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and, as such, it is at this point that recipients know the exact amount of the benefit (*e.g.*, the duty exemption). *See e.g., Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India,* 64 FR 73131, 73134 (December 29, 1999) (*Carbon Steel Plate From India*) and accompanying *Issues and Decision Memorandum* (*Carbon Steel Plate From India—I&D Memo*). Benefits from the DEPS program are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. *See Carbon Steel Plate From India—I&D Memo,* at *Comment 4.*

Both Garware and MTZ reported that they received post-export credits on PET film under the DEPS program during the POR. Because DEPS credits are earned on a shipment-by-shipment basis, we normally calculate the subsidy rate by dividing the benefit earned on subject merchandise exported to the United States by total exports of subject merchandise to the United States during the POR. See *e.g.*, Carbon Steel Plate From India at 73134. However, the sample licences provided by both Garware and MTZ did not indicate whether the benefit was earned on subject merchandise.[17] Therefore, we calculated the DEPS program rate using the value of the post-export credits that Garware and MTZ earned for their export shipments during the POR and subtracted as an allowable offset the actual amount of required application fees paid for each license in accordance with section 771(6) of the Act. We divided this amount by Garware's and MTZ's total exports of subject merchandise during the POR. On this basis, we preliminarily determine Garware's and MTZ's countervailable subsidy from the DEPS program to be 5.80 percent *ad valorem* and 5.35 percent *ad valorem,* respectively.

5. State Sales Tax Incentive Programs

In the previous countervailing duty administrative review, the Department determined that various state governments in India grant exemptions to, or deferrals from, sales taxes in order to encourage regional development. *See Issues Memorandum—Third Review,* at ''State Sales Tax Incentive Programs.'' These incentives allow privately-owned (*i.e.*, not 100 percent owned by the GOI) manufacturers, that are in selected industries and located in the designated regions, to sell goods without charging or collecting state sales taxes. As a result of these programs, the respondents did not pay sales taxes on their purchases from suppliers located in certain states. During the POR, Garware and its affiliated supplier, Garware Chemicals,[18] and MTZ did not pay sales taxes on certain purchases made from the states of Maharashtra (SOM) and Gujurat. In the investigation of this countervailing duty order, we determined that the operation of these types of state sales tax programs confers a countervailable subsidy. *See PET Film Final Determination—Decision Memorandum,* at ''State of Maharashtra Programs, Sales Tax Incentives.'' The financial contribution is the tax revenue foregone by the respective state governments pursuant to section 771(5)(D)(ii) of the Act, and the benefit equals the amount of sales taxes not paid by Garware and Garware Chemicals, and MTZ pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(D)(iv) of the Act, these programs are *de jure* specific because they are limited to certain geographical regions within the respective states administering the programs. There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find these programs countervailable. Further, as stated above, we preliminarily determine that cross-ownership between Garware and Garware Chemicals continues to exist. Accordingly, we attribute the subsidies received by Garware Chemicals to Garware in our preliminary results, pursuant to 19 CFR 351.525(b)(6)(iv) and (vi).

MTZ stated in its April 13, 2007 supplemental response that it purchased inputs from a company based in a ''Union Territory'' for which the company did not pay a sales tax. MTZ stated in its July 6, 2007 supplemental response that this exemption should not be treated as part of the State Sales Tax Incentive program; however, based on the information provided and from the previous review, the Department is treating this sales tax exemption as part of the State Sales Tax Incentive program preliminarily and will calculate MTZ's subsidy rate for this program accordingly. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review,* 71 FR 45037 (August 8, 2006) (unchanged in the final results). However, we intend to further examine this issue for the final results.

Garware reported in its second supplemental response of July 2, 2007 that Garware Chemical participated in this program. Garware provided information regarding Garware Chemical's benefits under this program, however; Garware did not provide any sales information for Garware Chemical. This information is required in order to attribute Garware Chemical's subsidy to Garware. *See* ''Cross-Ownership and Attribution of Subsidies'' section above. To calculate the benefit for MTZ, we first calculated the total amount of state sales taxes respondent would have paid on its purchases during the POR absent these programs. We then divided this amount by MTZ's total sales during the POR. On this basis, we preliminarily determine the subsidy rate under this program to be 0.96 percent *ad valorem*

[17] *See* Garware's Original Response, at Exhibit 8 (January 5, 2007), and MTZ's First Supplemental Response, at Exhibit S–11 (April 18, 2007). Garware confirmed in its second supplemental response that its DEPS licenses are not product specific. Garware's Second Supplemental Response, at 5 (July 2, 2007).

[18] *See* ''Cross-Ownership and Attribution of Subsidies'' section above.

for Garware and 7.39 percent ad *valorem* for MTZ.

6. State of Maharashtra (SOM) Capital Incentive Scheme

In the investigation, the Department determined that Garware received grants under this program through the SOM 1988 package scheme of incentives. *See PET Film Final Determination*, at ''State of Maharashtra Programs: 3. Capital Incentive Scheme.'' The benefits of this program, grants of up to 3,000,000 rupees, are available to certain privately-owned (*i.e.*, not one hundred percent owned by the GOI) industries that make capital investments in specific regions of Maharashtra.

The Department also found that the SOM Capital Incentive Scheme provided a financial contribution under section 771(5)(D)(i) of the Act in the form of a grant, and Garware benefitted under section 771(5)(E) of the Act, in the amount of the capital incentive grants received by Garware from the SOM. The Department also found this program to be specific within the meaning of sections 771(5A)(D)(i) and (iv) of the Act because the benefits of this program are limited to certain privately-owned (*i.e.*, not one hundred percent owned by the GOI) industries located within designated geographical regions.

Under 19 CFR 351.524(c), the Department treats the grants provided by this program as non-recurring subsidies. In the investigation, to determine the subsidy for this program, the Department first performed the ''0.5 percent test,'' as prescribed under 19 CFR 351.524(b)(2), for the year in which the SOM approved Garware's grants. Because the grants did not exceed 0.5 percent of Garware's total sales in that year, the Department allocated the total amount of the grants to the year in which the grants were received.

In the current review, Garware reported receiving a capital subsidy in 1998. Based on the information provided by Garware, we are unable to confirm that this capital subsidy was the same capital subsidy examined in the investigation.[19] Furthermore, we do not have the information necessary to perform the 0.5 percent test for the year in which the grant was received. Therefore, as facts available, we performed the 0.5 percent test based on sales information from the investigation. *See* Memorandum to The File From Elfi Blum and Toni Page, Case Analysts: *Placing the Calculations from the Final Determination on the Record of this Review*, dated July 31, 2007, and on file in the Central Record Unit, Room B–099 of the Main Commerce Building (CRU). Because this grant did not exceed 0.5 percent of Garware's total sales, the entire amount of the grant is attributable to the year in which it was received (*i.e.*, 1998). As such, we preliminarily determine that there is no countervailable benefit from this program allocable to the POR.

7. State of Maharashtra (SOM) Electricity Duty Exemption

This state incentive program provides an exemption from the payment of tax on electricity charges. This program is available to manufacturers located in certain regions of Maharashtra. Garware reported that it and its affiliated supplier, Garware Chemicals, Ltd., received an exemption from the payment of tax on electricity charges through this program. In the investigation, we determined that the electricity duty exemption scheme at issue is separate from the refund of electricity duty scheme under the 1993 SOM package scheme of incentives. *See PET Film Final Determination,* at ''Electricity Duty Exemption Scheme.''

In the investigation, the Department determined that the electricity duty scheme is countervailable because: (1) SOM has forgone or not collected revenue otherwise due, the tax exemption provided through this program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act; (2) the benefit consists of the amount of tax exempted on electricity charges through this program during the POI, pursuant to section 771(5)(E) of the Act; and (3) this program is specific within the meaning of section 771(5A)(D)(iv) of the Act because the benefits of this program are limited to industries located within designated geographical regions within the SOM. There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for these preliminary results, we continue to find this program countervailable.

Further, we preliminarily determine that cross-ownership continues to exist between Garware and Garware Chemical. *See* ''Cross-Ownership and Attribution of Subsidies'' section above. Accordingly, we attribute the subsidies received by Garware Chemicals to Garware in our preliminary results, pursuant to 19 CFR 351.525(b)(6)(iv) and (vi). Garware reported in its second supplemental response of July 2, 2007 that Garware Chemical participated in this program. Garware provided information regarding Garware Chemical's benefit under this program; however, Garware did not provide any sales information of Garware Chemical on the record. This information is required in order to attribute Garware Chemical's subsidy to Garware. *See* ''Cross-Ownership and Attribution of Subsidies'' section above. On this basis, we preliminarily determine the subsidy rate under this program to be 0.13 percent *ad valorem* for Garware.

Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the producers/exporters of PET film products did not apply for or receive benefits during the POR under the programs listed below:

1. Duty Free Replenishment Certificate (DFRC).
2. Export Oriented Units (EOU).
3. Octroi Refund Scheme—State of Maharashtra.[20]

Preliminary Results of Administrative Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated individual subsidy rates for Garware and MTZ for the POR. We preliminarily determine the total countervailable subsidy to be 10.35 percent *ad valorem* for Garware and 33.72 percent *ad valorem* for MTZ.

If the final results of this review remain the same as these preliminary results, the Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of review.

We will instruct CBP to collect cash deposits for Garware and MTZ at the rates indicated above. We will instruct CBP to continue to collect cash deposit rates for non-reviewed companies at the most recent rate applicable to the company.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these

[19] In response to a request by the Department, Garware stated in its first supplemental response of April 13, 2007, that Garware received capital subsidies in 1998. Exhibit S–5B indicates that it was a ''Disbursement of Special Capital Incentive under the 1988 Package Scheme of Incentives.'' Garware has not yet provided any additional information on this capital subsidy.

[20] Garware stated in its original response of January 5, 2007, at 57, that it applied for the program but had not yet received any benefit during the POR.

preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the publication of this notice. Requests should contain (1) The party's name, address and telephone number; (2) the number of participants; and, (3) a list of issues to be raised. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case brief, rebuttal brief, or hearing no later than 120 days after publication of these preliminary results, unless extended. See 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E7–15215 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Preliminary Results of the Tenth Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2005, through December 31, 2005. We preliminarily find that Pastificio Antonio Pallante S.r.L. (''Pallante'') and De Matteis Agroalimetare S.p.A. (''De Matteis'') received countervailable subsidies in this review, and Atar S.r.L. (''Atar'') did not receive any countervailable subsidies in this review and its rate is, consequently, zero. *See* the ''Preliminary Results of Review'' section, below. Interested parties are invited to comment on these preliminary results. *See* the ''Public Comment'' section of this notice.

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

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta (''pasta'' or ''subject merchandise'') from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy,* 61 FR 38544 (July 24, 1996) (''*Pasta Order*''). On July 3, 2006, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2005, the period of review (''POR''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 71 FR 37890 (July 3, 2006). On July 31, 2006, we received a request for review from Atar and Pallante. On July 31, 2006, we received a request for review for De Matteis on behalf of New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (''petitioners''). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 70 FR 51573 (August 30, 2006).

On August 31, 2006, we issued countervailing duty questionnaires to the Commission of the European Union, the Government of Italy (''GOI''), Pallante, De Matteis, and Atar. We received responses to our questionnaire in October and November 2006. We issued supplemental questionnaires to the respondents in November 2006, and we received responses to our supplemental questionnaires in December 2006 and January 2007. In November 2006, we also requested that Agritalia S.r.L. (''Agritalia'') provide a full questionnaire response because of its status as a trading company for Italian pasta producers participating in this review. We received Agritalia's questionnaire response in January 2007. On March 2, 2007, we sent out supplemental questionnaires to Agritalia, De Matteis and the GOI. We received responses on April 11, 2007. We sent out additional supplemental questionnaires to Agritalia, De Matteis, Atar, Pallante, and the GOI on May 11, 2007, and received responses in May and June 2007. We sent out additional supplemental questionnaires to De Matteis, Agritalia, and Pallante on June 19, 2007, and received responses on July 5, 2007.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are De Matteis, Atar, and Pallante.

Period of Review

The POR for which we are measuring subsidies is January 1, 2005, through December 31, 2005.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information,

the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See* memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale (ICEA) are also excluded from this order. *See* memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled ''Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy'' which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building.

The merchandise subject to review is currently classifiable under items 1901.90.9095 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is available in the CRU.

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

(4) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders,* 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti-circumvention inquiry. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 54888 (September 19, 2003).

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. The Department's regulations create a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''IRS Tables''). *See* 19 CFR 351.524(d)(2). For pasta, the IRS Tables prescribe an AUL of 12 years. None of the responding companies or interested parties objected to this allocation period. Therefore, we have used the 12-year allocation period for all respondents.

Attribution of Subsidies

Pursuant to 19 CFR 351.525(b)(6), the Department will attribute subsidies received by certain companies to the combined sales of those companies. Based on our review of the responses, we preliminarily find that ''cross-ownership'' exists with respect to certain companies, as described below, and we have attributed subsidies accordingly:

Pallante: Pallante has reported that it is affiliated with Vitelli Foods LLC (''Vitelli''), which is a U.S. importer of subject merchandise and other products from Italy and other countries. *See* Pallante's questionnaire response at pages 1–2 (October 31, 2006). Pallante also explained that until April 2003 it was affiliated with Industrie Alimentare Molisane (''IAM''), another Italian pasta producer, but that the affiliation has ended and they were not affiliated during the POR. *See* Pallante's questionnaire response at pages 2–4 (October 31, 2006). Because IAM is no longer cross-owned with Pallante, and because Vitelli is located in the United States, we are attributing Pallante's subsidies to the sales of Pallante only.

De Matteis: De Matteis has reported that it is affiliated with De Matteis Construzioni S.r.L. (''Construzioni'') by virtue of being 100 percent owned by Construzioni. *See* De Matteis' questionnaire response at pages 2–3 (October 31, 2007). In the *Fourth Administrative Review* [1] De Matteis had another affiliate, Demaservice S.r.l. De Matteis reported that Demaservice S.r.l. is no longer in existence as of December 21, 2001. *See* De Matteis' January 16, 2006, first supplemental questionnaire response at pages 16–17. De Matteis has reported that Construzioni did not receive any subsidies during the POR or AUL period. *See* De Matteis' Second Supplemental Response at 1 (April 13, 2007). Therefore, we are attributing De Matteis' subsidies to its sales only.

Atar: Atar has reported that it has no affiliates or cross-ownership. Thus, we are attributing any subsidies received to Atar's sales only.

Discount Rates

Pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average cost of long-term, fixed-rate loans as a discount rate for allocating non-recurring benefits over time because no company for which we need such discount rates took out any loans in the years in which the government agreed to provide the subsidies in question. Consistent with past practice in this proceeding, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward to reflect the mark-up an Italian commercial bank

[1] *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 66 FR 40987 (August 6, 2001) (''*Fourth Administrative Review*''); (unchanged in Final Results) *Certain Pasta From Italy: Final Results of the Fourth Countervailing Duty Administrative Review,* 66 FR 64214 (December 12, 2001).

would charge a corporate customer. *See, e.g., Certain Pasta from Italy: Preliminary Results and Partial Recision of the Eighth Countervailing Duty Administrative Review,* 70 FR 17971 (April 8, 2005) (decision unchanged in the final results, *Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review,* 70 FR 37084 (June 28, 2005)). For benefits received in 1995–2004, we used the Italian Bankers' Association prime interest rate (as reported by the Bank of Italy), increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges. The Bank of Italy ceased reporting this rate in 2004. Because the ABI prime rate was no longer reported after 2004, for these preliminary results, for 2005 we have used the ''Bank Interest Rates on Euro Loans: Outstanding Amounts, Non-Financial Corporations, Loans With Original Maturity More Than Five Years'' published by the Bank of Italy and provided by the Government of Italy in their October 24, 2006, Questionnaire Response at Exhibit 9. To this rate we made the adjustments described above. *See* Memorandum to the File, ''Calculations for the Preliminary Results for De Matteis Agroalimentare S.p.A.'' (July 31, 2007) (''De Matteis Calc Memo'').

Analysis of Programs

I. Program Preliminarily Determined to be Countervailable

A. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote development in the Mezzogiorno (the south of Italy). Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament abrogated Law 64/86 and replaced it with Law 488/92 (*see* below). This decision became effective in 1993. However, companies whose projects had been approved prior to 1993 were authorized to continue receiving grants under Law 64/86 after 1993.

DeMatteis and Pallante received grants under Law 64/86 which conferred a benefit during the POR.

In the *Pasta Investigation,* the Department determined that these grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy,* 61 FR 30288 (June 14, 1996) (''*Pasta Investigation*''). They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the *Pasta Investigation,* the Department treated the industrial development grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. We have followed the methodology described in 19 CFR 351.524(b)(2) which directs us to allocate over time those non-recurring grants whose total authorized amount exceeds 0.5 percent of the recipient's sales in the year of authorization. Where the total amount authorized is less than 0.5 percent of the recipient's sales in the year of authorization, the benefit is countervailed in full (''expensed'') in the year of receipt. We determined that the grants received by De Matteis and Pallante under law 64/86 exceeded 0.5 percent of their sales in the year in which the grants were approved, as was done in the *Fourth Administrative Review.*

We used the grant methodology described in section 351.524(d) of the regulations to calculate the countervailable subsidy from those grants that were allocated over time. We divided the benefit received by each company in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 64/86 industrial development grants to be 0.07 percent *ad valorem* for DeMatteis, and 0.28 percent *ad valorem* for Pallante. *See* De Matteis Calc Memo; Memorandum to the File, ''Calculations for the Preliminary Results for Pastificio Antonio Pallante S.r.L.'' (July 31, 2007) (''Pallante Calc Memo'').

B. Industrial Development Grants Under Law 488/92

In 1986, the European Union (''EU'') initiated an investigation of the GOI's regional subsidy practices. As a result of this investigation, the GOI changed the regions eligible for regional subsidies to include depressed areas in central and northern Italy in addition to the *Mezzogiorno.* After this change, the areas eligible for regional subsidies are the same as those classified as Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) areas by the EU. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and certain business services) may apply for industrial development grants.

Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Industry. On the basis of the findings of this preliminary examination, the Ministry of Industry ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this ranking.

DeMatteis and Pallante received grants under Law 488/92 which conferred a benefit during the POR.

Industrial development grants under Law 488/92 were found countervailable in the *Second Administrative Review*[2]. The grants are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants are countervailable subsidies.

In the *Second Administrative Review,* the Department treated industrial development grants under Law 488/92 as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. In accordance with section 351.524(b)(2) of the regulations, we determined that the grants received by De Matteis and Pallante under law 488/92 exceeded 0.5 percent of their sales in the year in which the grants were approved, as was the case in the *Fourth Administrative Review.*

We used the grant methodology as described in section 351.524(d) of the regulations to calculate the subsidy for those grants that were allocated over

[2] *See Certain Pasta From Italy: Preliminary Results of Countervailing Duty Administrative Review,* 64 FR 17618 (April 12, 1999) (''*Second Administrative Review*''); (unchanged in Final Results) *Certain Pasta From Italy: Final Results of Second Countervailing Duty Administrative Review,* 64 FR 44489 (August 16, 1999).

time. We divided the benefits received by Pallante in the POR by its total sales in the POR, and the benefits received by De Matteis in the POR by its sales of subject merchandise in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the Law 488/92 industrial development grants to be 0.81 percent *ad valorem* for DeMatteis and 0.61 percent *ad valorem* for Pallante. *See* De Matteis Calc Memo and Pallante Calc Memo.

C. European Regional Development Fund (''ERDF'') Programma Operativo Plurifondo (P.O.P.) Grant

The ERDF is one of the European Union's Structural Funds. It was created pursuant to the authority in Article 130 of the Treaty of Rome in order to reduce regional disparities in socio-economic performance within the EU. The ERDF program provides grants to companies located within regions which meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions), or Objective 5(b) (declining agricultural regions) under the Structural Funds.

DeMatteis received a P.O.P. Grant from the Regione Campania in 1998. *See Fourth Administrative Review.* The P.O.P. Grants were funded by the European Union, the GOI and the Regione Campania.

In the *Pasta Investigation,* the Department determined that ERDF grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds bestowing a benefit in the amount of the grant. Also, these grants were found to be regionally specific within the meaning of section 771(5A) of the Act. In this review, neither the EU, the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that ERDF grants are countervailable subsidies.

In the *Pasta Investigation,* the Department treated ERDF grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment. In accordance with section 351.524(b)(2) of the regulations, we determined that the ERDF grant received by De Matteis exceeded 0.5 percent of its sales in the year in which the grant was approved, as was the case in the *Fourth Administrative Review.*

We used the grant methodology described in section 351.524(d) of the regulations to calculate the countervailable benefit. We divided the benefit received De Matteis in the POR by its total sales in the POR.

On this basis, we preliminarily determine the countervailable subsidy from the ERDF grant to be 0.06 percent *ad valorem* for DeMatteis. *See* De Matteis Calc Memo.

D. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those located in the *Mezzogiorno* region (southern Italy), to use a variety of exemptions from and reductions (sgravi) of payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The sgravi benefits are regulated by a complex set of laws and regulations, and are sometimes linked to conditions such as creating more jobs. We have found in past segments of this proceeding that the benefits under some of these laws (*e.g.*, Laws 183/76 and 449/97) are available only to companies located in the *Mezzogiorno* and other disadvantaged regions. Other laws (*e.g.*, Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country.

In the *Pasta Investigation* and subsequent reviews, the Department determined that the various forms of social security reductions and exemptions confer countervailable subsidies within the meaning of section 771(5) of the Act. They represent revenue foregone by the GOI bestowing a benefit in the amount of the savings received by the companies. Also, they were found to be regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because they were limited to companies in the *Mezzogiorno* or because the higher levels of benefits were limited to companies in the *Mezzogiorno.*

In the instant review, no party in this proceeding challenged our past determinations in the *Pasta Investigation* and subsequent reviews that sgravi benefits were countervailable for companies located within the *Mezzogiorno* region. Additionally, no new information or evidence of changed circumstances was received that would warrant reconsideration of these past determinations.

The laws identified as having provided countervailable sgravi benefits during the POR are the following: Law 407/90 (De Matteis and Pallante), 196/97 (De Matteis), 223/91 Article 8 Paragraph 2 (Pallante), and Law 223/91 Article 25 Paragraph 9 (Pallante). All of these companies are located in the *Mezzogiorno* region of Italy and, therefore, the programs provide countervailable subsidies to these companies.

1. *Law 407/90*

Law 407/90 grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years. A 100 percent exemption is allowed for companies in southern Italy. However, companies located in northern Italy receive only a 50 percent exemption.

In accordance with section 351.524(c) of the Department's regulations and consistent with our methodology in the *Pasta Investigation* and in reviews subsequent to the *Pasta Investigation,* we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided De Matteis's and Pallante's savings in social security contributions during the POR by their total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the sgravi program to be 0.04 percent *ad valorem* for De Matteis and 0.03 percent *ad valorem* for Pallante. *See* De Matteis Calc Memo and Pallante Calc Memo.

2. *Law 196/97*

Law 196/97 allows for a reduction or exemption from social security contributions for workers between the ages of 16 and 32 hired under labor or training contacts. Reductions range from 25 percent to 100 percent depending on the location. The newly hired worker(s) must increase the company's total work force or the worker must be 29 years old or younger. For newly hired workers under a temporary contract, employers are exempt from paying a social security contribution for up to 2 years. If workers are then switched to a permanent contract, the exemption may apply for another 12 months. These benefits will only apply if the worker who is switched from a temporary to a permanent contract increases the number of employees in the enterprise.

In accordance with section 351.524(c) of the Department's regulations and consistent with our methodology in the *Pasta Investigation* and in reviews subsequent to the *Pasta Investigation,* we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided De Matteis's savings in social security contributions during the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the *sgravi* program to be 0.04 percent *ad valorem*

for De Matteis. *See* De Matteis Calc Memo.

3. *Law 223/91 Article 8, Paragraph 2*

Law 223/91, Article 8, Paragraph 2 is intended to encourage the hiring of laid off workers or mobility-listed people. Companies who hire unemployed people are allowed to pay lower social security taxes for up to a maximum of 18 months for employees hired under a long-term contract with no expiration date. If an employee is hired for a short-term contract, then the benefit will last as long as the contract. If the short-term contract is renewed, the benefit can be used for an additional 12 months. In the seventh review preliminary results we stated that record information for law 223/91 shows that this law is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because the higher levels of benefits were limited to companies in the *Mezzogiorno* and to handicraft enterprises. *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review,* 69 FR 45676, 45683 (July 30, 2004); (unchanged in Final Results) *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review,* 69 FR 70657 (December 7, 2004).

In accordance with section 351.524(c) of the Department's regulations and consistent with our methodology in the *Pasta Investigation* and in reviews subsequent to the *Pasta Investigation,* we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided each company's savings in social security contributions during the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the *sgravi* program to be 0.05 percent *ad valorem* for Pallante. *See* Pallante Calc Memo.

4. *Law 223/91 Article 8, Paragraph 4*

Law 223/91, Article 8, Paragraph 4 is intended to encourage the hiring of mobility-listed people. Companies who hire unemployed people on a permanent and full time contract are granted a credit of 50 percent of what the employee would have received in unemployment benefits.

In the 7th Administrative Review results we stated that record information for law 223/91 shows that this law is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because the higher levels of benefits were limited to companies in the *Mezzogiorno* and to handicraft enterprises. *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Seventh Countervailing Duty Administrative Review,* 69 FR 45676, 45683 (July 30, 2004); (unchanged in Final Results) *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review,* 69 FR 70657 (December 7, 2004).

In accordance with section 351.524(c) of the Department's regulations and consistent with our methodology in the *Pasta Investigation* and in reviews subsequent to the *Pasta Investigation,* we have treated social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy, we divided Pallante's savings in social security contributions during the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the sgravi program to be 0.01 percent *ad valorem* for Pallante. *See* Pallante Calc Memo.

E. Law 289/02

1. Article 62—Investments in Disadvantaged Areas

We preliminarily find that Article 62 of Law 289/02 is a credit towards taxes payable. The law was established to promote investment in disadvantaged areas by providing a tax credit to companies that make investments such as the purchase of new equipment for existing structures, or the building of new structures. *See* the GOI's Second Supplemental Response at 3–4 and Annex 1, 2, 5, and 6 (April 13, 2007).

We preliminarily determine that Article 62 of Law 289/02 confers a countervailable subsidy in the form of a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because it represents revenue foregone by the GOI. A benefit is conferred in the amount of the tax savings received by the companies per section 771(5)(E)(iv) of the Act. Also, the program is specific within the meaning of 751(5A)(D)(iv) of the Act because it is limited to certain geographical regions in Italy, specifically, the regions of Calabria, Campania, Basilicata, Pugilia, Sicilia, and Sardegna, and certain municipalities in the Abruzzo and Molise region, and certain municipalities in central and northern Italy. *See* GOI Third Supplemental Response at 3 and Annex 1 and 2, (May 25, 2007).

De Matteis is located in Campania, therefore, it could take advantage of this program. De Matteis explained that it received the benefit for the construction of a new semolina milling facility, including wheat silos, by-product storage silos, semolina silos, and milling equipment. *See* De Matteis' Second Supplemental Response at 2 (April 13, 2007). The Department is treating this program as a credit towards taxes payable per 19 CFR 351.509. Normally, the Department will allocate the benefit of a tax exemption to the year in which the benefit is considered to have been received per 19 CFR 351.509(c), treating the benefit as recurring per 19 CFR 351.524(c). However, the Department may find a benefit to be non-recurring by considering the criteria in 19 CFR 351.524(c)(2)(i)–(iii). In this case, the tax program is exceptional because it was only available for a limited period of time, and was dependent upon companies making specific investments. Further, the subsidy required the government of Italy's express authorization, and the subsidy was tied to capital assets of the firm.

In accordance with section 351.524(b)(2) of the regulations, we determined that the tax credit received by De Matteis exceeded 0.5 percent of its sales in the year in which the tax credit was approved. We used the non-recurring benefit calculation described in 19 CFR 351.524(d) of the regulations to calculate the countervailable benefit. We divided the benefit received by De Matteis in the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from Law 289/02 Article 62 to be 0.35 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

Pallante is located in Campania and, therefore, it could also take advantage of this program. In accordance with section 351.524(b)(2) of the regulations, we determined that the tax credit received by Pallante exceeded 0.5 percent of its sales in the year in which the tax credit was approved. We used the non-recurring benefit calculation described in 19 CFR 351.524(d) of the regulations to calculate the countervailable benefit. We divided the benefit received by Pallante in the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from Law 289/02 Article 62 to be 1.04 percent *ad valorem* for Pallante. *See* Pallante Calc Memo.

2. Article 63—Increase in Employment

We preliminarily find that Article 63 of Law 289/02 is a credit towards taxes payable. The law was established to promote employment by providing a tax credit to companies that hire new employees. The tax credit is 100 euros for a new hire for any company in Italy. If the employee is over 45 the amount

increases to 150 euros. An additional 300 euros will be granted if the company is located in certain regions of Italy. *See* GOI Second Supplemental Response at 3–4 and Annex 3, 4, 7, and 8 (April 13, 2007).

We preliminarily determine that Article 63 of Law 289/02 confers a countervailable subsidy in the form of a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because it represents revenue foregone by the GOI. A benefit is conferred in the amount of the tax savings received by the companies per section 771(5)(E)(iv) of the Act. The program is specific within the meaning of 751(5A)(D)(iv) of the Act because the greater benefit amount is limited to certain geographical regions in Italy, specifically, Campania, Basilicata, Puglia, Calabria, Sicilia, Sardegna, Abruzzo, Molise, and the municipalities of Tivoli, Formia, Sora, Cassino, Frosnone, Viterbo, and Massa. *See* GOI Third Supplemental Response at 3–4 (May 25, 2007). However, if a company is located outside the higher subsidy area, then the program is not countervailable because it is not specific.

De Matteis is located in Campania and, therefore, it could take advantage of the higher subsidy rate. The Department is treating this program as a credit towards taxes payable per 19 CFR 351.509. Normally, the Department will allocate the benefit of a credit towards taxes payable to the year in which the benefit is considered to have been received per 19 CFR 351.509. ''The Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.'' *See* 19 CFR 351.509(b). In expensing the complete benefit in one year, the Department is considering this program as recurring per 19 CFR 351.524(c) which states that ''{t}he Secretary normally will treat the following types of subsidies as providing recurring benefits: Direct tax exemptions and deductions; * * *'' To calculate the countervailable subsidy, we divided De Matteis' tax credit used on the tax return filed during the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from Law 289/02 Article 63 to be 0.03 percent *ad valorem* for De Matteis. *See* De Matteis Calc Memo.

F. Law 662/96

The GOI describes the Patti Territoriali grant (Law 662/96 Article 2, Paragraph 203, Letter d) as provided to companies for entrepreneurial initiatives such as new plants, additions, modernization, restructuring, conversion, reactivation, or transfer. Companies that can apply for the grants must be involved in mining, manufacturing, production of thermal or electric power from biomasses, service companies, tourist companies, agricultural, maritime and salt-water fishing businesses, aquaculture enterprises, or their associations. The Patti Territoriali provides grants to companies located within regions which meet the criteria of Objective 1 or Objective 2 under the Structural Funds or article 87.3.c of the Treaty of Rome. *See* the GOI's Second Supplemental Response at 4–5 and Annex 9–13 (April 13, 2007).

The GOI has stated that De Matteis received disbursements from the Patti Territoriali in 2000 and 2004 from a grant approved on January 29, 1999.

The Department preliminarily determines that the Patti Territoriali grant confers a countervailable subsidy within the meaning of section 771(5)(D)(i) of the Act because it is a direct transfer of funds. A benefit is conferred in the full amount of the grant. Further, the grant is regionally specific within the meaning of section 771(5A)(D)(iv) of the Act because it is limited to companies located within regions which meet the criteria of Objective 1 or Objective 2 under the Structural Funds or article 87.3.c of the Treaty of Rome.

We normally treat grants as non-recurring. In accordance with section 351.524(b)(2) of the regulations, we determined that the Patti Territoriali grant received by De Matteis exceeded 0.5 percent of its sales in the year in which the grant was approved and, therefore, we will allocate the grant over the 12 year AUL.

We used the grant methodology described in section 351.524(d) of the regulations to calculate the countervailable benefit. We divided the benefit received by De Matteis in the POR by its total sales in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Patti Territoriali grant to be 0.57 percent ad valorem for De Matteis. *See* De Matteis Calc Memo.

On July 23, 2007, petitioners submitted ''Comments In Anticipation of Preliminary Results.'' In these comments, petitioners have made a further claim concerning this program. Because we did not have time to issue a supplemental questionnaire, we are not acting on the claim at this time. Following the publication of these preliminary results, the Department will decide whether to issue any further supplemental questionnaires concerning this program.

II. Programs Preliminarily Determined to be Not Countervailable

A. Social Security Reductions and Exemptions—Sgravi (Article 120 of Law 388/00)

Atar has reported receiving benefits from Article 120 of Law 388/00. Unlike many other *sgravi* programs, Article 120 of Law 388/00 (*fiscalizzazione* program) is a nationwide *sgravi* program that provides an equivalent level of deductions throughout Italy and is not specific to the *Mezzogiorno* region or to the pasta industry pursuant to section 771(5A) of the Act. Article 120 of Law 388/00 provides a deduction of certain social security payments related to health care or insurance. The government takes over a minimal amount of the payments for social contributions which are owed to the Instituto Nazionale Previdenza Sociale (''INPS''). In the ninth administrative review we found this program to be non-countervailable. *See Certain Pasta from Italy: Preliminary Results of the Ninth Countervailing Duty Administrative Review and Notice of Intent to Revoke Order, in Part,* 71 FR 17440 (April 6, 2006); and *Certain Pasta from Italy: Final Results of the Ninth Countervailing Duty Administrative Review and Notice of Revocation of Order, in Part,* 71 FR 36318 (June 26, 2006). Therefore, we continue to find that Article 120 of Law 388/00 is not a countervailable subsidy because the subsidy is not specific. Accordingly, we determine that Atar did not receive countervailable subsidies under this program.

III. Programs Preliminarily Determined to Not be Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

A. *Industrial Development Loans Under Law 64/86.*

B. *Law 236/93 Training Grants.*

C. *Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy).*

D. *Development Grants Under Law 30 of 1984.*

E. *Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans.*

F. *Law 317/91 Benefits for Innovative Investments.*

G. *Brescia Chamber of Commerce Training Grants.*

H. *Ministerial Decree 87/02.*

I. *Law 10/91 Grants to Fund Energy Conservation.*

J. *Export Restitution Payments.*

K. *Export Credits Under Law 227/77.*

L. *Capital Grants Under Law 675/77.*

M. *Retraining Grants Under Law 675/77.*

N. *Interest Contributions on Bank Loans Under Law 675/77.*

O. *Preferential Financing for Export Promotion Under Law 394/81.*

P. *Urban Redevelopment Under Law 181.*

Q. *Industrial Development Grants Under Law 183/76.*

R. *Interest Subsidies Under Law 598/94.*

S. *Duty-Free Import Rights.*

T. *European Social Fund Grants.*

U. *Law 113/86 Training Grants.*

V. *European Agricultural Guidance and Guarantee Fund.*

W. *Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95).*

X. *Interest Grants Financed by IRI Bonds.*

Y. *Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA).*

Z. *Article 44 of Law 448/01.*

IV. Programs Preliminarily Determined To Have Been Terminated

We examined the following programs at verification during the 9th Administrative Review and preliminarily determine in this review that they have been terminated prior to the current POR and that there will be no remaining subsidy benefits from these programs after this POR. *See* ''Verification of the Questionnaire Responses of the Government of Italy in the 9th Administrative Review'' (March 31, 2006) which was placed on the record of this proceeding on July 31, 2007.

A. *Social Security Reductions and Exemptions—Sgravi Article 44 of Law 448/01.*

B. *Social Security Reductions and Exemptions—Sgravi Law 337/90.*

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Pallante and De Matteis. Atar had no countervailable subsidies. We did not calculate an individual rate for Agritalia because a review was not requested for Agritalia. Agritalia was only asked to participate because of the possible effect of subsidies it received on its suppliers who are included in this review. We have preliminarily found that Agritalia did not receive any subsidies which affected any suppliers' rates. For the period January 1, 2005, through December 31, 2005, we preliminarily find the net subsidy rates for the producers/exporters under review to be those specified in the chart shown below:

Producer/exporter	Net subsidy rate (percent)
De Matteis Agroalimetare S.p.A	1.97
Pastificio Antonio Pallante S.r.L	2.02
Atar S.r.l	0.00

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties at these net subsidy rates. The Department will issue appropriate instructions directly to Customs within 15 days of publication of the final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2005, and December 31, 2005, at the rates in effect at the time of entry. Agritalia has been reviewed previously and has its own exporter specific rate of 2.92 percent.

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties.

For all non-reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or ''all others'' rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice.

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice, pursuant to 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results, in accordance with section 751(a)(3) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 31, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. 07–3832 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Afghanistan International Carpet Fair; August 26–28, 2007

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

U.S. Secretary of Commerce Gutierrez's priorities for Afghanistan include helping the country develop three sectors in which it has a comparative advantage: rugs, dried fruits and nuts, and mining. The International Trade Administration of the Department of Commerce is

organizing a U.S. carpet trade mission to Kabul, Afghanistan for the Afghanistan International Carpet Fair on August 26–28, 2007. The mission will assist U.S. rug businesses exploring trade and investment opportunities in Afghanistan's rug sector. Assistant Secretary David Bohigian will lead a delegation of U.S.-based executives of U.S. firms interested in pursuing business in Afghanistan's rug sector. The mission will include participation in the Carpet Fair, matchmaking, and a potential site visit to a rug production facility. The mission will reaffirm the U.S. Government's support towards bilateral relations and seek to expand opportunities for U.S. companies in Afghanistan.

Commercial Setting

Afghanistan has a comparative advantage in producing hand woven rugs, putting this sector on the cutting edge of the Afghanistan's reintegration into the global economy. Afghanistan's rugs have a rich legacy of artistry and craftsmanship, which has been handed down through many generations. Each type of rug is unique to the location in which it was produced and inspired. Afghanistan produces various types of rugs woven out of wool, silk, and cotton.

Due to the current lack of finishing facilities, Afghanistan sends more than eighty percent of its rugs to Pakistan, where they are finished and labeled ''made in Pakistan''. This Trade Mission will enable delegates to explore opportunities for investing in rug producing facilities and exporting textile equipment to Afghanistan. As such, the Mission could play a valuable role in preserving the brand identity of Afghan rugs, by helping producers to finish and export their own rugs.

The Afghan Government is helping Afghan rug producers connect their craftsmanship to the world. In conjunction with the U.S. Department of Commerce, the Government of Afghanistan organized two previous delegations of Afghan rug producers to visit the United States. In July 2006, a delegation visited major retailers and rug importers in New York, Atlanta, and Washington, DC. In February 2007, a second delegation attended the AmericasMart International Area Rug Market in Atlanta, where Afghanistan's rugs were part of a major cultural showcase.

This first-ever Afghanistan International Carpet Fair will provide an opportunity for Afghan rug producers and U.S. buyers to network, create business relationships, and allow U.S. buyers to explore investment opportunities in the rug sector. The Trade Mission presents a unique opportunity for seasoned U.S. rug professionals to partner with Afghan rug producers as Afghanistan strives to re-establish its leadership position in the global rug business.

Mission Goals: The mission aims to further U.S. commercial policy objectives and to advance specific U.S. business interests in the U.S. and Afghan rug sectors. The mission will:

- Create an opportunity for members of the U.S. rug sector to meet and network with Afghan rug producers;
- Allow U.S. rug business delegates to visit Afghan rug producing facilities and explore potential investment opportunities;
- Assess the commercial climate of Afghanistan's rug sector as well as export and investment opportunities in Afghanistan;
- Encourage continued progress in economic development in Afghanistan.

Mission Scenario: This mission will enable participants to gain access to the Afghan rug market on a large scale. The mission will include VIP participation in the rug show and a potential visit to at least one rug producing facility. Participants will be part of the carpet fair's opening night-VIP reception with high-level Afghan government officials, including President Karzai (to be confirmed). The event will provide opportunities to network with over 70 Afghan rug vendors at the show. The show will feature a broad range of rugs from Afghanistan's diverse rug producing provinces. Networking will also include one-on-one meetings between the U.S. rug business delegates and Afghan rug producers.

Mission Timetable: The precise schedule will depend on the availability of local government and business officials and the specific goals of the mission participants. The tentative trip itinerary will be as follows:

Sunday, August 26

Arrive in Kabul
Attend opening reception for the Afghanistan International Carpet Fair, Serena Hotel
Meet with high-level U.S. and Afghan Government officials

Monday, August 27

Attend Afghanistan International Carpet Fair
Networking between buyers and sellers
One-on-one meetings between buyers and sellers
Potential site visit to rug producing facilities

Tuesday, August 28

Attend Afghanistan International Carpet Fair
Networking between buyers and sellers
One-on-one meetings between buyers and sellers
Potential site visit to rug producing facilities

Wednesday, August 29

Depart Kabul

Criteria for Participation and Selection: We are looking to recruit five to ten delegates from the U.S. rug industry to participate in this mission. Recruitment and selection will be conducted according to the ''Statement of Policy Governing Department of Commerce-Overseas Trade Missions'' established in March 1997.

Eligibility: Participating companies must be incorporated or otherwise organized in the United States.

Selection Criteria: Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission;
- Relevance of a company's business and product line to the identified growth sectors;
- Rank of the designated company representative;
- Past, present, or prospective relevant international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business; and
- Timely receipt of the company's signed and completed application, participation agreement, and participation fee.

Additionally, U.S. exporters applying for this mission, such as rug finishing machinery manufacturers or distributors, must certify that the company's products or services are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. The production and content requirements do not apply to U.S. buyer and U.S. investor applicants.

Recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade missions calendar (*http://www.ita.doc.gov/doctm/tmcal.html*), the Afghanistan Investment and Reconstruction Task Force Web site (*http://www.export.gov/afghanistan*), and press releases to the general and trade media. Promotion of the mission will also take place through the involvement of U.S. Export Assistance Centers and relevant trade associations.

An applicant's partisan, political activities (including political contribution) are entirely irrelevant to the selection process. The fee to participate in this mission is approximately USD 1,500. The fee will not cover travel expenses, meals or lodging. Recruitment begins immediately and will close on August 8, 2007. Applications received after that date will be considered only if space and scheduling constraints permit. The mission Web site (*http://www.export.gov/afghanistan/events*) will share information as it becomes available.

Disclaimer

Trade mission members participate in the trade mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Afghanistan: *http://travel.state.gov/travel/cis_pa_tw/tw/tw_2121.html.* The Department of Commerce will coordinate with the U.S. Embassy in Kabul to arrange for all transportation of the trade mission participants to and from the hotel and on visits to rug producing facilities. The Serena Hotel is responsible for providing security for the event venue. The Serena Hotel is a luxury hotel and does have security measures in place.

The U.S. Government does not make any representations or guarantees as to the success of the trade mission.

Noor Alam,

Afghanistan Investment and Reconstruction Task Force, U.S. Department of Commerce, Washington, DC 20230, Tel: (202) 482–1812, Fax: (202) 482–0980, E-mail: AfghanInfo@ita.doc.gov.

[FR Doc. E7–15202 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648 XB46

Fishing Capacity Reduction Program; Bering Sea/Aleutian Islands King and Tanner Crabs

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

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to increase the fee rates for the Bristol Bay red king and Aleutian Islands brown king crab reduction endorsement fisheries to repay the $17,129,957.23 and $6,380,837.19 sub-loans, respectively, of the $97,399,357.11 reduction loan to finance the Bering Sea/Aleutian Islands (BSAI) King and Tanner Crab fishing capacity reduction program.

DATES: The BSAI King and Tanner Crab fishing capacity reduction program fee rate increases will begin on September 5, 2007.

ADDRESSES: Send questions about this notice to Leo Erwin, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Leo Erwin, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b) through (e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans which finance reduction program costs.

Subpart L of 50 part 600 is the framework rule generally implementing section 312(b) through (e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorized reduction loans.

The Consolidated Appropriations Act of 2001 (Public Law 106–554) directed the Secretary of Commerce to establish the $100 million fishing capacity reduction program in the BSAI king and tanner crab fishery. Congress amended the authorizing Act twice (Public Law 107 20 and Public Law 107 117), once to change the crab reduction program's funding from a $50 million appropriation and a $50 million loan to a $100 million loan and once to clarify provisions about crab fishery vessels. NMFS adopted the program's implementation rule as § 600.1103 in a subpart M of part 600.

NMFS published the BSAI crab reduction program's proposed implementation rule on December 12, 2002 (67 FR 76329) and its final rule on December 12, 2003 (68 FR 69331). On November 24, 2004, NMFS published a **Federal Register** notice (69 FR 68313) advising the public that beginning on December 27, 2004, NMFS would tender the crab reduction program's reduction payments to 25 accepted bidders. NMFS allocated the $97,399,357.11 million reduction loan to six reduction endorsement fisheries involved, as the following subamounts:

1. Bristol Bay red king, $17,129,957.23,
2. BSAI *C. opilio* and *C. bairdi*, $66,410,767.20,
3. Aleutian Islands brown king, $6,380,837.19,
4. Aleutian Islands red king, $237,588.04,
5. Pribilof red king and blue king, $1,571,216.35; and
6. St. Matthew blue king, $5,668,991.10.

NMFS published a fee payment collection system implementation rule on September 16, 2005 (70 FR 54653). Fee collection and payment began on October 17, 2005. On May 10, 2006, NMFS published a final rule to exempt any crab landed under the Community Development Quota (CDQ) Program from the fee regulations for the BSAI King and Tanner Crab Fishing Capacity Reduction Program (71 FR 27209). Anyone interested in the program's full implementation details should refer to these documents.

II. Purpose

The purpose of this notice is to adjust, in accordance with the framework rule's § 600.1013(b), the fee rates for the BSAI king and tanner crab fishery. Section 600.1013(b) directs NMFS to recalculate the fee rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30 year term.

NMFS has determined that the current fee rates for the Bristol Bay red king and Aleutian Islands brown king reduction endorsement fisheries, 1.9 percent and 2.6 percent respectively, are inadequate to service these sub-loans. Therefore, NMFS is increasing the fee rates to 2.5 percent for the Bristol Bay red king crab reduction endorsement fishery, and to 5.0 percent for the Aleutian Islands brown king crab reduction endorsement fishery. NMFS has determined this action for the Bristol Bay red king crab reduction endorsement fishery is necessary to ensure timely loan repayment. NMFS does not expect the Aleutian Island brown king crab reduction endorsement fishery to remain on a timely repayment schedule even with this increase. However, fee rates are capped at 5.0 percent by statute.

To provide more accessible services, streamline collections, and save taxpayer dollars, fish buyers may

disburse collected fee deposits to NMFS by using a secure Federal system on the Internet known as Pay.gov. Pay.gov enables fish buyers to use their checking accounts to electronically disburse their collected fee deposits to NMFS. Fish buyers who have access to the Internet should consider using this quick and easy collected fee disbursement method. Fish buyers may access Pay.gov by going directly to *Pay.gov*'s Federal website at: *http://www.pay.gov/paygov/*.

Fish buyers who do not have access to the Internet or who simply do not wish to use the Pay.gov electronic system, may continue to disburse their collected fee deposits to us by sending their checks to our lockbox. Our lockbox's address is:

NOAA Fisheries BSAI Crab Buyback
P O Box 979060
St. Louis, MO 63197 9000

Fish buyers must not forget to include with their disbursements the fee collection report applicable to each disbursement. The fee collection report tells NMFS how much of the disbursement it must apply to each of the six reduction endorsement fisheries subamounts. Fish buyers using *Pay.gov* will find an electronic fee collection report form to receive information and accompany electronic disbursements. Fish buyers who do not use Pay.gov must include a hard copy fee collection report with each of their disbursements. Fish buyers not using Pay.gov may also access the NMFS website for an Excel spreadsheet version of the fee collection report at: *http://www.nmfs.noaa.gov/mb/financial__services/buyback.htm*.

III. Notice

The new rates for the Bristol Bay red king and Aleutian Islands brown king reduction endorsement fisheries will begin on September 5, 2007.

From and after this date, all fish sellers paying fees on the Bristol Bay red king and Aleutian Islands brown king reduction endorsement fisheries shall begin paying BSAI crab reduction loan program fees at the revised rates.

From and after this date, all fees received by NMFS for the Bristol Bay red king and Aleutian Islands brown king reduction endorsement fisheries shall be subject to the new fee rates, regardless of the applicable fee month.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on September 16, 2005 (70 FR 54654).

The revised fees applicable to the BSAI crab reduction program's reduction endorsement fisheries are as follows:

REDUCTION ENDORSEMENT FISHERIES	CRAB RATIONALIZATION FISHERIES	CURRENT FEE RATE	NEW FEE RATE
Bristol Bay red king	BBR	1.9%	2.5%
BSAI *C. opilio* and *C. bairdi*	BSS, WBT, and EBT	5.0%	5.0%
Aleutian Islands brown king	EAG and WAG	2.6%	5.0%
Aleutian Islands red king	WAI	5.0%	5.0%
Pribilof red king and Pribilof blue king	PIK	5.0%	5.0%
St. Matthew Blue	SMB	5.0%	5.0%

Authority: The authority for this action is 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: July 31, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E7–15205 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB47

Fishing Capacity Reduction Program for the Pacific Coast Groundfish Fishery

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

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to increase the fee rate for the Oregon pink shrimp fee-share fishery to repay the $2,228,845 sub-loan of the $35,662,471 reduction loan to finance the Pacific Coast groundfish fishing capacity reduction program.

DATES: The Pacific Coast groundfish program fee rate increase for Oregon pink shrimp will begin on September 5, 2007.

ADDRESSES: Send questions about this notice to Leo Erwin, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Leo Erwin, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b) through (e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)through (e)) general authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b) through (e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorizes reduction loans.

Enacted on February 20, 2003, section 212 of Division B, Title II, of Public Law 108–7 (section 212) specifically authorizes a fishing capacity reduction program for that portion of the limited entry trawl fishery under the Pacific Coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors are endorsed for trawl gear operation (reduction fishery).

The groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for the operation of groundfish trawl gear. The program also involved corollary fishing capacity reduction in the California, Oregon, and Washington fisheries for Dungeness crab and pink shrimp (fee-share fisheries).

All post-reduction fish landings from the reduction fishery and the six fee-share fisheries are subject to the groundfish program's fee.

NMFS proposed the implementing notice on May 28, 2003 (68 FR 31653) and published the final notice on July 18, 2003 (68 FR 42613).

NMFS allocated the $35,662,471 reduction loan to the reduction fishery

and to each of the six fee-share fisheries as follows:

1. Reduction fishery, $28,428,719; and
2. Fee-share fisheries:

a. California coastal Dungeness crab fishery, $2,334,334,

b. California pink shrimp fishery, $674,202,

c. Oregon coastal Dungeness crab fishery, $1,367,545,

d. Oregon pink shrimp fishery, $2,228,845,

e. Washington coastal Dungeness crab fishery, $369,426, and

f. Washington pink shrimp fishery, $259,400.

Each of these allocations became a reduction loan subamount repayable by fees from the applicable fishery.

NMFS published in the **Federal Register** on July 13, 2005 (70 FR 40225), the final rule to implement the industry fee system for repaying the groundfish program's reduction loan. The regulations implementing the program are located at § 600.1012 of 50 CFR part 600's subpart M.

On August 8, 2005, NMFS published in the **Federal Register** (70 FR 45695) a notice of the fee effective date and established September 8, 2005 as the effective date when fee collection and loan repayment began.

II. Purpose

The purpose of this notice is to adjust, in accordance with the framework rule's § 600.1013(b), the fee rate for the Oregon pink shrimp fee-share fishery. Section 600.1013(b) directs NMFS to recalculate the fee rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30 year term.

NMFS has determined that the current fee rate of 3.75 percent for the Oregon pink shrimp fishery is inadequate to service the loan. Therefore, NMFS is increasing the fee rate to 4.70 percent which NMFS has determined is necessary to ensure timely loan repayment.

To provide more accessible services, streamline collections, and save taxpayer dollars, fish buyers may disburse collected fee deposits to NMFS by using a secure Federal system on the Internet known as *Pay.gov*. *Pay.gov* enables fish buyers to use their checking accounts to electronically disburse their collected fee deposits to NMFS. Fish buyers who have access to the Internet should consider using this quick and easy collected fee disbursement method. Fish buyers may access *Pay.gov* by going directly to *Pay.gov*'s Federal website at: *http://www.pay.gov/paygov/*.

Fish buyers who do not have access to the Internet or who simply do not wish to use the *Pay.gov* electronic system, may continue to disburse their collected fee deposits to us by sending their checks to our lockbox. Our lockbox's address is:

NOAA Fisheries Pacific Coast Groundfish Buyback
P O Box 979059
St. Louis, MO 63197 9000

Fish buyers must not forget to include with their disbursements the fee collection report applicable to each disbursement. The fee collection report tells NMFS how much of the disbursement it must apply to the reduction fishery and six fee share fisheries subamounts. Fish buyers using Pay.gov will find an electronic fee collection report form to receive information and accompany electronic disbursements. Fish buyers who do not use *Pay.gov* must include a hard copy fee collection report with each of their disbursements. Fish buyers not using Pay.gov may also access the NMFS website for an Excel spreadsheet version of the fee collection report at: *http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm*.

III. Notice

The new fee rate for the Oregon pink shrimp fishery will begin on September 5, 2007].

From and after this date, all groundfish program fish sellers paying fees on the Oregon pink shrimp fee-share fishery shall begin paying groundfish program fees at the revised rate.

From and after this date, all fees received by NMFS for the Oregon pink shrimp fee-share fishery shall be subject to the new fee rates regardless of the applicable fee month.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on July 13, 2005 (70 FR 40225).

The revised fees applicable to the groundfish program's reduction fishery and to each of its six fee-share fishery are as follows:

FISHERY	CURRENT FEE RATE	NEW FEE RATE
Groundfish	5.00%	5.00%
CA Coastal Dungeness Crab	1.24%	1.24%
CA Pink Shrimp	5.00%	5.00%
OR Coastal Dungeness Crab	0.55%	0.55%
OR Pink Shrimp	3.75%	4.70%
WA Coastal Dungeness Crab	0.16%	0.16%
WA Pink Shrimp	1.50%	1.50%

Authority: The authority for this action is Pub. L. 107 206, Pub. L. 108 7, 16 U.S.C. 1861a (b) through (e), and 50 CFR 600.1000 *et seq.*

Dated: July 31, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E7–15207 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB72

Marine Mammals; File No. 10018

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Dr. Rachel Cartwright, 5277 West Wooley Road, Oxnard, CA 93035, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*).

DATES: Written, telefaxed, or e-mail comments must be received on or September 5, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

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; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is

NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 10018.

FOR FURTHER INFORMATION CONTACT: Brandy Hutnak or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 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.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant seeks a five year permit to study the behavior and dynamics of humpback whale female and calf pairs in the waters off of Maui, Hawaii, including waters of the Hawaiian Islands Humpback Whale National Marine Sanctuary. Up to 540 takes for close vessel approach, photo-identification, focal follows, underwater observations, collection of sloughed skin, and incidental harassment are requested annually to test the hypotheses that behavior, dynamics and distribution of female/calf pairs varies between different stocks and may be influenced by abiotic factors such as aspects of bathymetry, water quality, and levels of vessel traffic. Incidental harassment of bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), pantropical spotted dolphins (*Stenella attenuata*), false killer whales (*Pseudorca crassidens*), and pilot whales (*Globicephala* sp.) is also requested. Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 1, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–15232 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB82

North Pacific Fishery Management Council; Notice of Public Meeting

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

ACTION: Meetings of the North Pacific Fishery Management Council Aleutian Island Ecosystem Team.

SUMMARY: The North Pacific Fishery Management Council (Council) Ecosystem Committee will meet at the Auke Bay Laboratory Lena Point facility, in Juneau, AK, from 1 p.m. to 5 p.m. on Wednesday, August 22, 2007

DATES: The North Pacific Fishery Management Council (Council) Ecosystem Committee will meet on August 22, 2007.

ADDRESSES: NMFS Auke Bay Laboratory, Ted Stevens Marine Research Institute, 17109 Pt. Lena Loop Road, Juneau, AK 99801.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda is to discuss the AI Fishery Ecosystem Plan (review summary pamphlet, discuss approaches to identifying desirable/ undesirable states of ecosystem), give feedback on the proposed approach to developing an Arctic Fishery Management Plan, and receive updates on the Alaska Marine Ecosystem Forum meeting and NOAA's integrated ecosystem assessment plans.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: August 1, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–15187 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB78

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for two scientific research permits.

SUMMARY: Notice is hereby given that NMFS has received two scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on September 5, 2007.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), threatened Snake River (SR) spring/summer-run (spr/sum), threatened SR fall-run. Steelhead (*O. mykiss*): threatened LCR, threatened Snake River (SR). Coho salmon (*O. kisutch*): threatened LCR. Sockeye salmon (*O. nerka*): endangered SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226).

NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits. Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see ADDRESSES). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1124

The Idaho Department of Fish and Game (IDFG) is requesting a 5–year permit for seven study tasks that, among them, would annually take adult and juvenile threatened SR fall chinook salmon; adult and juvenile threatened spring/summer SR chinook salmon; and adult and juvenile endangered SR sockeye salmon in the Salmon and Clearwater Rivers in Idaho. The original Permit 1124 was in place for 5 years (63 FR 30199) with one amendment (67 FR 34909); it expired on December 31, 2002. The permit was renewed for another five years and is due to expire on December 31, 2007. Throughout its existence, the permit has comprised the same seven tasks (with the addition of rescuing and salvaging listed fish): Task 1 - General fish population inventory; Task 2 - Spring/summer chinook salmon natural production monitoring and evaluation; Task 3 - Spring/summer chinook salmon supplementation research; Task 4 - Redfish Lake, Pettit Lake, Alturas Lake kokanee/sockeye research; Task 5 - Salmon and steelhead fish health monitoring; Task 6 - Steelhead natural production monitoring and evaluation; and Task 7 - Steelhead supplementation research. Under these tasks, listed adult and juvenile salmon would be (a) Observed/harassed during fish population and production monitoring surveys; (b) captured (using seines, traps, hook-and-line angling equipment, and electrofishing equipment) and anesthetized; (c) sampled for biological information and tissue samples, (d) PIT-tagged or tagged with radio transmitters or other identifiers, (e) and released. Some fish would die as a result of the research activities though the permit would include salvage and rescue operations as part of the allotted take (i.e., during some of the activities, listed fish would be collected and transported to improve their survival). In addition, the IDFG is asking to lethally take a small number of juvenile SR sockeye and spring/summer chinook salmon during some of the research.

The research has many purposes and would benefit listed SR salmon in different ways. In general, the purpose of the research is to determine the distribution, abundance, and productivity of anadromous and resident fish stocks; measure the efficacy of harvest management strategies; gauge the impact of proposed or existing habitat alteration projects; and monitor natural production levels, salmonid health, and the effectiveness of supplementation efforts. The research would benefit listed salmon by helping resource managers tailor land-altering activities (e.g., timber harvest, road building) to the needs of the fish; set harvest regimes so that they have minimal impacts on listed populations; prioritize projects in a way that gives maximum benefit to listed species; and design strategies and activities to help recover them.

Permit 10021

The Lower Willamette Group (LWG) is seeking a 2–year permit to annually capture UWR Chinook salmon, UWR steelhead, LCR Chinook salmon, LCR steelhead, and LCR coho salmon during the course of research directed at non-listed fish species in the lower Willamette River, Oregon. The information gained from this action would be used to fill data gaps in food web models and determine tissue contaminant concentrations as part of the ongoing Remedial Investigation/Feasibility Study of the lower Willamette River superfund site. The research would benefit listed salmonids by helping guide the superfund site cleanup effort and thereby improve habitat conditions for listed anadromous salmonids that migrate through the harbor. The LWG proposes to use boat electrofishing to capture non-listed fish. If a salmonid is observed, the LWG would not attempt to net it; instead, they would cease electrofishing and move to another area before resuming sampling. The LWG does not intend to kill any of the salmonids being captured but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: August 1, 2007.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–15229 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economics & Statistics Administration

Measuring Innovation in the 21st Century Economy Advisory Committee; Notice of Public Meeting

AGENCY: Economics & Statistics Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Department of Commerce (DOC) is announcing the second meeting of the Measuring Innovation in the 21st Century Economy Advisory Committee. The meeting is open to the public. Seating at the meeting will be on a first-come, first-served basis. Interested parties may register on the Advisory Committee Web site: *http://www.innovationmetrics.gov*. Pre-registration is encouraged but not required.

DATES: The meeting will be held on September 12, 2007, from approximately 9 a.m. to noon. On-site sign-in begins at 8:30 a.m.

ADDRESSES: The meeting will be held in the Auditorium of the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Attendees should arrive at the main building entrance on 14th Street, NW., between Pennsylvania and Constitution Avenues. Attendees must present a government-issued picture ID and pass through metal detection equipment.

FOR FURTHER INFORMATION CONTACT: Elizabeth ''E.R.'' Anderson, Deputy Under Secretary for Economic Affairs, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–3727, facsimile: 202–482–0432; or Sabrina Montes, Room 4858, telephone: 202–482–6495, facsimile: 202–482–0325.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration rule on Federal Advisory Committee Management, 41 CFR part 101–6, the Secretary of Commerce determined that the establishment of the Measuring

Innovation in the 21st Century Economy Advisory Committee (the ''Committee'') was in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary on new or improved measures of innovation to help explain how innovation occurs in different sectors of the economy, how it is diffuses, and how it impacts economic growth and productivity. The Committee consists of fifteen members from business and academia appointed by the Secretary of Commerce. The Committee functions solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act. The Charter was filed under the Federal Advisory Committee Act. Additional information on the Advisory Committee on Measuring Innovation in the 21st Century Economy can be found online at: *http://www.innovationmetrics.gov*.

The meeting is physically accessible to people with disabilities. Individuals requiring special accommodations at this meeting including sign language interpretation or other auxiliary aids should contact Sabrina Montes at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made. The meeting will be transcribed and the transcription will be made public on the Committee Web site within one month of the meeting date.

Elizabeth ''E.R.'' Anderson,

Deputy Under Secretary for Economic Affairs.

[FR Doc. E7–15167 Filed 8–3–07; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—Building State Capacity to Improve the Achievement of Students With Disabilities Under the No Child Left Behind Act (NCLB) and the Individuals With Disabilities Education Act (IDEA); Notice Inviting Applications for new Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326K.

Dates:

Applications Available: August 6, 2007.

Deadline for Transmittal of Applications: September 5, 2007.

Deadline for Intergovernmental Review: September 10, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to promote academic achievement and improve results for children with disabilities by supporting technical assistance (TA), model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in sections 663 and 681(d) of the IDEA, 20 U.S.C. 1400 *et seq.*

Absolute Priority: For FY 2007, this is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: Building State Capacity to Improve the Achievement of Students With Disabilities under NCLB and IDEA

Background:

One of the primary goals of Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB), is for all students to reach proficiency in reading and math by 2014. Available data indicate that there is still much work to be done to reach this goal, particularly for students with disabilities. In 2004, 37 percent of schools missed AYP for the students with disabilities subgroup (Department of Education, 2006). Furthermore, while the achievement gaps between various groups of students have decreased, the gap between students with disabilities and students without disabilities remains significant and a cause for concern (Center on Education Policy, 2007a). For example, O'Reilly and colleagues (2006) note that achievement data from standardized reading and mathematics tests collected in two nationally representative longitudinal studies (Special Education Elementary Longitudinal Study and the National Longitudinal Transition Study 2) indicate that almost two-thirds of students with disabilities scored at or below the 25th percentile.

In order to raise the achievement of students with disabilities, State educational agencies (SEAs) must have the capacity to provide support and TA to their districts and schools. While most SEAs agree that they should play a key role in supporting their districts' and schools' efforts to improve the achievement of students, many SEAs do not have the capacity to do so (Center on Education Policy, 2007b). The Center on Education Policy (2007a) found that providing TA to districts with schools in need of improvement continues to be very challenging for SEAs.

SEA officials report that one reason for their inability to provide support to their districts and schools is a lack of in-house expertise in providing TA. In fact, many of the SEAs surveyed by the Center on Education Policy (2007a) stated that they were ''experimenting'' with providing TA and did not know the best way to provide support to their districts and schools. This has resulted in delivery of TA that is fragmented and episodic, rather than ongoing and systematic (Department of Education, 2006).

For TA to be effective, SEAs must take the following steps: (1) Identify available TA that addresses the unique needs of their districts; (2) create an infrastructure that coordinates TA between regular and special education; (3) support districts in sustaining the implementation of evidence-based practices; and (4) support the scaling-up of evidence-based practices Statewide (see Learning Point Associates, 2007). Each of these steps is detailed below.

Identify available TA that addresses the unique needs of districts. States should consider using the significant TA resources that are currently available to support their districts and schools. For example, the Department's Office of Special Education Programs (OSEP) funds over 50 TA centers, including six Regional Resource Centers (RRCs), to support the effective implementation of the IDEA. The Department's Office of Elementary and Secondary Education (OESE) funds 21 comprehensive TA centers to support the implementation of NCLB. Regional educational laboratories, funded by the Department's Institute of Education Sciences (IES), provide information on scientifically based research and focus on topics such as distributed leadership, effective instructional strategies, and standards-based curricula. These providers of research and TA provide a rich source of information and support; yet SEAs may not effectively utilize these resources to meet their needs due to insufficient staff (Center on Education Policy, 2007a) or a lack of awareness about available resources.

Create an infrastructure that coordinates TA between regular and special education. The challenge of coordinating TA for special education and regular education makes it difficult for most SEAs to create an infrastructure that provides ongoing and systematic TA to improve the achievement of students with disabilities. To provide TA that focuses on improving the

achievement of all students, including students with disabilities, SEAs have had to reorganize both their structure and their function (Center on Education Policy, 2007a). A review of Statewide systems of support indicates that SEAs typically provide TA in a piecemeal fashion and do not coordinate TA across regular and special education (Westat, 2006). In a study of the impact of TA services on improved education for students with disabilities, a major finding was that the ''* * *deep attitudinal and philosophical barriers that exist between general and special education will continue to hinder technical assistance activities if they are not addressed by both policymakers and practitioners'' (SRI, 2000).

Support effective, efficient, and sustained implementation of evidence-based practices. Capacity is needed at both State and district levels to sustain the implementation of evidence-based practices. Twenty-one States noted that an important objective of their Statewide system of support involves building district capacity to provide TA so that districts are better able to provide support to schools (Department of Education, 2006). Currently, research (Fixsen, Naoom, Blasé, Friedman, & Wallace, 2005) and exemplars of the implementation of evidence-based programs and practices funded by the Department of Education, such as positive behavior supports (PBS) (Barrett, 2006) and Reading First (U.S. Department of Education, 2006), suggest that if a district or school is to effectively implement a research-based program or practice with fidelity, a number of core implementation components must be in place (e.g., ongoing consultation and coaching, regular evaluation of staff performance, data-based decision making). Research and practice also suggest that TA provided to districts and schools should not solely focus on the research-based practice, but also should include assistance to help districts and schools develop and support core implementation components, noted above, to ensure that the research-based practices are effectively implemented and sustained.

Support the scaling up of evidence-based practices. Scaling up and sustaining the implementation of evidence-based practices requires a guide (i.e., a ''blueprint'') designed to improve the efficiency and success of large-scale replications of a specific practice (Center on Positive Behavioral Interventions and Supports, 2004). The research and exemplars that inform best practices in implementation and sustainability of effective practices also inform the work of scaling up evidence-based practices and can be used to create a blueprint to assist SEAs in building capacity to provide TA to districts and schools.

Specifically, an integrated system of TA that supports the scaling up of evidence-based practices will require: State funding and public support from State leaders, systems that support the use of evidence-based practices, and appropriate resources for consultation and coaching for the implementation sites (Fixsen *et al.*, 2005).

In summary, as part of their efforts to improve the achievement of students with disabilities, SEAs need to provide effective TA to districts. SEAs are transforming their approaches to supporting districts to implement Federal programs so that they may improve the quality of education provided to students (Center on Education Policy, 2007a). Indeed, in some States, SEAs have gone from being one of the least used sources of TA to improve education, to the most used source. SEAs, however, report that they often have not had the time, personnel, or guidance needed to transition from being an agency focused on compliance monitoring to an agency focused on TA (Center on Education Policy, 2007a). The purpose of this priority is to support a center to assist SEAs to build the necessary capacity to provide the TA needed by districts to support the achievement of students with disabilities in grades K–12 and, in doing so, improve the achievement of all students.

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Priority

This priority will support a National Center to Build State Capacity to Provide TA to Districts (Center) to ensure that the implementation of evidence-based practices that improve the achievement of students with disabilities is sustained and brought to scale for grades K–12. The Center will work intensively with six States to help them: (a) Identify available TA that addresses the unique needs of the districts; (b) create an infrastructure to provide TA across regular and special education to improve the achievement of students with disabilities; (c) use what is known about effective implementation of evidence-based practices at both the SEA and district levels; and (d) use effective methods to scale-up the use of evidence-based practices. The Center will help six selected States carry out the challenging responsibility of providing districts with the necessary TA to improve the achievement of students with disabilities. The Center will disseminate, nationwide, the lessons learned from their work with the six States, including (a) How SEAs effectively took steps to build the capacity to provide coordinated TA to districts and (b) TA strategies appropriate for the unique needs of specific sites that can be used by States to improve their capacity to provide TA to improve the achievement of students with disabilities. Through the dissemination of the Center's work, the capacity of all States to support their districts and scale up the use of evidence-based practices will be enhanced.

To meet this priority, an applicant must describe in its application—

(a) The current research, theory, and best practices on providing TA at a systems level, including a review of the concepts of systems change, implementation, and scaling up of evidence-based practices Statewide.

(b) A conceptual framework for how States should provide TA to districts to support them in implementing and sustaining the use of evidence-based practices across regular and special education to improve the achievement of students with disabilities, and how SEAs should support scaling up the use of these practices.

(c) A plan for how the Center will work intensively with six selected SEAs to establish, enhance, and coordinate a State TA infrastructure across regular and special education to support districts in implementing evidence-based practices to improve the achievement of students with disabilities and scaling up the use of these practices Statewide for grades K–12.

(d) A logic model depicting, at a minimum, the goals, activities, outputs, and outcomes of the proposed Center. One acceptable approach to logic modeling is presented on the following Web site: *http://www.uwex.edu/ces/lmcourse/*. The model must include descriptions of proposed service delivery strategies, including the nature and conditions under which various strategies would be used; information on who would implement these strategies and how they would be implemented; and a comprehensive description of how the applicant would measure, through benchmarks and formative and summative evaluations, the effectiveness of these strategies.

(e) A plan for recruiting and selecting six States to work with the Center to improve their capacity to support districts in improving the achievement of students with disabilities. Factors for consideration in selecting these States could include the demographic and geographic characteristics of each State; the SEA's priorities and initiatives to support school improvement; the SEA's current capacity for providing TA; and the commitment of the State's regular and special education leadership to coordinate their TA to improve the achievement of students with disabilities. (Final selection of States will be made during the development of the cooperative agreement in the Department. The selection process will be clear to interested States.)

(f) A plan for how the Center will document the unique characteristics and needs of each State and the work that was necessary to effectively build State and district capacity to provide TA to improve the achievement of students with disabilities.

(g) A plan for establishing and facilitating a community of practice (CoP) of Federal and State TA providers and others interested in building State capacity, to share expertise and lessons learned on a continuous basis. The membership of the CoP must be determined with input from OSEP and OESE and include the following: Representatives from the six selected SEAs; experts in systems change and implementation of evidence-based practices; representatives from the Department's regional comprehensive centers, regional resource centers, regional educational laboratories, and special and regular education content centers; parents of students with disabilities; State and local policy makers; and distinguished teachers and principals. The Center must support the ongoing communication of the CoP through e-mail, teleconferences, Web-based discussions, and face-to-face meetings.

(h) A dissemination plan that includes methods for disseminating the lessons learned and context-specific TA strategies. This plan must describe the audiences that are most likely to benefit from these lessons learned and TA strategies and the methods the Center will use to reach them. An annual conference may be one of these dissemination methods.

(i) An evaluation plan that measures the impact of the Center's activities. Specifically, the evaluation must document—

(1) What participants in the six selected SEAs learned;

(2) How the Center's TA affected the SEAs' ability to support districts in implementing evidence-based practices to improve the achievement of students with disabilities;

(3) How the SEAs scaled-up the implementation of the evidence-based practices; and

(4) The degree to which the evidence-based practices contributed to improved outcomes for students with disabilities.

To meet the requirements of this priority, the Center, at a minimum, must—

(a) Establish and maintain a Web site that will include the Center's products and tools, links to CoP information, and other resources. All Web site information and documents must be displayed in a form that meets a government or industry-recognized standard for accessibility;

(b) Select an advisory group from the CoP that will meet at least annually with the Center to provide feedback on Center plans, activities, and accomplishments;

(c) Budget for the Center's project director to attend a three-day Project Directors' meeting in Washington, DC during each year of the project and two additional yearly meetings with OSEP; and

(d) Budget five percent of the award amount annually to support emerging needs as identified jointly through consultation with the OSEP project officer.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been, or are being, met by the Center; and

(c) The degree to which the project promotes best practices in educational services to children.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of the IDEA makes the public comment requirements under the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the

maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. Eligible Applicants: SEAs; local educational agencies (LEAs); public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—

(a) The project funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

(b) Applicants and the award recipient funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.326K.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternate Format* in section VIII in this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the coversheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, references, or the letters of support.

However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* August 6, 2007. *Deadline for Transmittal of Applications:* September 5, 2007.

Applications for awards under this competition may be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6.

Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 10, 2007.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide *Grants.gov* Apply site in FY 2007. The Building State Capacity to Improve the Achievement of Students With Disabilities under the No Child Left Behind Act (NCLB) and the Individuals with Disabilities Education Act (IDEA), CFDA Number 84.326K, is one of the competitions included in this project. We request your participation in *Grants.gov*.

If you choose to submit your application electronically, you must use the *Grants.gov* Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of an application to us.

You may access the electronic application for the Building State Capacity to Improve the Achievement of Students With Disabilities under the No Child Left Behind Act (NCLB) and the Individuals with Disabilities Education Act (IDEA) at *http://www.Grants.gov* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326K).

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the *Grants.gov* system no later than 4:30 p.m., Washington, DC time, on the

application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.

• You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via *Grants.gov*, you must complete the steps in the *Grants.gov* registration process (*http://www.Grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the *Grants.gov* 3-Step Registration Guide (see *http://www.Grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via *Grants.gov*. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by the Department.) The Department then will retrieve your application from *Grants.gov* and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Technical Issues with the Grant.Gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under For **FURTHER INFORMATION CONTACT** in Section VII in this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.326K) 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.326K) 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not

accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326K) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the award.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on: The extent to which projects provide high quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

The awardee will be required to provide information related to these measures.

The awardee also will be required to report information on the project's performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Debra Price-Ellingstad, U.S. Department of Education, 400 Maryland Avenue, SW., room 4097, Potomac Center Plaza, Washington, DC 20202–2550.

Telephone: (202) 245–7481.

If you use a TDD, call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 31, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–15228 Filed 8–3–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from January 2, 2007 through March 31, 2007.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Under section 607(f) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you may call

the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from January 2, 2007 through March 31, 2007. Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions

Topic Addressed: Child With a Disability.

○ Letter dated March 8, 2007 to American Speech-Language-Hearing Association Director Catherine D. Clark, regarding criteria for determining whether a speech or language impairment adversely affects a child's educational performance, how public agencies may respond when speech/language pathology sessions are missed due to the student's absence or the provider's absence, and an explanation of the requirements governing the continuum of alternative placements.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Methods of Ensuring Services.

○ Letter dated January 23, 2007 to Volusia County, Florida Superintendent of Schools Margaret A. Smith, and letter dated February 9, 2007 to Houston, Texas Independent School District Staff Member Carolyn Guess, clarifying requirements for obtaining parental consent when a public agency seeks access to a child's public benefits or public insurance to pay for required special education and related services for Medicaid-eligible children.

○ Letter dated March 8, 2007 to Indiana Department of Education Governmental Affairs Committee Chairman John D. Hill, clarifying requirements for obtaining parental consent when a public agency seeks access to a child's public benefits or public insurance to pay for required special education and related services for Medicaid-eligible children and explaining that the local educational agency (LEA) does not have to obtain a separate parental consent if parental consent is given directly to another agency, such as a State's Medicaid Agency.

Topic Addressed: Children With Disabilities Enrolled by Their Parents in Private Schools.

○ Letter dated March 9, 2007 to Massachusetts Department of Education State Director of Special Education Marsha Mittnacht, regarding parentally-placed children with disabilities who reside out-of-State and attend private schools located in school districts in Massachusetts.

○ Letter dated March 23, 2007 to Association of Educational Service Agencies Executive Director Brian L. Talbot and letter dated March 23, 2007 to Association of Educational Services Agencies President Lee Warne, regarding the role of sending and receiving LEAs in completing child find activities and implementing equitable services for children with disabilities enrolled by their parents in private schools.

Topic Addressed: Access to Instructional Materials.

○ Letter dated March 16, 2007 to Recording for the Blind and Dyslexic President and CEO John Kelly, regarding the benefits of giving all qualified accessible media producers anticipatory access to the National Instructional Materials Accessibility Standard files sets deposited at the National Instructional Materials Access Center.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations and Reevaluations.

○ Letter dated February 6, 2007 to individual (personally identifiable information redacted), regarding the relationship of the requirements for review of existing evaluation data to the requirements for reevaluation.

○ Letter dated March 1, 2007 to Harcourt Assessment Inc. Publisher Aurelio Prifitera, responding to Harcourt Assessment's overview of the requirements in the final regulations for Part B of IDEA for evaluating children suspected of having specific learning disabilities.

○ Letter dated March 6, 2007 to Wyoming Protection and Advocacy for Individual Rights Program Attorney Buck Gwyn, regarding State criteria for determining whether a child has a specific learning disability.

○ Letter dated March 6, 2007 to Lehigh University Professor Perry A. Zirkel, regarding new requirements in the final regulations for Part B of IDEA that govern whether States may use the severe discrepancy model and clarifying the role of response to intervention in determining whether a child has a specific learning disability.

Section 615—Procedural Safeguards

Topic Addressed: Maintenance of Current Educational Placement.

○ Letter dated February 2, 2007 to Pennsylvania Department of Education Staff Member Gerald L. Zahorchak, regarding the child's status during the pendency of administrative or judicial proceedings when a child who is no longer eligible for services under Part C of IDEA seeks initial services under Part B of IDEA.

Topic Addressed: Discipline Procedures.

○ Letter dated March 8, 2007 to University of Utah Professor Dixie Snow Huefner, regarding when a parent or an LEA may request an expedited due process hearing and the child's placement during an appeal.

○ Letter dated February 9, 2007 to Washoe County, Nevada Assistant Superintendent Dr. Kris Christiansen, regarding whether a functional behavioral assessment (FBA) triggers the procedural safeguards applicable to an evaluation or an independent educational evaluation and whether parent consent is required prior to conducting an FBA.

Part C

Infants and Toddlers With Disabilities

Section 643—Allocation of Funds

Topic Addressed: State Allocation Formula.

○ Letter dated March 6, 2007 to Texas Governor Rick Perry, clarifying that allocations to each State under Part C of IDEA are made based on the ratio of the number of infants and toddlers in that State to the number of infants and toddlers in all States and that the calculations are based on the most recent data available from the Census Bureau. The Department cannot make adjustments in the formula allocations to States based on data provided by an individual State.

Other Letters that Do Not Interpret the Idea but May Be of Interest to Readers

Topic Addressed: Assessment and Accountability.

○ Letter dated February 7, 2007 to Chief State School Officers regarding the assessment and accountability requirements of Title I and extending flexibility for determining annual yearly progress for the students with disabilities subgroup.

Topic Addressed: Transition to Postsecondary Education.

○ Letters dated March 16, 2007 to Dear Colleague and Dear Parent from Office for Civil Rights Assistant Secretary Stephanie Monroe, regarding the legal rights and responsibilities of students with disabilities as they transition from secondary to postsecondary education settings.

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities).

Dated: July 31, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–15226 Filed 8–3–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0006; FRL–8450–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Community Right-To-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-To-Know Act (EPCRA), EPA ICR Number 1352.11, OMB Control Number 2050–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2004–0006, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *superfund.docket@epa.gov.*
- Fax: 202–566–0224.
- Mail: Superfund Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460
- Hand Delivery: EPA Docket Center, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2004–0006. 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 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2625; E-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–2004–0006, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund 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 Superfund Docket is 202–566–0276.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–2004–0006.

Affected Entities: Entities potentially affected by this action are manufacturers and non-manufacturers.

Title: Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)

ICR Number: EPA ICR No. 1352.11, OMB Control No. 2050–0072.

ICR Status: This ICR is currently scheduled to expire on January 31, 2008. 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: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA Hazard Communication Standard to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC, LEPC, and LFD with jurisdiction over their facility. This form is to be submitted on March 1 of each year, on the inventory of chemicals in the previous calendar year.

Burden Statement: The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.6 hours for new and newly regulated facilities and approximately 0.6 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to submit Tier I or Tier II inventory report under 40 CFR 370.25 is estimated to be approximately 3.1 hours per facility. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.17 hours per request. The average burden for state and local governments for managing and maintaining the reports is estimated to be 32.25 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated Total Number of Potential Respondents: 564,132.

Frequency of Response: Annual.

Estimated Total Average Number of Responses for Each Respondent: 1.

Estimated Total Annual Burden Hours: 2,031,859.

Estimated Total Annual Costs: $96 million.

This includes capital investment or maintenance and operational costs.

There is an increase of 2,160 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is due to the increase in the number of facilities that may be subject to the hazardous chemical inventory requirements.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR

1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 26, 2007.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. E7–15238 Filed 8–3–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 30, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before October 5, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by email or U.S. mail. To submit your comments by email, send them to *PRA@fcc.gov* and to *Jasmeet_K._Seehra@omb.eop.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, and Jasmeet Seehra, Office of Management and Budget (OMB) Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 225 and 255 Interconnected voice over Internet Protocol Services (VoIP).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 5,711.

Estimated Time per Response: 10–20 hours.

Frequency of Response: Occasional reporting requirements; recordkeeping; third party disclosure.

Obligation to Respond: Mandatory.

Total Annual Burden: 57,110–114,220 hours.

Total Annual Cost: $ 11,422,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personal identifiable information (PII) from individuals.

Privacy Impact Assessment: No.

Needs and Uses: On June 15, 2007, the Commission released a *Report and Order,* In the Matters of IP-Enabled Services; Implementation of sections 225 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; the Use of N11 Codes and Other Abbreviated Dialing Arrangements, FCC 07–110. FCC 07–110 extends the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended (the Act), to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services. In addition, the Commission extends to interconnected VoIP providers the Telecommunications Relay Services requirements contained in its regulations, pursuant to section 225(b)(1) of the Act. As applied to interconnected VoIP providers and to manufacturers of specialized VoIP equipment, several requirements adopted by FCC 07–110 contain new or modified information collection requirements that have not been approved by OMB, and on which the Commission must seek comment under the PRA. For example, several rules that FCC 07–110 extends to interconnected VoIP providers and/or equipment manufacturers contain procedures governing a provider or manufacturer's obligation to respond to an informal consumer complaint. Other rules detail VoIP providers' and VoIP equipment manufacturers' duty to make available to the public certain information concerning their respective services or products. In particular, the following rules, as applied to interconnected VoIP providers and to manufacturers of specialized VoIP equipment and customer premises equipment, contain new or modified information collection requirements: 47 CFR 6.11(a), 6.11(b), 6.18(b), 6.19, 64.604(a)(5), 64.604(c)(1)(i), 64.604(c)(1)(ii), 64.604(c)(2), 64.604(c)(3), 64.604(c)(5)(iii)(C), 64.604(c)(5)(iii)(E), 64.604(c)(5)(iii)(G), 64.604(c)(6)(v)(A)(3), 64.604(c)(6)(v)(G), 64.604(c)(7), and 64.606(b). The Commission will publish a separate document in the **Federal Register** announcing the effective date of those rules upon OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–15083 Filed 8–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 07–02]

Order of Investigation and Hearing; Anderson International Transport and Owen Anderson—Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984

Anderson International Transport and Owen Anderson

Anderson International Transport (''AIT'') is located at 9045 Knight Road, Houston, Texas. Other business addresses listed on AIT's bills of lading are 4939 West Orem, Suite 4 & 6,

Houston, Texas and 14023 South Post Oak Road, Houston, Texas. AIT is owned by Owen Anderson (''Mr. Anderson''). An assumed name certificate for Anderson International Transport, 4939 West Orem Drive, Houston, Texas was filed by Mr. Anderson on February 18, 2005, in Harris County, Texas. AIT is not incorporated.

Based on evidence available to the Commission, it appears that Mr. Anderson and AIT have knowingly and willfully provided transportation services as a non-vessel operating common carrier (''NVOCC'') in the United States without obtaining an ocean transportation intermediary (''OTI'') license from the Commission, without providing proof of financial responsibility and without publishing a tariff showing its rates and charges. It appears that Mr. Anderson and AIT have originated a minimum of fifteen ocean export shipments during the period January 5, 2005 through October 19, 2006.

Section 8(a) of the 1984 Act, 46 U.S.C. 40501, requires an NVOCC to maintain open to public inspection in an automated tariff system, tariffs showing its ''rates, charges, classifications, rule, and practices.'' The Commission's regulations at 46 CFR 520.3 affirm this statutory requirement by directing each NVOCC to notify the Commission, prior to providing transportation services of the location and publisher of its tariffs by filing Form FMC–1. Section 19 of the 1984 Act, 46 U.S.C. 40901 and 40902, prohibits any person from acting as an OTI [1] in the United States prior to being issued a license from the Commission and obtaining a valid bond, proof of insurance, or other surety in a form and amount determined by the Commission to ensure financial responsibility. The Commission's regulations at 46 CFR 515.21 mandate that the bond, proof of insurance, or other surety evidencing the financial responsibility of an OTI shall be in the amount of $50,000 for freight forwarders and $75,000 for NVOCCs.

Furthermore, pursuant to section 13 of the 1984 Act, 46 U.S.C. 41107, a party is subject to a civil penalty of not more than $30,000 for each violation knowingly and willfully committed, and not more than $6,000 for other violations.[2] Each shipment is a separate violation.

[1] An ocean transportation intermediary is defined by section 3(17) of the 1984 Act, 46 U.S.C. 40102(17), as either a freight forwarder or a non-vessel-operating common carrier.

[2] These penalty amounts reflect an adjustment for inflation pursuant to the Commission's regulations at 46 CFR Part 506.

Now therefore, it is ordered, That pursuant to section 11(c) of the 1984 Act, 46 U.S.C. 41302, an investigation is instituted to determine:

(1) Whether Owen Anderson and Anderson International Transport violated section 8 of the 1984 Act and the Commission's regulations at 46 CFR Part 520 by operating as an NVOCC without publishing tariffs showing rates and charges;

(2) whether Owen Anderson and Anderson International Transport violated sections 19(a) and (b) of the 1984 Act and the Commission's regulations at 46 CFR Part 515 by operating as an OTI in the U.S. foreign trades without obtaining a license from the Commission and without providing proof of financial responsibility in the form of surety bonds;

(3) whether, in the event one or more violations of the 1984 Act or the Commission's regulations are found, civil penalties should be assessed and, if so, the amount of the penalties to be assessed; and

(4) whether, in the event violations are found, appropriate cease and desist orders should be issued against Owen Anderson and Anderson International Transport;

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Owen Anderson and Anderson International Transport are designated as Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on the parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of this Commission in this proceeding, include notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by March 21, 2008 and the final decision of the Commission shall be issued by July 21, 2008.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–15176 Filed 8–3–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 07–07]

Order of Investigation and Hearing; Embarque Puerto Plata, Corp. and Embarque Puerto Plata Inc. d/b/a Embarque Shipping and Embarque El Millon Corp., Estebaldo Garcia, Ocean Sea Line, Maritza Gil, Mateo Shipping Corp. and Julio Mateo—Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 CFR Parts 515 and 520

Embarque Puerto Plata, Corp. was incorporated in the State of New York on November 17, 1992, and subsequently dissolved by proclamation. Embarque Puerto Plata Inc. was incorporated in the State of New York on April 28, 2005. Embarque Puerto Plata, Corp. and Embarque Puerto Plata Inc. (''Embarque'') listed its office address as 1426 Cromwell Avenue, Bronx, New York 10451. Recent indications, however, are that Embarque is currently operating at 381

East 169th Street, Bronx, New York 10456 by utilizing the different business names of Embarque Shipping and Embarque El Millon Corp. The principals of Embarque are Estebaldo Garcia and Hayda Garcia. Based on evidence available to the Commission, it appears that Embarque and Estebaldo Garcia have knowingly and willfully provided transportation services as a non-vessel operating common carrier (''NVOCC'') in the United States from at least May 2005 to the present without obtaining an ocean transportation intermediary (''OTI'') license from the Commission, without providing proof of financial responsibility, and without publishing a tariff showing its rates and charges.

Ocean Sea Line,[1] located at 146 West 170th Street, Bronx, New York 10452 was incorporated in New York on November 1, 2000 and dissolved by proclamation on June 30, 2004. Maritza Gil indicated in correspondence with the Commission that she is the president of Ocean Sea Line and owns 100% of the company stock. From at least September 2003 to the present, it appears Ocean Sea Line knowingly and willfully provided ocean transportation services as a freight forwarder with respect to numerous shipments without obtaining an OTI license from the Commission and without providing proof of financial responsibility. Since Ocean Sea Line is no longer a valid New York corporation, Ms. Gil appears to be operating Ocean Sea Line as a sole proprietorship.

Mateo Shipping, Corp. (''Mateo Shipping'') was incorporated in the State of New York on July 12, 2004. The business office of Mateo Shipping is located at 1441 Ogden Avenue, Bronx, New York 10452. In correspondence with the Commission, Julio Mateo represented himself to be the President of Mateo Shipping, as well as owner of 50% of the capital stock. Based on evidence available to the Commission, it appears that Mateo Shipping and Julio Mateo have knowingly and willfully provided transportation services as an NVOCC from at least October, 2005 through the present without obtaining an OTI license, without providing proof of financial responsibility and without publishing a tariff showing its rates and charges.

Section 8(a) of the 1984 Act, 46 U.S.C. 40501(a), requires an NVOCC to maintain open to public inspection in an automated tariff system, tariffs showing its ''rates, charges, classifications, rules, and practices.'' The Commission's regulations at 46 CFR 520.3 affirm this statutory requirement by directing each NVOCC to notify the Commission, prior to providing transportation services, of the location and publisher of its tariffs by filing Form FMC–1.

Furthermore, section 19(a) of the 1984 Act states that no person in the United States may act as an ocean transportation intermediary unless that person holds a license issued by the Commission. 46 U.S.C. 40901. Section 19(b)(1) of the 1984 Act further requires all persons acting as ocean transportation intermediaries to furnish a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. 46 U.S.C. 40902. The Commission's regulations at 46 CFR 515.21 restate this obligation and mandate that the bond, proof of insurance, or other surety evidencing the financial responsibility of an OTI shall be in the amount of $50,000 for freight forwarders and $75,000 for NVOCCs.

Pursuant to section 13 of the 1984 Act, 46 U.S.C. 41107(a), a party is subject to a civil penalty of not more than $30,000 for each violation knowingly and willfully committed, and not more than $6,000 for other violations.[2] Each shipment is a separate violation.

Now therefore, it is ordered, That pursuant to section 11(c) of the 1984 Act, 46 U.S.C. 41302(a), an investigation is instituted to determine:

(1) Whether Embarque Puerto Plata, Corp. and Embarque Puerto Plata Inc. d/b/a Embarque Shipping and Embarque El Millon Corp., Estebaldo Garcia, Mateo Shipping, and Julio Mateo violated section 8 of the Act and the Commission's regulations at 46 CFR 520 by operating as NVOCCs without publishing tariffs showing their rates and charges;

(2) whether Embarque Puerto Plata, Corp. and Embarque Puerto Plata Inc. d/b/a Embarque Shipping and Embarque El Millon Corp., Estebaldo Garcia, Ocean Sea Line, Maritza Gil, Mateo Shipping, and Julio Mateo violated sections 19(a) and (b) of the 1984 Act and the Commission's regulations at 46 CFR Part 515 by operating as OTIs in the United States trades without obtaining licenses from the Commission and without providing proof of financial responsibility;

(3) whether, in the event one or more violations of the Act or the Commission's regulations are found, civil penalties should be assessed and, if so, the amount of the penalties to be assessed; and

(4) whether, in the event violations are found, appropriate cease and desist orders should be issued against Embarque Puerto Plata, Corp. and Embarque Puerto Plata Inc. d/b/a Embarque Shipping and Embarque El Millon Corp., Estebaldo Garcia, Ocean Sea Line, Maritza Gil, Mateo Shipping, and Julio Mateo;

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Embarque Puerto Plata, Corp. and Embarque Puerto Plata Inc. d/b/a Embarque Shipping and Embarque El Millon Corp., Estebaldo Garcia, Ocean Sea Line, Maritza Gil, Mateo Shipping and Julio Mateo are designated as Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on the parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of this Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on the parties of record;

[1] The company is listed as Ocean SeaLine in New York State corporate records.

[2] These penalty amounts reflect an adjustment for inflation pursuant to the Commission's regulations at 46 CFR part 506.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by July 30, 2008 and the final decision of the Commission shall be issued by December 1, 2008.

By the Commission

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–15177 Filed 8–3–07; 8:45 am]

BILLING CODE 6730–01–P

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 31, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Hometown Bancshares, Inc. Middlebourne, West Virginia; to merge with First Community Bancorp, Inc., St. Marys, West Virginia, and thereby indirectly acquire First National Bank of St. Marys, St. Marys, West Virginia. In connection with this application, First National Bank of St Marys, Saint Marys, West Virginia, will merge with Union Bank, Inc., Middlebourne, West Virginia.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan and Capitol Bancorp Colorado Ltd. II, Fort Collins, Colorado; to acquire 51 percent of the voting shares of Loveland Bank of Commerce (in organization) Loveland, Colorado.

2. Capitol Bancorp, Ltd., Lansing, Michigan and Capitol Development Bancorp Limited V, Lansing Michigan; to acquire 51 percent of the voting shares of Bank of Feather River (in organization) Yuba City, California.

Board of Governors of the Federal Reserve System, August 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–15186 Filed 8–3–07; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2007–B4]

Federal Management Regulation; Federal Real Property Profile Summary Report

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: In furtherance of FMR Bulletin 2006–B4, this notice announces the Fiscal Year (FY) 2006 release of the new version of the Federal Real Property Profile (FRPP) Summary Report, which provides an overview of the U.S. Government's owned and leased real property as of September 30, 2006. The FY 2006 FRPP Summary Report is now available.

EFFECTIVE DATE: August 6, 2007.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration, Washington, DC 20405; *stanley.langfeld@gsa.gov*, (202) 501–1737. Please cite FMR Bulletin 2007–B4.

SUPPLEMENTARY INFORMATION: The FY 2006 FRPP Summary Report provides summary-level data on worldwide real property owned and leased by the Federal Government. The reported data is pulled from the FRPP inventory system, which is a centralized, comprehensive, and descriptive database of the Government's real property portfolio, developed and managed by GSA in consultation with the Federal Real Property Council (FRPC).

The FY 2006 report marks the second reporting year for the governmentwide data elements designated by the FRPC as required by Executive Order 13327. All executive branch agencies are required to submit constructed asset-level data to the FRPP on an annual basis.

The FRPP system was re-engineered in FY 2005 and further enhanced in FY 2006 to meet the FRPC's information technology requirements. Agencies can use the FRPP applications to update portfolio information online and in real time, perform historical benchmarking, produce ad hoc reports, measure performance of real property assets, and identify unneeded and underutilized assets for disposal. The goals of the database are to: 1) improve decision-making with more accurate and reliable data; 2) provide the ability to benchmark Federal real property asset performance; and 3) centralize collection of key real property data elements into one Federal inventory database.

Dated: July 25, 2007.

Kevin Messner,

Acting Associate Administrator, Office of Governmentwide Policy.

General Services Administration

[FMR Bulletin 2007–B4]

Real Property

To: Heads of Federal Agencies

Subject: Federal Real Property Profile Summary Report

1. *What is the purpose of this Bulletin?*

This Bulletin announces the FY 2006 release of the Federal Real Property Profile (FRPP) Summary Report, an overview of the U.S. Government's owned and leased real property as of September 30, 2006.

2. *What is the background?*

a. On February 4, 2004, the President issued Executive Order (EO) 13327, ''Federal Real Property Asset Management,'' and established the Federal Real Property Council (FRPC) to oversee the Government's asset management planning process and to improve governmentwide real property performance. The EO requires the Administrator of General Services, in consultation with the FRPC, to develop and maintain a centralized inventory database, incorporating all key elements identified by the FRPC.

b. The goals of the centralized database are to: 1) improve decision-making with more accurate and reliable data; 2) provide the ability to benchmark Federal real property asset performance; and 3) centralize collection of key real property data elements into one Federal inventory database. The FRPP system was re-engineered in FY 2005 and further enhanced in FY 2006 to meet the FRPC's information technology requirements.

c. The FY 2006 report marks the second reporting year for the governmentwide data elements designated by the FRPC as required by Executive Order 13327. All executive branch agencies are required to submit constructed asset-level data to the FRPP on an annual basis. The FRPP is a secure, password-protected Web-based database that allows Federal real property managers to update real property data online and in real time, perform historical benchmarking, produce ad hoc reports, measure performance of real property assets, and identify unneeded and underutilized assets for disposal. The FRPP Summary Report provides information regarding Federal real property holdings to stakeholders.

3. How can we obtain a copy of the FRPP summary report?

The FY 2006 version of the FRPP Summary Report is posted on the GSA website at *http://www.gsa.gov/realpropertyprofile*. Hard copies of the report can be obtained by contacting the Asset Management Division (MPA), Office of Governmentwide Policy, General Services Administration, 1800 F Street, N.W., Washington, DC 20405.

4. Whom should we contact for further information regarding the FRPP?

For further information, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or *stanley.langfeld@gsa.gov*.

[FR Doc. E7–15170 Filed 8–3–07; 8:45 am]

BILLING CODE 6820–RH–S

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation (FTR); Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 08–01, Fiscal Year (FY) 2008 continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration's (GSA's) annual per diem review has resulted in lodging and meal allowance rate changes for locations within the continental United States (CONUS) to provide for the reimbursement of Federal employees' authorized travel expenses covered by per diem. Per Diem Bulletin 08–01 updates the standard CONUS lodging per diem rate as well as the maximum per diem amounts for existing non-standard areas (NSAs) located within CONUS. The standard CONUS lodging rate will increase to $70. All CONUS per diem rates prescribed in Bulletin 08–01 may be found at *http://www.gsa.gov/perdiem.* GSA based the lodging per diem rates, including the updated standard CONUS lodging rate, on average daily rate information that the lodging industry reports. The use of such data in the per diem rate setting process enhances the Government's ability to obtain policy compliant lodging where it is needed. In addition to the annual lodging study, GSA identified two new redefined non-standard areas (NSA's), which prompted an out of cycle meal survey for these areas.

For a complete listing of pertinent information that must be submitted through a Federal executive agency for GSA to restudy a location if a CONUS or standard CONUS per diem rate is insufficient to meet necessary expenses, please review numbers 4 and 5 of our per diem Frequently Asked Questions at (*http://www.gsa.gov/perdiemfaqs*).

DATES: This notice is effective October 1, 2007, and applies for travel performed on or after October 1, 2007 through September 30, 2008.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Cy Greenidge, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management, at (202) 219–2349, or by e-mail at *http://www.gsa.gov/perdiemquestions.* Please cite Notice of Per Diem Bulletin 08–01.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of current data, the General Services Administration (GSA) has determined that the current standard continental United States (CONUS) lodging rate, as well as lodging rates for certain localities (non-standard areas), do not adequately reflect lodging market conditions. To develop the per diem rates for FY 2008, GSA used the same average daily rate-based methodology used for establishing the FY 2007 per diem rates. The use of average daily rate information to establish the standard CONUS lodging rate is new for FY 2008.

A meals study was also conducted for two new non-standard areas (NSAs).

B. Change in Standard Procedure

GSA issues/publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the internet at *http://www.gsa.gov/perdiem.* This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: July 31, 2007.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. E7–15216 Filed 8–3–07; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07BO]

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

State of Pennsylvania Fire and Life Safety Public Education Survey—New—Division of Unintentional Injury, National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project will involve conducting a statewide survey of Pennsylvania fire departments to identify current fire and life safety education programs, resources, and training needs. Survey findings will be used to develop an inventory of programs and resources, and to inform future training programs for fire and life safety educators in Pennsylvania. In the United States each year, there are approximately 400,000 residential fires, with 14,000 non-fatal and 3,000 fatal civilian injuries. In line with Healthy People 2010 objectives, National Center of Injury Prevention and Control (NCIPC) works to reduce and eliminate non-fatal and fatal injuries from residential fires.

The survey will be conducted with fire departments in Pennsylvania. The 2007 National Directory of Fire Chiefs & EMS Administrators lists all fire departments in Pennsylvania along with their contact information. Fire departments will be asked to complete a 35-item survey either on-line or by returning a paper survey. It is expected that 1,000 fire departments will complete the 30 minute survey, which is designed to collect information on the scope and content of educational programs and activities, training needs, and barriers to fire and life safety education. An initial mailing (and e-mail if e-mail address exists) to the fire chief of each fire department will include a postcard describing the study and instructing them how to submit the survey. Fire departments that have not completed the survey and have not declined will be sent a reminder postcard and will receive a follow-up telephone call.

There are no costs to respondents except for their time to participate in the surveys.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Fire Departments—Completed survey	1,000	1	30/60	500
Total				500

Dated: July 31, 2007.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–15218 Filed 8–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2006P–0287 and 2006P–0399]

Determination That PHOSLO (Calcium Acetate) 667-Milligram Tablet Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that PHOSLO (calcium acetate) 667-milligram (mg) tablet, equal to 169 mg calcium, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for calcium acetate 667-mg tablet.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an

ANDA that does not refer to a listed drug.

PHOSLO (calcium acetate) 667-mg tablet, equal to 169 mg calcium, is the subject of approved NDA 19–976 held by Fresenius Medical Care (Fresenius). PHOSLO (calcium acetate) 667-mg tablet is indicated for the control of hyperphosphatemia in end stage renal failure. Fresenius's NDA 19–976 was approved on December 10, 1990. Lachman Consultant Services, Inc., and Beckloff Associates, submitted citizen petitions dated July 14, 2006 (Docket No. 2006P–0287/CP1) and September 27, 2006 (Docket No. 2006P–0399), respectively, under 21 CFR 10.30, requesting that the agency determine, as described in § 314.161, whether PHOSLO (calcium acetate) 667-mg tablet was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Fresenius's PHOSLO (calcium acetate) 667-mg tablet was not withdrawn from sale for reasons of safety or effectiveness. FDA has reviewed its files for records concerning the withdrawal of PHOSLO (calcium acetate) 667-mg tablet from sale. There is no indication that the decision to discontinue marketing of PHOSLO (calcium acetate) 667-mg tablet was a function of safety or effectiveness concerns, and the petitioner has identified no data or information suggesting that PHOSLO (calcium acetate) 667-mg tablet was withdrawn for safety or effectiveness reasons. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate that PHOSLO (calcium acetate) 667-mg tablet was withdrawn for reasons of safety or effectiveness.[1]

After considering the citizen petitions and reviewing agency records, FDA determines that for the reasons outlined in this document, PHOSLO (calcium acetate) 667-mg tablet was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list PHOSLO (calcium acetate) 667-mg tablet in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PHOSLO (calcium acetate) 667-mg tablet may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: July 30, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–15172 Filed 8–3–07; 8:45 am]

BILLING CODE 4160–01–S

[1]Beckloff Associates also requested that the agency determine whether PHOSLO (calcium acetate) 667-mg capsule was withdrawn from sale for reasons of safety or effectiveness. Because a capsule dosage form for this product is currently marketed, such a determination is not necessary (See NDA 21–160, product no. 3).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0446]

Determination That PHENERGAN (Promethazine Hydrochloride) Suppositories, 12.5 Milligrams and 25 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that PHENERGAN (promethazine hydrochloride (HCl)) suppositories, 12.5 milligrams (mg) and 25 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for promethazine HCl suppositories, 12.5 mg and 25 mg.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

PHENERGAN (promethazine HCl) suppositories, 12.5 mg and 25 mg, are the subject of approved NDA 10–926 held by Wyeth Pharmaceuticals, Inc. (Wyeth). PHENERGAN (promethazine HCl) suppositories are indicated for, among other things, certain types of allergic reactions and sedation. Wyeth's NDA 10–926 was originally approved in 1958. In 1971, under the Drug Efficacy Study Implementation (DESI), FDA concluded that promethazine HCl rectal suppositories were effective or probably effective for the indications described in the **Federal Register** notice published on June 18, 1971 (DESI 6290, 36 FR 11758). In a citizen petition received November 1, 2006 (Docket No. 2006P–0446/CP1), submitted under 21 CFR 10.30, Taro Pharmaceuticals U.S.A., Inc., requested that the agency determine, as described in § 314.161, whether PHENERGAN (promethazine HCl) suppositories, 12.5 mg and 25 mg, were withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that PHENERGAN (promethazine HCl) suppositories, 12.5 mg and 25 mg, were not withdrawn from sale for reasons of safety or effectiveness. In support of this finding, we note that promethazine HCl is a widely used product that has been marketed for many decades in many dosage forms. FDA has independently evaluated relevant literature and data for possible postmarketing adverse events and has found no information that would indicate that PHENERGAN

suppositories, 12.5 mg and 25 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined in this notice, PHENERGAN (promethazine HCl) suppositories, 12.5 mg and 25 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list PHENERGAN (promethazine HCl) suppositories, 12.5 mg and 25 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PHENERGAN (promethazine HCl) suppositories, 12.5 mg and 25 mg, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: July 30, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–15174 Filed 8–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0160]

Determination That Daranide (Dichlorphenamide) Tablets, 50 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Daranide (dichlorphenamide) Tablets, 50 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for dichlorphenamide tablets, 50 mg.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated April 12, 2006 (Docket No. 2006P–0160/CP1), submitted under 21 CFR 10.30, Taro Research Institute requested that the agency determine whether Daranide Tablets, 50 mg, were withdrawn from sale for reasons of safety or effectiveness. Daranide (dichlorphenamide) Tablets, 50 mg, are the subject of approved NDA 11–366 held by Merck & Co., Inc. (Merck). Daranide is indicated for adjunctive treatment of glaucoma. Merck discontinued marketing Daranide Tablets, 50 mg, in June 2002, and they were moved to the ''Discontinued Drug Product List'' section of the Orange Book.

The agency has determined that Daranide Tablets, 50 mg, were not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that Daranide Tablets, 50 mg, were withdrawn from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for possible postmarketing adverse events and has found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined in this notice, Daranide (dichlorphenamide) Tablets, 50 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list Daranide (dichlorphenamide) Tablets, 50 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Daranide (dichlorphenamide) Tablets, 50 mg, may be approved by the agency as long as they comply with relevant legal and regulatory requirements. If FDA determines that labeling for this drug product should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: July 30, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–15230 Filed 8–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected

inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Determining Hepatocellular Carcinoma Subtype and Detecting Hepatic Cancer Stem Cells

Description of Technology: Hepatocellular carcinoma (HCC) is the third leading cause of cancer death worldwide, and it is very heterogeneous in terms of its clinical presentation as well as genomic and transcriptomic patterns. HCC can originate from both adult hepatocytes and hepatic progenitor cells. The extent of progenitor cell activation and the direction of differentiation are correlated with the severity of the disease. HCC patient variability indicates that HCC comprises several biologically distinct subtypes. This heterogeneity and the lack of appropriate biomarkers have hampered patient prognosis and treatment stratification.

Available for licensing are microRNA biomarkers that are associated with four HCC subtypes: hepatic stem cell-like, bile duct epithelium-like, hepatocytic progenitor-like, and mature hepatocyte-like. One unique profile is associated with HCC with features of liver stem cells and poor patient prognosis. It has both diagnostic and therapeutic value in the management of HCC patients.

Applications: A diagnostic assay where HCC treatment can be individualized according to patient HCC subtype; An assay for HCC to prognose patient survival; Therapeutic compositions that target subtype specific HCC.

Market: HCC is the third leading cause of cancer death worldwide; HCC is the fifth most common cancer in the world; Post-operative five year survival rate of HCC patients is 30–40%.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Xin Wei Wang (NCI) *et al.*

Publications:

1. Presented at Keystone Symposia on MicroRNA and Cancer in June 2007.

2. R Garzon *et al.* MicroRNA expression and function in cancer. Trends Mol Med. 2006 Dec;12(12):580–587.

Patent Status: U.S. Provisional Application No. 60/942,833 filed 08 Jun 2007 (HHS Reference No. E–215–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Human Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Isolation, Cloning, and Characterization of Novel Adeno-Associated Virus Serotypes

Description of Technology: Adeno-associated viruses (AAV) are used in gene delivery, but with limited success due to toxicity. The novel AAVs described in this technology may be more effective and useful in gene therapy applications.

This invention relates to new adeno-associated viruses (AAV), vectors and particles derived therefrom and also provides methods for delivering specific nucleic acids to cells using the AAV vectors and particles. The inventors cloned and sequenced the genomes of AAVs found in twelve (12) simian adenovirus isolates and determined that the AAVs were novel. Ten (10) of these isolates had high similarity to AAV1 and AAV6 (>98%). Despite the high homology to AAV6, these novel AAVs demonstrated distinct cell tropisms and reactivity towards a panel of lectins, suggesting that they may use a distinct entry pathway.

Applications: AAVs can be used as delivery systems in gene therapy; AAV's also have gene transfer applications.

Advantages: Vectors based on these new AAV serotypes may have a different host range and different immunological properties, thus allowing for more efficient transduction in certain cell types than previously used AAV.

Benefits: Gene therapy has tremenous potential in treating several life threatening diseases, and this technology has the potential to benefit millions of patients that could benefit from the proper use of gene therapy treatments. Additionally, the gene therapy market is now a multi-million dollar industry can substantially benefit from the use of this technology.

A range of licensing opportunities exist, including material licenses, commercial licenses, nonexclusive and exclusive licenses, as well as fields of use directed towards clinical applications. Please see the Office of Technology Transfer website for more information (*http://www.ott.nih.gov*).

Inventors: Michael Schmidt (NIDCR), John A. Chiorini (NIDCR), *et al.*

U.S. Patent Status: Pending PCT Application PCT/US2006/017157, published as WO 2006/119432 (HHS Reference No. E–179–2005/0–PCT–02).

Licensing Contact: David A. Lambertson, Ph.D.; Phone: (301) 435–4632; Fax: (301) 402–0220; E-mail: *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Dental and Craniofacial Research, Gene Therapy and Therapeutics Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize adeno-associated viruses. Please contact David W. Bradley, Ph.D. at *bradleyda@nidcr.nih.gov* for more information.

Serum Autoantibody for Cancer Diagnostics

Description of Technology: The invention demonstrates that the approach of autoantibody analysis provides a valuable approach for cancer diagnosis. Detecting serum autoantibodies against extracellular form of protein kinase A (ECPKA) can effectively diagnose cancer.

The technology describes compositions and methods for detecting autoantibodies against an ECPKA for the diagnosis of cancer. Because ECPKA is secreted from cancer cells at higher rate than normal cells, the formation of serum autoantibodies to ECPKA in cancer patients is greater. A highly sensitive enzyme immunoassay that measures the presence of anti-ECPKA autoantibody in serum of cancer patients can therefore be used for cancer diagnosis.

Application: ECPKA-autoantibody-based immunoassay method provides an important diagnostic procedure applicable for the detection of various cancers.

Advantages: Highly sensitive and specific immunoassay developed for anti-ECPKA antibody is more sensitive and specific than results from other current assays that detect only antigen activity; high statistical correlation betweeen the presence of serum-autoantibody directed against ECPKA and presence of cancer.

Benefits: Early detection of cancer and this technology can contribute

significantly to improving the clinical management of cancer and thus the quality of life for people suffering from the disease. Furthermore, the cancer diagnostic market is estimated to grow to almost $10 billion dollars in the next 5 years, providing a significant financial opportunity.

Inventors: Yoon S. Cho-Chung (NCI).

U.S. Patent Status: U.S. Patent Application No. 10/592,040 (HHS Reference No. E–081–2004/2–US–02); Foreign Rights are also available.

Licensing Contact: David A. Lambertson, Ph.D.; Phone: (301) 435–4632; Fax: (301) 402–0220; E-mail: *lambertsond@mail.nih.gov.*

A New Series of Thalidomide Analogs That Have Potent Anti-Angiogenic Properties

Description of Technology: This technology describes synthesis of several novel tetrahalogenated thalidomide derivatives that are potentially more anti-angiogenic than thalidomide. More specifically, two series of analogs based on two major common pharmacophores have been synthesized. One series preserves the thalidomide common structure, while the other series contains a different common structure (tetrafluorobenzamides). Several analogs from both series have shown significant anti-angiogenic properties, *in vitro.*

Applications: The novel thalidomide derivatives have therapeutic potential for a broad spectrum of cancer related diseases alone, or in combination with existing therapies. The compounds can also be useful for the treatment of autoimmune diseases.

Advantages: Superior anti-angiogenic and anti-cancer activity when compared with thalidomide; *In vitro* data supports use in multiple cancer types.

Benefits: Cancer is the second leading cause of death in the United States and it is estimated that there will be approximately 600,000 deaths caused by cancer in 2007. Improving the quality of life and duration of life of cancer patients will depend a lot on chemotherapies with reduced toxicity and this technology can contribute significantly to that social cause. Furthermore, the technology involving novel anti-angiogenic small molecule cancer therapy technology has a potential market of more than $2 billion.

Inventors: William D. Figg (NCI) *et al.*

U.S. Patent Status: Pending PCT Application PCT/US2007/008849 (HHS Reference No. E–080–2006/0–PCT–02).

Licensing Contact: David A. Lambertson, Ph.D.; Phone: (301) 435–4632; Fax: (301) 402–0220; E-mail: *lambertsond@mail.nih.gov.*

Dated: July 30, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–15168 Filed 8–3–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Notice

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immortalized Cell Line for Retroviral Studies

Description of Technology: This technology describes immortalized human umbilical cord-blood T lymphocytes transformed with the retrovirus human T-cell leukemia-lymphoma virus (HTLV). These cells contain the HTLV genome and synthesize viral RNA but are restricted in their expression of viral structure proteins. This cell line should be useful in the study of retrovirus expression. Please visit the NIH AIDS Research and Reference Reagent Program Web site (*http://www.aidsreagent.org; catalog #404*) for additional information.

Applications: Viral expression studies; Study of viral proteins and nucleic acids involved in T-cell immortalization.

Inventors: Genoveffa Franchini (NCI).

Publications:

1. SZ Salahuddin *et al.* Restricted expression of human T-cell leukemia—lymphoma virus (HTLV) in transformed human umbilical cord blood lymphocytes. Virology 1983 Aug;129(1):51–64.

2. NIH AIDS Research and Reference Reagent Program Web site.

Patent Status: HHS Reference No. E–272– 2007/0—Research Tool.

Licensing Status: Available for licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov.*

Device and Method for Protecting Against Coronary Artery Compression During Transcatheter Mitral Valve Annuloplasty

Description of Technology: Catheter-based mitral valve regurgitation treatments that use a coronary sinus trajectory or coronary sinus implant can have unwanted effects because the coronary sinus and its branches have been found to cross the outer diameter of major coronary arteries in a majority of humans. As a result, pressure applied by any prosthetic device in the coronary sinus (such as tension on the annuloplasty device) can compress the underlying coronary artery and induce myocardial ischemia or infarction.

Available for licensing and commercial development are devices and methods that avoid constricting coronary artery branches during coronary sinus-based annuloplasty. These devices and methods protect coronary artery branches from constriction during trans-sinus mitral annuloplasty. The device protects a coronary vessel from compression during mitral annuloplasty in which an annuloplasty element, such as a tensioning device, extends at least partially through the coronary sinus over a coronary artery. The device is a surgically sterile bridge configured for placement within the coronary sinus at a location where the coronary sinus passes over a coronary artery, so that the protection device provides a support for a mitral annuloplasty element, such as a compressive prosthesis, including a tension element when it is placed under tension. The protection device has an arch of sufficient rigidity and dimensions to support the tensioning element over the coronary artery, redistribute tension away from an underlying coronary artery, and inhibit application of pressure to the underlying artery, for example when an annuloplasty tension element is placed under tension during mitral annuloplasty.

In particular, the protective device can be a support interposed in the

coronary sinus between the annuloplasty device and the coronary artery. The device may be substantially tubular so that the tensioning element is contained within the protective device and supported in spaced relationship to the coronary artery. An arch may be configured to extend between a proximal end and a distal end that are substantially collinear with one another so that the ends form stabilizing members such as feet that retain the bridge in position over the coronary artery.

The device may be used in methods of improving the function of a mitral valve in a subject in which an annuloplasty element, for example an element that exerts compressive remodeling forces on the mitral valve (such as a tensioning element), is introduced at least partially around the mitral valve, for example at least partially through the coronary sinus and over a coronary artery. The protective device is placed between the annuloplasty element and the coronary artery, with the annuloplasty element supported by the bridge of the device. Compressive remodeling forces are exerted by the annuloplasty device (for example by applying tension to alter the shape or configuration of the mitral valve annulus to reduce its circumference) while supporting the annuloplasty element on the bridge to inhibit application of pressure to the coronary artery. The function of the mitral valve in the patient is thereby improved without impairing coronary blood flow.

The annuloplasty element can be introduced at least partially around the mitral valve by advancing the annuloplasty element in an endovascular catheter through the vascular system to the heart and introducing the annuloplasty element and the protective device from the catheter into the coronary sinus through a coronary sinus ostium. In those embodiments in which the protective device includes an internal lumen, the annuloplasty element extends through the lumen of the protective device over the coronary artery so that the annuloplasty element is supported by the protective device. The protective device can be integrated directly into the annuloplasty element, such as a resilient or expandable device, or a tensioning element or tensioning material.

In other embodiments, this disclosure provides a method of improving function of a mitral valve in a subject who has mitral regurgitation by performing a mitral valve cerclage annuloplasty. In a particular disclosed example of the procedure, a guiding catheter is percutaneously inserted through the vasculature of a subject. The guiding catheter is introduced through the coronary sinus into the great cardiac vein, and a steerable microcatheter or other coaxial guiding catheter or steering device introduces a guidewire into a basal blood vessel such as the first septal coronary vein. From there the guidewire traverses under imaging guidance the septal myocardium or annulus fibrosis and reenters the right ventricle or right atrium. The guidewire is then retrieved using a vascular snare and the guiding catheter and guidewire are replaced with a tensioning system. The protective device is then introduced through the guiding catheter over or in tandem with the tensioning system so as to protect an underlying coronary artery when tension is introduced to perform the annuloplasty.

Applications: Cardiac valve repair; Interventional Cardiology; Cardiac Surgery.

Development Status: Early-stage; Pre-clinical data available; Prototype.

Inventors: June-Hong Kim, Robert J. Lederman, Ozgur Kocaturk (NHLBI).

Patent Status: U.S. Provisional Application No. 60/858,716 filed 14 Nov 2006. (HHS Reference No. E–249–2006/0–US–01); U.S. Provisional Application No. 60/932,611 filed 31 May 2007 (HHS Reference No. E–249–2006/1–US–01); The issued and pending patent rights are solely owned by the United States Government.

Licensing Status: Available for licensing on an exclusive or non-exclusive basis.

Licensing Contact: Michael A. Shmilovich, Esq.; 301/435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The NHLBI Cardiovascular Branch is seeking statements of capability or interest from parties interested in collaborative research to further development, evaluate, or commercialize catheter-based cardiovascular devices. Please contact Peg Koelble, NHLBI Office of Technology Transfer and Development, at 301–594–4095 or *koelblep@nhlbi.nih.gov.*

A Shuttle Plasmid, Recombinant MVA/HIV1 Clinical Vaccine Constructs and a Mechanism for Enhanced Stability of Foreign Gene Inserts by Codon Alternation and for Insertion of the Foreign Gene Between Two Vaccinia Virus Essential Genes

Description of Technology: Since the onset of the AIDS epidemic more than two decades ago, enormous efforts have been directed to making a vaccine that will protect against human immunodeficiency virus-1 (HIV); an effective vaccine is thought to require the induction of cellular and humoral responses. Vaccine candidates have included a variety of HIV immunogens delivered as DNA, attenuated poxviruses, adenoviruses, vesicular stomatitis virus, proteins, and various combinations thereof. The inventors' efforts to design an HIV vaccine have focused on modified vaccinia virus Ankara (MVA) as a vector.

The patent application describes (1) The shuttle plasmid, pLW73, used for insertion of a foreign gene between two essential vaccinia virus genes (in this case, I8R, G1L), (2) an MVA/Ugandan Clade D (UGD) construct, and (3) an MVA/HIV 75 AG construct using pLW73 as a vector. Additionally, the invention provides two methods: (1) A method useful for large-scale production of recombinant vaccinia viruses, and (2) a method for stabilizing foreign gene inserts that undergo mutation after repeated passages, again useful in large-scale production of recombinant vaccinia viruses.

Application: Immunization against HIV.

Developmental Status: Vaccine candidates have been synthesized and preclinical studies have been performed. The vaccine candidates of this invention are slated to enter Phase I clinical trials in the next year.

Inventors: Bernard Moss, Patricia Earl, Linda Wyatt (NIAID).

Patent Status: U.S. Patent Application No. 60/840,093 filed 25 Aug 2006 (HHS Reference No. E–248–2006/0–US–01); U.S. Patent Application No. 60/840,755 filed 28 Aug 2006 (HHS Reference No. E–248–2006/1–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter J. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Molecular Probes for Identification or Isolation of Membrane Proteins

Description of Technology: This technology describes a new class of molecular probes designed around an iodonaphthyl succinate antigen that can be used to label and tag proteins using a variety of conventional protein modification chemistries. The technology is offered as a combination of probe + monoclonal antibodies against the probe (three clones). The probe can be used for labeling and tagging cell surface and integral membrane proteins as well as soluble proteins. The monoclonal antibodies were tested and found effective for immunoprecipitation, western blot, and

flow cytometry. Once tagged, the modified proteins can be detected or isolated using an antibody reactive with the probe. Several possible probes and monoclonal antibodies that react with them are described. These probes and their corresponding antibodies have significant advantages over the biotin-avidin system.

Advantages: Reversibility of binding for protein isolation; Lack of high, non-specific binding to cell surfaces; Ability to incorporate isotopic ^{125}I label in the probe for tracking tagged proteins in vivo.

Applications: Protein labeling; Protein isolation.

Development Status: In vitro data available.

Inventors: Yossef Raviv *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 60/906,166 filed 09 Mar 2007 (HHS Reference No. E–162–2006/0–US–01).

Licensing Contact: Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov.*

Cross-protective Influenza Vaccine That Protects Against Lethal H5N1 Challenge

Description of Technology: Concerns about a potential influenza pandemic and its prevention are a regular part of health news, with bird (avian) influenza (prominently including H5N1 strains) being a major concern. Vaccination is one of the most effective ways to minimize suffering and death from influenza. Currently, there is not an effective way to vaccinate against avian influenza without knowing what subtype and strain will circulate. The technology described here relates to use of influenza A matrix 2 (M2) protein of a sequence derived from one subtype to induce immunity protective against infection with other subtypes, an approach made possible by the fact that M2 is highly conserved among different influenza strains. The M2 component can be expressed from a DNA vaccine or recombinant viral vector, can be a protein or peptide, or can involve immunizing with one form and boosting with another, for example a DNA or viral vector followed by or preceded by a polypeptide. The M2 component can be used either alone or in combination with other influenza components, and can be administered with or without adjuvant. Specifically, mouse studies showed that the DNA vaccine priming followed by recombinant adenoviral boosting with constructs expressing M2 from an H1N1 strain protected against a lethal challenge with an H5N1 strain. Such cross-protection would be beneficial in a seasonal or pandemic influenza vaccine product. The current approach offers several advantages over traditional influenza vaccine approaches, including (a) ease and speed of production without need for eggs, (b) vaccine manufacture not based upon surveillance to determine dominant strain(s), and (c) effectiveness despite antigenic shift for the components HA and NA of circulating viruses.

Application: Influenza vaccine.

Development Status: Animal (mouse) data available.

Inventors: Suzanne L. Epstein *et al.* (CBER/FDA).

Patent Status: U.S. Provisional Application No. 60/786,152 filed 27 Mar 2006 (HHS Reference No. E–076–2006/0–US–01); PCT Application No. PCT/US2007/007679 filed 27 Mar 2007 (HHS Reference No. E–076–2006/1–PCT–01).

Licensing Contact: Susan Ano, PhD; 301/435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Biologics Evaluation and Research, Office of Cellular, Tissue, and Gene Therapies, Division of Cellular and Gene Therapies, Gene Therapy and Immunogenicity Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize matrix 2 (M2) vaccines protective against influenza A subtypes, including high-pathogenicity avian strains, differing from the strain from which the vaccine was derived. Please contact Dr. Suzanne Epstein at 301–827–0450 or *suzanne.epstein@fda.hhs.gov* for more information.

Targeting Poly-Gamma-Glutamic Acid To Treat Staphylococcus Epidermidis and Related Infections

Description of Invention: Over the past decade, *Staphylococcus epidermidis* has become the most prevalent pathogen involved in nosocomial infections. Usually an innocuous commensal microorganism on human skin, this member of the coagulase-negative group of staphylococci can cause severe infection after penetration of the epidermal protective barriers of the human body. In the U.S. alone, *S. epidermidis* infections on in-dwelling medical devices, which represent the main type of infection with *S. epidermidis*, cost the public health system approximately $1 billion per year. Importantly, *S. epidermidis* is frequently resistant to common antibiotics.

Immunogenic compositions and methods for eliciting an immune response against *S. epidermidis* and other related staphylococci are claimed. The immunogenic compositions can include immunogenic conjugates of poly-γ-glutamic acid (such as γDLPGA) polypeptides of *S. epidermidis*, or related staphylococci that express a γPGA polypeptide. The γPGA conjugates elicit an effective immune response against *S. epidermidis*, or other staphylococci, in subjects to which the conjugates are administered. A method of treating an infection caused by a *Staphylococcus* organism that expresses CAP genes is also disclosed. The method can include selecting a subject who is at risk of or has been diagnosed with the infection by the *Staphylococcus* organism which expresses γPGA from the CAP genes. Further, the expression of a γPGA polypeptide by the organism can then be altered.

Application: Prophylactics against *S. epidermidis.*

Developmental Status: Preclinical studies have been performed.

Inventors: Michael Otto, Stanislava Kocianova, Cuong Vuong, Jovanka Voyich, Yufeng Yao, Frank DeLeo (NIAID).

Publication: S Kocianova *et al.* Key role of poly-gamma-DL-glutamic acid in immune evasion and virulence of *Staphylococcus epidermidis.* J Clin Invest. 2005 Mar;115(3):688–694.

Patent Status: PCT Patent Application No. PCT/US2006/026900 filed 10 Jul 2006 (HHS Reference No. E–263–2005/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Human Bacterial Pathogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of poly-γ-glutamic acid of staphylococci. Please contact Dr. Michael Otto at *motto@niaid.nih.gov* for more information.

Improved Expression Vectors for Mammalian Use

Description of Technology: This technology relates to improving levels of gene expression using a combination of a constitutive RNA transport element (CTE) with a mutant form of another RNA transport element (RTE). The combination of these elements results in a synergistic effect on stability of mRNA transcripts, which in turn leads to increased expression levels. Using HIV–1 gag as reporter mRNA, one mutated RTE in combination with a CTE was

found to improve expression of unstable mRNA by about 500-fold. Similarly this combination of elements led to synergistically elevated levels of HIV–1 Env expression. The function of CTEs and RTEs is conserved in mammalian cells, so this technology is a simple and useful way of obtaining high levels of expression of otherwise poorly expressed genes and can be used in a number of applications such as but not limited to improvements of gene therapy vectors, expression vectors for mammalian cells.

Applications: Gene therapy; DNA vaccines; Protein expression.

Development Status: In vitro data available.

Inventor: Barbara Felber *et al.* (NCI).

Patent Status: U.S. Utility Application No. 10/557,129, filed 16 Nov 2005, from PCT Application No. PCT/US04/15776 filed 19 May 2004, which published as WO2004/113547 on 29 Dec 2004 (HHS Reference No. E–223–2003/1–US–03).

Licensing Status: Available for licensing.

Licensing Contact: Susan Ano, PhD; 301/435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Vaccine Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: July 31, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–15208 Filed 8–3–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on August 23, 2007 from 1 p.m. to 3 p.m. via teleconference.

The meeting will include review, discussion, and evaluation of grant applications. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site at *www.nac.samhsa.gov,* or by contacting the CSAT National Advisory Council Executive Secretary, Ms. Cynthia Graham (see contact information below).

Committee Name: SAMHSA Center for Substance Abuse Treatment National; Advisory Council.

Date/Time/Type: August 23, 2007, from 1 p.m. to 3 p.m.; Closed.

Place: SAMHSA Building, 1 Choke Cherry Road, VTC Room, L–1057, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Executive Secretary, SAMHSA CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, Maryland 20857, Telephone: (240) 276–1692, Fax: (240) 276–16890, *E-mail: cynthia.graham@samhsa.hhs.gov.*

Dated: July 31, 2007.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E7–15217 Filed 8–3–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2007–0042]

Privacy Act of 1974; U.S. Customs and Border Protection, Automated Targeting System, System of Records

AGENCY: Privacy Office; Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: This document is a new System of Records Notice (SORN) for the Automated Targeting System (ATS) and is subject to the Privacy Act of 1974, as amended. ATS is an enforcement screening tool consisting of six separate components, all of which rely substantially on information in the Treasury Enforcement Communications System (TECS). ATS historically was covered by the SORN for TECS. The Department of Homeland Security, U.S. Customs and Border Protection (CBP) published a separate SORN for ATS in the **Federal Register** on November 2, 2006. This SORN did not describe any new collection of information and was intended solely to provide increased notice and transparency to the public about ATS. Based on comments received in response to the November 2, 2006 notice, CBP issues this revised SORN, which responds to those comments, makes certain amendments with regard to the retention period and access provisions of the prior notice, and provides further notice and transparency to the public about the functionality of ATS.

TECS is an overarching law enforcement information collection, risk assessment, and information sharing environment. It is also a repository for law enforcement and investigative information. TECS is comprised of several modules that collect, maintain, and evaluate screening data, conduct targeting, and make information available to appropriate officers of the U.S. government. ATS is one of those modules. It is a decision support tool that compares traveler, cargo, and conveyance information against intelligence and other enforcement data by incorporating risk-based targeting scenarios and assessments. As such, ATS allows DHS officers charged with enforcing U.S. law and preventing terrorism and other crimes to effectively and efficiently manage information collected when travelers or goods seek to enter, exit, or transit through the United States.

Within ATS there are six separate and distinct components that perform screening of inbound and outbound cargo, conveyances, or travelers. These modules compare information received against CBP's law enforcement databases, the Federal Bureau of Investigation Terrorist Screening Center's Terrorist Screening Database (TSDB), information on outstanding wants or warrants, information from other government agencies regarding high-risk parties, and risk-based rules developed by analysts using law enforcement data, intelligence, and past case experience. The modules also facilitate analysis of the screening results of these comparisons. In the case of cargo and conveyances, this screening results in a risk assessment score. In the case of travelers, however, it does not result in a risk assessment score.

DATES: The new system of records will be effective September 5, 2007.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–572–8790), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of

International Trade, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The System

The priority mission of CBP is to prevent terrorists and terrorist weapons from entering the country while facilitating legitimate travel and trade. ATS uses CBP's law enforcement databases, the Federal Bureau of Investigation Terrorist Screening Center's Terrorist Screening Database (TSDB), information on outstanding wants or warrants, information from other government agencies regarding high-risk parties, and risk-based rules developed by analysts to assess and identify high-risk cargo, conveyances, and travelers that may pose a greater risk of terrorist or criminal activity and therefore should be subject to further scrutiny or examination. These rules are based on investigatory and law enforcement data, intelligence, and past case experience. Historically, the SORN for the Treasury Enforcement Communications System (TECS) covered ATS. As part of DHS's updating of its system of records notices and in an effort to provide more detailed information to the traveling public and trade community, DHS has decided to notice ATS as a separate Privacy Act system of records, giving greater visibility into its targeting and screening efforts.

TECS is an overarching law enforcement information collection, risk assessment, and information sharing environment. It is also a repository for law enforcement and investigative information. TECS is comprised of several modules that collect, maintain, and evaluate screening data, conduct targeting analysis, and make information available to appropriate officers of the U.S. government. ATS is one of those modules. It is a decision-support tool that compares traveler, cargo, and conveyance information against intelligence and other enforcement data by incorporating risk-based targeting scenarios and assessments. As such, ATS allows DHS officers charged with enforcing U.S. law and preventing terrorism and other crime to effectively and efficiently manage information collected when travelers or goods seek to enter, exit, or transit through the United States. Within ATS there are six separate and distinct components that perform screening of inbound and outbound cargo, conveyances, or travelers by comparing information received against CBP's law enforcement databases, the Federal Bureau of Investigation Terrorist Screening Center's Terrorist Screening Database (TSDB), information on outstanding wants or warrants, information from other government agencies regarding high-risk parties, and risk-based rules developed by analysts based on law enforcement data, intelligence, and past case experience. The modules also facilitate analysis of the screening results of these comparisons.

As a legacy organization of CBP, the U.S. Customs Service traditionally employed computerized screening tools to target potentially high-risk cargo entering, exiting, and transiting the United States. ATS originally was designed as a rules-based program to identify such cargo; it did not apply to travelers. Today, ATS includes the following separate components: ATS–N, for screening inbound or imported cargo; ATS–AT, for outbound or exported cargo; ATS–L, for screening private passenger vehicles crossing at land border ports of entry using license plate data; ATS–I, for cooperating with international customs partners in shared cargo screening and supply chain security; ATS–TAP, for assisting tactical units in identifying anomalous trade activity and performing trend analysis; and ATS–P, for screening travelers and conveyances entering the United States in the air, sea, and rail environments. The Privacy Impact Assessment (PIA)—which DHS will publish on its Web site (*http://www.dhs.gov/privacy*) concurrently with the publication of the SORN in the **Federal Register**—provides a full discussion of the functional capabilities of ATS and its components. It is worth clarifying here, however, that only the ATS components pertaining to cargo rely on rules-based ''scoring'' to identify cargo shipments of interest. Travelers identified by risk-based targeting scenarios identified through the ATS–P are not assigned scores.

ATS–P became operational in 1999 and is critically important to CBP's mission. ATS–P allows CBP officers to determine whether a variety of potential risk indicators exist for travelers and/or their itineraries that may warrant additional scrutiny. ATS–P maintains Passenger Name Record (PNR) data, which is data provided to airlines and travel agents by or on behalf of air passengers seeking to book travel. CBP began receiving PNR data voluntarily from air carriers in 1997. Currently, CBP collects this information as part of its border enforcement mission and pursuant to the Aviation and Transportation Security Act of 2001 (ATSA).

ATS–P's screening relies upon information from the following databases: TECS, the Advanced Passenger Information System (APIS), the Non Immigrant Information System (NIIS), the Suspect and Violator Indices (SAVI), and the Department of State visa databases, as well as the PNR information that it maintains. As stated above, unlike in the cargo environment, ATS–P does not use a score to determine an individual's risk level; instead, ATS–P compares PNR and information in the above-mentioned databases against lookouts and patterns of suspicious activity identified by analysts based upon past investigations and intelligence. This risk assessment is an analysis of the threat-based scenario(s) that a traveler matched when traveling on a given flight. These scenarios are drawn from previous and current law enforcement and intelligence information. This analysis is done in advance of a traveler's arrival in or departure from the United States and becomes one tool available to DHS officers in identifying illegal activity. In lieu of manual reviews of traveler information and intensive interviews with every traveler arriving in or departing from the United States, ATS–P allows CBP personnel to focus their efforts on potentially high-risk passengers.

The Legal Requirements

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. ATS involves the collection and creation of information that is maintained in a system of records. ATS also stores information on individuals other than U.S. citizens and lawful permanent residents (LPRs). As a matter of administrative policy, where the PII of individuals other than U.S. citizens and LPRs is held in mixed systems (i.e., a system also including U.S. citizen or LPR), DHS will accord

such PII the fair information principles set forth the Privacy Act.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, to assist the individual to more easily find such files within the agency, and to inform the public if any applicable Privacy Act exemptions will be claimed for the system.

Access to information in ATS may be provided. However, as discussed further later in this notice, certain records within ATS are exempt from certain provisions of the Privacy Act (specifically, those provisions contained at 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g)) pursuant to 5 U.S.C. 552a(j)(2) and (k)(2)). Notwithstanding the listed exemptions for the system, individuals, regardless of their citizenship, may make a written request to review and access personal data provided by and regarding the requester, or provided by a booking agent, brokers, or other person on the requester's behalf, that is collected by CBP and contained in the PNR database stored in the ATS–P, and correct any inaccuracies. Data collected and maintained from air carriers as PNR are listed later in this notice in the ''Categories of Records in the System'' section of this notice; the listed categories are not specific data elements because each carrier varies its configuration of PNR to meet its business needs. In an effort to provide some consistency in the description of PNR data for the traveling public, CBP has categorized the various data that generally comprise PNR for air carriers into the 19 categories listed in the SORN. The PNR data, upon request, may be provided to the requester in the form in which it was collected from the respective carrier, but may not include certain business confidential information of the air carrier that is also contained in the record, such as use and application of frequent flier miles, internal annotations to the air fare, etc.

To obtain access to a requestor's own PNR, contact the FOIA/PA Branch, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5–C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (phone: (202) 344–1850 and fax: (202) 344–2791). Additionally, regardless of their citizenship, individuals who believe they have been erroneously denied entry, refused boarding for transportation, or identified for additional screening by CBP may submit a redress request through DHS Traveler Redress Inquiry Program (''TRIP''). (*See* 72 FR 2294, January 18, 2007). For further information on the Automated Targeting System and the redress options, please see the accompanying Privacy Impact Assessment for the Automated Targeting System at *http://www.dhs.gov/privacy* under ''Privacy Impact Assessment.'' Redress requests should be sent to: Systems Manager, DHS TRIP, U.S. Department of Homeland Security, Washington, DC.

DHS is hereby publishing a description of the system of records referred to as the Automated Targeting System. In accordance with 5 U.S.C. 552a(r), a report concerning this record system has been sent to the Office of Management and Budget and to the Congress.

Discussion of Revisions Arising From Public Comments:

On November 2, 2006, CBP issued a Privacy Act System of Records Notice for ATS (71 FR 64543). DHS received a number of comments and decided to extend the comment period until December 29, 2006, by **Federal Register** Notice dated December 8, 2006 (71 FR 71182). A total of 641 comments were received in response to the SORN. After considering these comments, CBP has made the following substantive changes to the previously issued SORN. First, the general retention period for data maintained in ATS is reduced from 40 years to a total of 15 years. CBP has determined that it can continue to uncover and use information relating to terrorism and other serious crimes within this shorter retention period.

This retention period is consistent with the retention period currently contained in international agreements entered into by the Department. Furthermore, CBP has limited access to the last eight years of the retention period for PNR data to those users who first obtain supervisory approval to access the archive where the data is maintained. CBP, however, has created an exception to this general retention period such that PNR data, as well as any other data that may be stored in ATS, which becomes associated with active law enforcement activities, and/or investigations or cases (*i.e.*, specific and credible threats; flights, individuals, and routes of concern; or other defined sets of circumstances) will remain accessible for the life of the law enforcement matter to support that activity and other enforcement activities that may become related.

Second, persons whose PNR data has been collected and maintained in ATS–P will have administrative access to that data under the Privacy Act. This data will be available in the same format that it was obtained by CBP (with the exception of business confidential information that may be contained in the record). These individuals will also be able to seek to correct factual inaccuracies contained in their PNR data, as it is maintained by CBP. CBP believes that permitting persons to access and to seek to amend their PNR data will reduce the incidence of potential misidentifications and improve the accuracy of the data within ATS–P.

Third, CBP has added the following category to the categories of persons from whom information is obtained: ''Persons who serve as booking agents.'' Several commenters correctly noted that many in the traveling public utilize the services of booking agents and that booking agents' identities are included in itinerary information.

Fourth, to be consistent with the forthcoming SORN for the Advanced Passenger Information System (APIS), CBP has amended category A to include persons whose international itineraries cause their flight to stop in the United States, either to refuel or to permit a transfer, and crewmembers on flights that overfly or transit through U.S. airspace.

Fifth, as stated above, CBP has clarified the categories of PNR data collected and maintained in ATS–P to more accurately reflect the type of data collected from air carriers. Consistent with its particular business needs, each air carrier determines the specific configuration of data elements that ultimately constitute PNR. By providing increased notice of the types of data that may be contained within PNR, CBP seeks to provide the public with a greater understanding of the personal information being maintained in ATS–P. Examples of these categories of PNR, as listed below under ''Categories of Records'' include: Name, date of issuance ticket, date(s) of travel, PNR locator number, payment information, such as credit card information, and travel agent or travel agency that may have made the reservations for the individual.

Lastly, two of the routine uses included in the earlier version of the SORN-those pertaining to using ATS in background checks—are removed. This is necessary because the revised SORN contains a more narrow definition of the purposes for which certain data—

specifically, PNR data maintained in ATS–P—will be used. The deleted routine uses did not fit within the scope of these purposes.

This discussion of comments addresses revisions made to the SORN published on November 2, 2006. The full comments received address additional issues, such as mission creep, potential economic impact, appropriate applicability of the Privacy Act, constitutionality, and information quality. For a discussion of the full comments received from the November 2, 2006, publication and DHS' response, please see ''Discussion of Public Comments Received on the Automated Targeting System Privacy Act System of Records Notice'' on the DHS Web site at *http://www.dhs.gov/privacy.*

SYSTEM NAME:

Automated Targeting System (ATS)—CBP.

SYSTEM LOCATION:

This computer database is located at the CBP National Data Center in Washington, D.C. Computer terminals are located at customhouses, border ports of entry, airport inspection facilities under the jurisdiction of DHS, and other locations at which DHS authorized personnel may be posted to facilitate DHS's mission. Terminals may also be located at appropriate facilities for other participating government agencies pursuant to agreement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

ATS includes the following separate components: ATS–N, for screening inbound or imported cargo; ATS–AT, for outbound or exported cargo; ATS–L, for screening private passenger vehicles crossing at land border ports of entry by license plate data; ATS–I, for cooperating with international customs partners in shared cargo screening and supply chain security; ATS–TAP, for assisting tactical units in identifying anomalous trade activity and performing trend analysis; and ATS–P, for screening travelers and conveyances entering the United States in the air, sea and rail environments.

Collectively, these components handle information relating to the following individuals:

A. Persons seeking to enter, exit, or transit through the United States by land, air, or sea. This includes passengers who arrive and depart the United States by air or sea, including those in transit through the United States on route to a foreign destination and crew members who arrive and depart the United States by air or sea, including those in transit through the United States on route to a foreign destination, and crew members on aircraft that over fly the United States.

B. Persons who engage in any form of trade or other commercial transaction related to the importation or exportation of merchandise.

C. Persons who are employed in any capacity related to the transit of merchandise intended to cross the United States border.

D. Persons who serve as operators, crew, or passengers on any vessel, vehicle, aircraft, train, or other conveyance that arrives in or departs the United States.

E. Persons who serve as booking agents, brokers, or other persons who provide information on behalf of persons seeking to enter, exit, or transit through the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

ATS uses CBP's law enforcement databases, the Federal Bureau of Investigation Terrorist Screening Center's Terrorist Screening Database (TSDB), information on outstanding wants or warrants, information from other government agencies regarding high-risk parties, and risk-based rules developed by analysts to assess and identify high-risk cargo, conveyances, or travelers that should be subject to further scrutiny or examination. ATS maintains these assessments together with a record of which rules were used to develop the assessment. With the exception of PNR information, discussed below, ATS maintains a pointer or reference to the underlying records from other systems that resulted in a particular assessment.

ATS–P, a component of ATS, maintains the PNR information obtained from commercial air carriers and uses that information to assess whether there is a risk associated with any travelers seeking to enter, exit, or pass through the United States. PNR may include some combination of these following categories of information, when available:

1. PNR record locator code.
2. Date of reservation/ issue of ticket.
3. Date(s) of intended travel.
4. Name(s) .
5. Available frequent flier and benefit information (*i.e.*, free tickets, upgrades, etc.).
6. Other names on PNR, including number of travelers on PNR.
7. All available contact information (including originator of reservation).
8. All available payment/billing information (e.g. credit card number).
9. Travel itinerary for specific PNR.
10. Travel agency/travel agent.
11. Code share information (e.g., when one air carrier sells seats on another air carrier's flight).
12. Split/divided information (e.g., when one PNR contains a reference to another PNR).
13. Travel status of passenger (including confirmations and check-in status).
14. Ticketing information, including ticket number, one way tickets and Automated Ticket Fare Quote (ATFQ) fields.
15. Baggage information.
16. Seat information, including seat number.
17. General remarks including Other Service Indicated (OSI), Special Service Indicated (SSI) and Supplemental Service Request (SSR) information.
18. Any collected APIS information (e.g., Advance Passenger Information (API) that is initially captured by an air carrier within its PNR, such as passport number, date of birth and gender).
19. All historical changes to the PNR listed in numbers 1 to 18.

Not all air carriers maintain the same sets of information for PNR, and a particular individual's PNR likely will not include information for all possible categories. In addition, PNR does not routinely include information that could directly indicate the racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health, or sex life of the individual. To the extent PNR does include terms that reveal such personal matters, DHS employs an automated system that filters certain of these terms and only uses this information in exceptional circumstances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

19 U.S.C. 482, 1461, 1496, and 1581–82, 8 U.S.C 1357, Title VII of Public Law 104–208, 49 U.S.C. 44909, and the ''Security and Accountability for Every Port Act of 2006'' (SAFE Port Act) (Pub. L. 109–347).

PURPOSES FOR PNR IN ATS–P:

(a) To prevent and combat terrorism and related crimes;

(b) To prevent and combat other serious crimes, including organized crime, that are transnational in nature;

(c) To prevent flight from warrants or custody for crimes described in (a) and (b) above;

(d) Wherever necessary for the protection of the vital interests of a data subject or other persons;

(e) In any criminal judicial proceedings; or

(f) As otherwise required by law.

PURPOSES OF ATS (EXCEPT PNR IN ATS–P):

In addition to those purposes listed above for PNR in ATS–P:

(a) To perform targeting of individuals, including passengers and crew, focusing CBP resources by identifying persons who may pose a risk to border security or public safety, may be a terrorist or suspected terrorist, or may otherwise be engaged in activity in violation of U.S. law.

(b) To perform a risk-based assessment of conveyances and cargo to focus CBP's resources for inspection and examination and enhance CBP's ability to identify potential violations of U.S. law, possible terrorist threats, and other threats to border security; and

(c) To otherwise assist in the enforcement of the laws enforced or administered by DHS, including those related to counterterrorism.

ROUTINE USES OF RECORDS MAINTAINED IN THE VARIOUS COMPONENTS OF ATS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3). DHS only discloses information to those authorities who have a legal purpose to use the data, intend to use the information consistent with the purpose for which CBP collects it or for another legally required function, such as GAO oversight and ongoing IT maintenance, and has sufficient capability to protect and safeguard it. Under these limits, data may be disclosed as a routine use in the following manner:

A. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where CBP believes the information would assist enforcement of applicable civil or criminal laws;

B. To Federal and foreign government intelligence or counterterrorism agencies or components where CBP becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

C. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, or where the information is relevant to the protection of life, property, or other vital interests of a data subject and such disclosure is proper and consistent with the official duties of the person making the disclosure;

D. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk;

E. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings;

F. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure.

G. To an agency, organization, or individual for the purposes of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function;

H. To a Congressional office, for the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains;

I. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records, in compliance with the Privacy Act of 1974, as amended;

J. To the U.S. Department of Justice (including U.S. Attorney offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent said employee, or (d) the United States or any agency thereof;

K. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906;

L. To appropriate Federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations where CBP is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance ATS;

M. To appropriate agencies, entities, and persons when (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

The data is stored electronically at the National Data Center for current data and offsite at an alternative data storage facility for historical logs and system backups.

RETRIEVABILITY:

The data is retrievable by name or personal identifier from an electronic database.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include all of the following: restricting access to those with a ''need to know''; using locks, alarm devices, and passwords; compartmentalizing databases; auditing software; and encrypting data communications.

ATS also monitors source systems for changes to the source data. The system

manager, in addition, has the capability to maintain system back-ups for the purpose of supporting continuity of operations and the discrete need to isolate and copy specific data access transactions for the purpose of conducting security incident investigations. ATS information is secured in full compliance with the requirements of the Federal Information Security Management Act (FISMA) and the DHS IT Security Program Handbook. This handbook establishes a comprehensive information security program.

USE AND CONTROL:

CBP maintains full access for a limited number of authorized personnel to all information contained within ATS. Authorized personnel receive thorough background investigations and extensive training on CBP security and privacy policies on the appropriate use of ATS information. These individuals are trained to review the risk assessments and background information to identify individuals who may likely pose a risk. To ensure that ATS is being accessed and used appropriately, audit logs are also created and reviewed routinely by CBP's Office of Internal Affairs to ensure integrity of the system and process.

Access to the risk assessment results and related rules is restricted to a limited number of authorized government personnel who have gone through extensive training on the appropriate use of this information and CBP policies, including for security and privacy. These All individuals are specifically trained to review the risk assessments and background information to identify individuals who may likely pose a risk.

RETENTION AND DISPOSAL:

Records in this system will be retained and disposed of in accordance with a records schedule to be approved by the National Archives and Records Administration. ATS both collects information directly, and derives other information from various systems. To the extent information is collected from other systems, data is retained in accordance with the record retention requirements of those systems.

The retention period for data maintained in ATS will not exceed fifteen years, after which time it will be deleted, except as noted below. The retention period for PNR, which is contained only in ATS–P, will be subject to the following further access restrictions: ATS–P users will have general access to PNR for seven years, after which time the PNR data will be moved to dormant, non-operational status. PNR data in dormant status will be retained for eight years and may be accessed only with approval of a senior DHS official designated by the Secretary of Homeland Security and only in response to an identifiable case, threat, or risk. Such limited access and use for older PNR strikes a reasonable balance between protecting this information and allowing CBP to continue to identify potential high-risk travelers. Notwithstanding the foregoing, information maintained only in ATS that is linked to active law enforcement lookout records, CBP matches to enforcement activities, and/or investigations or cases (i.e., specific and credible threats; flights, individuals, and routes of concern; or other defined sets of circumstances) will remain accessible for the life of the law enforcement matter to support that activity and other enforcement activities that may become related.

It is important to note that the justification for a fifteen year retention period is based on CBP's law enforcement and security functions at the border. This retention period is based on CBP's historical encounters with suspected terrorists and other criminals, as well as the broader expertise of the law enforcement and intelligence communities. It is well known, for example, that potential terrorists may make multiple visits to the United States in advance of performing an attack. It is over the course of time and multiple visits that a potential risk becomes clear. Passenger records including historical records are essential in assisting CBP Officers with their risk-based screening of travel indicators and identifying potential links between known and previously unidentified terrorist facilitators. Analyzing these records for these purposes allows CBP to continue to effectively identify suspect travel patterns and irregularities.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, National Targeting and Security, Office of Field Operations, U.S. Customs and Border Protection, Ronald Reagan Building and Director, Targeting and Analysis, Systems Program Office, Office of Information Technology, U.S. Customs and Border Protection.

PUBLIC RECORD ACCESS/REDRESS PROCEDURES:

DHS policy allows persons (including foreign nationals) to access and redress under the Privacy Act to raw PNR data maintained in ATS–P. The PNR data, upon request, may be provided to the requester in the form in which it was collected from the respective carrier, but may not include certain business confidential information of the air carrier that is also contained in the record, such as . This access does not extend to other information in ATS obtained from official sources (which are covered under separate SORNs) or that is created by CBP, such as the targeting rules and screening results, which are law enforcement sensitive information and are exempt from certain provisions of the Privacy Act. For other information in this system of records, individuals generally may not seek access for purposes of determining if the system contains records pertaining to a particular individual or person. (*See* 5 U.S.C. 552a (e)(4)(G) and (f)(1)).

Individuals, regardless of nationality, may seek access to records about themselves in accordance with the Freedom of Information Act. In addition, DHS policy allows persons, including foreign nationals, to seek access under the Privacy Act to raw PNR data submitted to ATS–P. Requests for access to personally identifiable information contained in PNR that was provided by the requestor or by someone else on behalf of the requestor, regarding the requestor, may be submitted to the FOIA/PA Unit, Office of Field Operations, U.S. Customs and Border Protection, Room 5.50C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (phone: (202) 344–1850 and fax: (202) 344–2791). Requests should conform to the requirements of 6 CFR Part 5, which provides the rules for requesting access to Privacy Act records maintained by DHS. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

CBP notes that ATS is a decision-support tool that compares various databases, but does not actively collect the information in those respective databases, except for PNR. When an individual is seeking redress for other information analyzed in ATS, such redress is properly accomplished by referring to the databases that directly collect that information. If individuals are uncertain what agency handles the information, they may seek redress through the DHS Traveler Redress Program (''TRIP''). *See* 72 FR 2294, dated January 18, 2007. Individuals who believe they have been improperly denied entry, refused boarding for transportation, or identified for

additional screening by CBP may submit a redress request through TRIP. TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—like airports and train stations or crossing U.S. borders. Through TRIP, a traveler can request correction of erroneous PNR data stored in ATS–P and other data stored in other DHS databases through one application. Additionally, for further information on ATS and the redress options please see the accompanying PIA for ATS published on the DHS website at *www.dhs.gov/privacy.* Redress requests should be sent to: DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *http://www.dhs.gov/trip* and at *http://www.dhs.gov.*

Additionally, a traveler may seek redress from CBP at the time of the border crossing.

CONTESTING RECORD PROCEDURES:

Individuals may seek redress and/or contest a record through several different means, all of which will be handled in the same fashion. If the individual is aware the information is specifically handled by CBP, requests may be sent directly to CBP at the FOIA/PA Unit, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5–C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (phone: (202) 344–1850 and fax: (202) 344–2791). If the individual is uncertain what agency is responsible for maintaining the information, redress requests may be sent to DHS TRIP at DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA–901, Arlington, VA 22202–4220 or online at *http://www.dhs.gov/trip.*

RECORD SOURCE CATEGORIES:

The system contains information derived from other law enforcement systems operated by DHS and federal, state, local, tribal, or foreign government agencies, which collected the underlying data from individuals and public entities directly.

The system also contains information collected from carriers that operate vessels, vehicles, aircraft, and/or trains that enter or exit the United States. In addition, the cargo modules (ATS-Inbound and Outbound) employ information collected from third party data aggregators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 6 CFR Part 5, Appendix C, certain records and information in this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (e)(5), and (8); (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2)). With respect to ATS–P module, exempt records are the risk assessment analyses and business confidential information received in the PNR from the air and vessel carriers. No exemption shall be asserted regarding PNR data about the requester, obtained from either the requester or by a booking agent, brokers, or another person on the requester's behalf. This information, upon request, may be provided to the requester in the form in which it was collected from the respective carrier, but may not include certain business confidential information of the air carrier that is also contained in the record. For other ATS modules the only information maintained in ATS is the risk assessment analyses and a pointer to the data from the source system of records.

Dated: July 31, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E7–15197 Filed 8–1–07; 11:51 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2007, the interest rates for overpayments will remain at 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will remain at 8 percent. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: *Effective Date:* July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2007–39, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2007, and ending September 30, 2007. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning October 1, 2007, and ending December 31, 2007.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpay-ments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	093007	8	8	7

Dated: July 31, 2007.

Deborah J. Spero,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E7–15154 Filed 8–3–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5067–N–03]

Extension of HUD's Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, as Revised by Section 4803 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 To Include Calendar 2007 Program Funds

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice supplements two earlier notices published in the **Federal Register** that provided guidance to public housing agencies (PHAs) on implementing the authority provided to HUD by section 901 of the ''Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006'' (Pub. L. 109–148, December 30, 2005) to allow PHAs to combine operating and capital funds and use flexibly and efficiently to facilitate disaster recovery in the States of Louisiana and Mississippi. Such authority was provided for calendar year 2006. This notice advises of the extension of such authority through calendar year 2007 by section 4803 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq

Accountability Appropriations Act, 2007 (Pub. L. 110–28, May 25, 2007).

Eligible PHAs interested in using funds under the authority provided must submit a 2007 Notice of Intent and Fungibility Plan in accordance with the July 28, 2006, and October 30, 2006, **Federal Register** Notices. Further information on may be found on the Office of Public and Indian Housing Web site at *http://www.hud.gov/offices/pih/*.

DATES: Eligible PHAs must submit their Calendar Year 2007 Notices of Intent and Fungibility Plans no later than September 14, 2007.

FOR FURTHER INFORMATION CONTACT: For technical assistance and other questions concerning the Notice of Intent and Section 901 Fungibility Plan, PHAs should contact their local HUD Public Housing Hub in New Orleans, Louisiana, or Jackson, Mississippi; or Bessy Kong, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410–5000, telephone (202) 708–0614 or 708–0713, extension 2548 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 28, 2006 (71 FR 42996), HUD published a notice entitled, ''Implementation Guidance for section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.'' Section 901 of the supplemental appropriations act authorizes HUD to allow PHAs to combine assistance provided under sections 9(d) and (e) of the United States Housing Act of 1937 (Act) and assistance provided under section 8(o) of the Act, for the purpose of facilitating the prompt, flexible, and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes. Such authority was provided through calendar year 2006. Section V.A. of the July 28, 2006, notice, entitled, ''General Procedures for Combining Public Housing and Voucher Funds Under Section 901,'' provided instructions for PHAs interested in implementing the flexibility in funding authorized in section 901.

On October 30, 2006 (71 FR 63340), HUD published a notice extending the period for eligible PHAs located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in connection with Hurricanes Katrina or Rita to submit Notices of Intent and Fungibility Plans in accordance with the July 28, 2006, notice. In addition to extending the PHA submission deadline, the October 30, 2006, notice removed the restriction that the combined funding may not be spent for uses under the Housing Choice Voucher (HCV) program.

This notice revises the earlier notices to incorporate the extension of section 901 flexibility from calendar year (CY) 2006 funding to calendar years 2006 and 2007 funding as authorized by section 4803 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28, enacted May 25, 2007).

As noted earlier in this notice, eligible PHAs interested in combining (CY) 2007 funds must submit a 2007 Notice of Intent and Fungibility Plan in accordance with the July 28, 2006, and October 30, 2006, **Federal Register** notices. Further information on HUD processing of CY2007 section 901 flexibility may be found on the Office of Public and Indian Housing Web site at *http://www.hud.gov/offices/pih/*.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E7–15165 Filed 8–3–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW154432 & WYW174407]

Notice of Availability of the Record of Decision for the Environmental Impact Statement for the Maysdorf Coal Lease-by-Application, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Maysdorf Coal Lease-by-Application (LBA).

ADDRESSES: The document is available electronically on the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/maysdorf.html*. Paper copies of the ROD are also available at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Janssen, Wyoming Coal Coordinator, (307) 775–6206 or Ms. Mavis Love, Land Law Examiner (307) 775–6258. Both Mr. Janssen's and Ms. Love's offices are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: The ROD covered by this Notice of Availability (NOA) is for the Maysdorf Coal Tract and addresses leasing coal administered by the BLM Casper Field Office in Campbell County, Wyoming. The BLM adopts Alternative 3. Under Alternative 3, the Maysdorf coal lease application area, as modified by BLM, would be divided into two separate tracts referred to as the North Maysdorf LBA Tract and the South Maysdorf LBA Tract. The North Maysdorf LBA Tract (WYW154432), as modified by BLM, includes 445.89 acres, more or less, and contains an estimated 54.7 million tons of mineable coal. The South Maysdorf LBA Tract (WYW174407), as modified by BLM, includes 2,900.24 acres, more or less, and contains an estimated 288 million tons of mineable coal. Two competitive coal lease sales will be announced in the **Federal Register**.

This decision is subject to appeal to the Interior Board of Land Appeals (IBLA) as provided in 43 CFR 4 within thirty (30) days from the date of publication of this NOA in the **Federal Register**. The ROD contains instructions for filing an appeal with the IBLA.

Alan Rabinoff,

Acting State Director.

[FR Doc. E7–15221 Filed 8–3–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–EU; N–82856; 7–08807]

Notice of Realty Action: Non-Competitive (Direct) Sale in the Las Vegas Valley, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 10-acre parcel of public land in the southwest portion of the Las Vegas Valley, Nevada to Clark County for affordable housing purposes. BLM proposes that the parcel be sold by direct sale to Clark County at less than the appraised fair market value (FMV), pursuant to Section 7(b) of the Southern Nevada Public Land Management Act (Pub. L. 105–263, SNPLMA) and the Nevada Guidance on Policy and Procedures for Affordable Housing Disposals (Nevada Guidance) approved on August 8, 2006. BLM proposes to sell the parcel in accordance with the applicable provisions in Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* (FLPMA), and the BLM land sale and mineral conveyance regulations at 43 CFR Section 2710 and Section 2720, respectively.

DATES: On or before September 20, 2007 interested parties may submit comments concerning the proposed sale, including the environmental assessment (EA), to the BLM Field Manager, Las Vegas Field Office, at the address stated below.

ADDRESSES: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Michelle Leiber, BLM Realty Specialist, at (702) 515–5168. For general information on BLM's public land sale procedures, refer to the following Web address: *http://www.blm.gov/nhp/what/lands/realtysales.htm.*

SUPPLEMENTARY INFORMATION: Pursuant to a request by Clark County, BLM proposes to sell a 10-acre parcel of public land located in the southwest portion of the Las Vegas Metropolitan Area and further described below. The parcel's southern and western boundaries abut developed residential properties. The other two sides are bound by developed roads (northern boundary is Arby Avenue; and eastern boundary is Riley Street). The subject parcel would be sold using the direct sale procedures, and under such terms, covenants, or conditions as determined necessary for affordable housing purposes by the BLM Authorized Officer in accordance with Section 7(b) of SNPLMA, and the Nevada Guidance. Pursuant to Section 7(b) of SNPLMA, BLM, in consultation with the Department of Housing and Urban Development (HUD), may make lands available for affordable housing purposes, in the State of Nevada at less than the appraised FMV. The amount administratively discounted from FMV is calculated according to the Nevada Guidance provisions.

Under SNPLMA Section 7(b), housing is ''affordable housing'' if the housing serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act ([Cranston-Gonzales] 42 U.S.C. 12704). In the Cranston-Gonzales Act, the term ''low-income families'' means families whose incomes do not exceed eighty percent (80%) of the average median income for the area as determined by HUD.

The appraised FMV for the 10-acre parcel is nine million five hundred thousand dollars ($9,500,000). Under the Nevada Guidance, and after consultation with HUD, the BLM Authorized Officer has determined that discount percentages for the respective median income category will be administratively applied to the FMV by BLM in order to establish the value of the public lands to be sold under these provisions. The FMV for this property would be ninety-five percent (95%) discounted pursuant to the Nevada Guidance resulting in a federally approved purchase price of four hundred seventy five thousand dollars ($475,000), so long as the property is used for affordable housing purposes.

Under the Nevada Guidance, the preferred method of sale under SNPLMA Section 7(b) is direct sale. In addition, the direct sale method is supported by 43 CFR 2711.3–3(1), which authorizes direct sales when, ''A tract is identified for transfer to State or local government,'' and 43 CFR 2711.3–3(2), which authorizes direct sales when, ''A tract is identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project.'' Since SNPLMA was passed in 1998, Clark County has invested considerable time and substantial resources in finding eligible projects for affordable housing purposes.

This project supported under SNPLMA Section 7(b) is called the ''Arby Family Apartments.'' If successfully sold, this project would begin to meet the tremendous demand for affordable housing recognized by the State of Nevada and the local governmental entities in the Las Vegas Valley. Clark County's submission of the sale nomination to the BLM and HUD includes a comprehensive plan for assessment and evaluation of the need for and feasibility of this project. HUD has recommended approval of this project in accordance with the SNPLMA, the Nevada Guidance, and HUD's Policy and Procedures for Affordable Housing Disposals Section 4(C–H).

Therefore, the following described land in Clark County, Nevada, is proposed to be sold to Clark County for affordable housing purposes under Section 7(b) of SNPLMA:

Land Proposed for Sale

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E., Sec. 5, NE¼SW¼SE¼.

Clark County Tax Parcel No.: 176–05–801–013.

The land described contains 10.0 acres, more or less, in Clark County.

This parcel is within the disposal boundary adopted by Congress in the SNPLMA and is also in conformance with the BLM Las Vegas Resource Management Plan, approved on October 5, 1998. The land is not required for any Federal purpose. The sale will be made subject to the applicable provisions of FLPMA and the regulations of the Secretary of the Interior. Under 43 CFR 2711.3–1(d) and 2711.3–1(b), a deposit of not less than twenty percent (20%) of the federally approved purchase price must be submitted, thirty (30) days from the date of the sale offer, by 4 p.m. PST at the BLM Las Vegas Field Office. Payment must be made in the form of certified check, postal money order, bank draft, cashier's check, or any combination thereof, made payable in U.S. dollars to the order of the DOI—Bureau of Land Management.

Failure to submit the deposit will result in forfeiture of the sale offer. Remainder of the purchase price must be paid within one hundred eighty (180) calendar days following the date of the sale offer. Failure to pay the full price within the one hundred eighty (180) days will disqualify the sale offer and cause the entire twenty percent (20%) deposit to be forfeited to the BLM, 43 CFR 2711.3–1(d) and 2711.3–3. No exceptions will be made. BLM cannot accept the full price at any time following the expiration of the 180th day after the sale offer. Payment must be received in the form of a certified check, postal money order, bank draft, cashier's check, or any combination thereof,

made payable in U.S. dollars to the order of the DOI—Bureau of Land Management. Arrangements for Electronic Fund Transfer to BLM for the balance due shall be made a minimum of two weeks prior to the date you wish to make payment.

The patent shall include the following numbered terms, covenants, and conditions:

1. *Affordable Housing:* Pursuant to Section 7(b) of SNPLMA, the term ''affordable housing'' as used in the sale patent, means housing that serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12704).

2. *Affordable Housing Purpose:* For purposes of the sale patent, the term ''affordable housing purpose'' shall mean for the purpose of affordable housing projects, including construction, which commit fifty percent (50%), or more, of living space to affordable housing, and which are used for no purpose other than residential use.

3. *Construction:* For purposes of the sale patent, the term ''construction'' shall mean ongoing and substantial work dedicated to the building of the dwelling structures and other improvements necessary for the realization of low-income affordable housing projects located on lands conveyed under Section 7(b) of SNPLMA.

4. *Covenant and Restriction:* Clark County hereby covenants and binds all successors-in-interests to use the land as approved by the BLM and HUD and conveyed by the sale patent only for affordable housing purposes for a period of twenty (20) years, which will commence upon the issuance of a certificate of occupancy or its equivalent by the HUD. This affordable housing covenant shall be deemed appurtenant to and to run with the ownership of the land conveyed by the sale patent. It shall be binding on Clark County, its successors and assigns, during the time each owns the land.

5. *Time Limit:* Reversion and Fair Market Value. If, at the end of five (5) years from the date of the sale patent, any land conveyed through this proposed sale is not being used for affordable housing purposes, at the option of the United States, those lands not so used shall revert to the United States, or, in the alternative, the United States may require payment by the owner to the United States of the then fair market value.

6. *Use Restriction:* Reversion and Fair Market Value. All land conveyed by the sale patent shall be used only for affordable housing purposes as approved by the BLM and HUD during the period of affordability. If at any time all or any portion of the land conveyed by the sale patent is used for any purpose other than affordable housing purposes by Clark County as approved, or any successor-in-interest, at the option of the United States, those lands not used for affordable housing purposes shall revert to the United States, or, in the alternative, the United States may at this time require payment by the owner to the United States of the then fair market value or institute a proceeding in a court of competent jurisdiction to enforce the covenant set forth above to use the land conveyed only for affordable housing purposes.

7. *Enforcement:* This use restriction and the reversionary interest may be enforced by the BLM or the HUD, or their successors-in-interest, as deemed appropriate by agreement of these two agencies at the time of enforcement, after reasonable notice to Clark County and landowner of record and opportunity to cure any default.

8. Clark County, upon issuance and acceptance of the sale patent, shall simultaneously transfer by deed the land conveyed by the sale patent to its successor-in-interest.

If patented, title to the land will continue to be subject to the following numbered reservations to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945);

2. Discretionary leasable(s) (oil and gas only) and all saleable mineral deposits in the land so patented, and to it, its permittees, licensees, and lessees, the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and such regulations as the Secretary of the Interior (Secretary) may prescribe, including all necessary access and exit rights; and

3. A reversionary interest as further defined in the above terms, covenants, and conditions.

If patented, title to the land will be subject to:

1. Valid existing rights [of record], including, but not limited to those documented on the BLM public land records at the time of sale; and

2. By accepting the sale patent, Clark County, subject to the limitations of law and to the extent allowed by law, shall be responsible for the acts or omissions of its officers, directors and employees in connection with the use or occupancy of the patented real property. Successors-in-interests of the patented real property, except Clark County, shall indemnify, defend, and hold the United States and Clark County harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the successors-in-interest, excluding Clark County, or its employees, agents, contractors, or lessees, [or any third-party], arising out of or in connection with the successors-in-interests, excluding Clark County, use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the successors-in-interests, excluding Clark County, and its employees, agents, contractors, or lessees, [or any third party], arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States or Clark County; (3) Costs, expenses, or damages of any kind incurred by the United States or Clark County; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States or Clark County; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced against successors-in-interest, excluding Clark County, by the United States or Clark County in a court of competent jurisdiction.

No representation or warranty of any kind, express or implied, is given or will be given by the United States as to the title, the physical condition or the past, present, or potential uses of the land proposed for sale. However, to the extent required by law, such land is subject to the requirements of Section

120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9620(h)).

Publication of this notice in the **Federal Register** temporarily segregates the above described land from appropriation under the public land laws, including the mining laws. The segregative effect of this notice will terminate upon issuance of a patent or other document of conveyance for such land, upon publication in the **Federal Register** of a termination of the segregation, or August 5, 2009, whichever occurs first, unless extended by the Nevada State Director in accordance with 43 CFR 2711.1–2(d), prior to the expiration date. The above described land was previously segregated from mineral entry under case file number N–66364, with record notation as of October 19, 1998. Subject to valid existing rights, the lands described for disposal are withdrawn from location and entry, under the mining laws and from operation under the mineral leasing and geothermal leasing laws until such time the Secretary terminates the withdrawal or the lands are patented. The above-described land was withdrawn from mineral entry under the SNPLMA as of October 19, 1998. This previous segregation will terminate upon publication of this notice in the **Federal Register**.

Detailed information concerning the proposed sale, including any environmental studies and documents, approved appraisal report and supporting documents, is available for review at the BLM Las Vegas Field Office at the address above. Interested parties may submit written comments regarding the sale, including the EA, to the address above. No facsimiles, e-mails, or telephone calls will be considered as validly submitted comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The Field Manager, BLM Las Vegas Field Office, will review the comments of all interested parties concerning the sale. To be considered, comments must be received at the BLM Las Vegas Field Office on or before the date stated above in this notice for that purpose.

In the absence of any adverse comments, the decision will become effective on October 5, 2007.

The lands will not be offered for sale until after the decision becomes effective.

(Authority: 43 CFR 2711.1–2).

Angie Lara,

Acting Field Manager, Las Vegas Field Office, Las Vegas, NV.

[FR Doc. E7–15235 Filed 8–3–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–1430–EU; WIES–054896]

Notice of Realty Action: Competitive Sale of Public Land in Langlade County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: A 1.18 acre parcel of public land located in Langlade County, Wisconsin, is being considered for sale under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA). The Bureau of Land Management (BLM) proposes to sell the land utilizing competitive sale procedures at no less than the appraised fair market value.

DATES: Comments regarding the proposed sale must be received by the Bureau of Land Management–Eastern States (BLM–ES) on or before September 20, 2007. The BLM–ES will accept sealed bids for the offered land from qualified bidders not later than 4:30 p.m. CDT on October 5, 2007.

ADDRESSES: Comments regarding the proposed sale, as well as sealed bids, should be addressed to Timothy O'Brien, Acting Field Manager, Bureau of Land Management–Eastern States, Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202–4617.

FOR FURTHER INFORMATION CONTACT: Information regarding the competitive sale instructions, procedures, documents, maps, and materials to submit a bid can be obtained by contacting Carol Grundman, Realty Specialist, at the above address, by phone at 414–297–4447, or by e-mail at *carol_grundman@es.blm.gov*.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and found suitable for sale under the provisions of Sections 203 and 209 of the Federal Land Policy Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719) and implementing regulations at 43 CFR 2710 and 2720:

Fourth Principal Meridian

T. 33 N., R. 10 E.; Sec. 25, lot 17.

The area described contains 1.18 acres in Langlade County.

The BLM Wisconsin Resource Management Plan Amendment dated 2001 identified this parcel of land as suitable for disposal. The purpose of the sale is to dispose of land which is difficult and uneconomic to manage as part of the public lands. The parcel has no legal access via a public road. There are no encumbrances reported on the records maintained by the BLM–ES, Milwaukee Field Office.

The land is being offered for sale using competitive bidding procedures pursuant to 43 CFR 2711.3–1. Interested bidders must submit sealed bids to the BLM–ES, Milwaukee Field Office (address stated above), not later than 4:30 p.m. CDT, on October 5, 2007. Sealed bid envelopes must be clearly marked on the front lower left-hand corner with ''SEALED BID BLM LAND SALE WI, WIES–054896, October 5, 2007. The bid envelope must also contain a signed statement showing the total amount of the bid and the name, mailing address, and phone number of the entity making the bid.

Sealed bids will be opened to determine the high bid at 10 a.m. CDT, October 9, 2007 at the BLM–ES, Milwaukee Field Office (address stated above). The highest qualifying bid will be declared the high bid and the high bidder will receive written notice. Bidders submitting matching high bid amounts for the parcel will be provided an opportunity to submit a supplemental sealed bid. The BLM will return checks submitted by unsuccessful bidders by U.S. mail.

Bids must be for not less than the federally appraised fair market value determination of the land. The appraised fair market value will be made available 30 days prior to the sealed bid closing date at the BLM–ES, Milwaukee Field Office (address stated above). Each sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for an amount not less than 20 percent of the total amount of the bid. Personal checks will not be accepted.

The successful bidder will be allowed 180 days from the date of sale to submit the remainder of the full bid price in the form of a certified check, money order, bank draft, or cashier's check made

payable to the Bureau of Land Management. Personal checks will not be accepted. Failure to submit the full bid price prior to but not including the 180th day following the day of the sale, will result in the forfeiture of the bid deposit to the BLM, and the parcel will be offered to the second highest qualifying bidder at their original bid. If there are no acceptable bids, the parcel may remain available for sale on a continuing basis in accordance with the competitive sale procedures described in 43 CFR 2711.3–1 without further legal notice. Bids submitted to the BLM will be opened on the first Friday of each month following the initial date of sale at 10 a.m. CDT, in the BLM–ES, Milwaukee Field Office, until the parcel is sold or the offer is cancelled.

Federal law requires that bidders must be (1) United States citizens 18 years of age or older, (2) a corporation subject to the laws of any State or of the United States, (3) an entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Wisconsin, or (4) a State, State instrumentality, or political subdivision authorized to hold real property.

The Federal mineral interests underlying this parcel have no known mineral value and will be conveyed with the sale of the parcel. A sealed bid for the above described parcel constitutes an application for conveyance of those mineral interests. In addition to the full purchase price, a successful bidder must pay a separate nonrefundable filing fee of $50 for the mineral interests to be conveyed simultaneously with the sale of the land.

Segregation: Publication of this Notice in the **Federal Register** segregates the subject land from appropriation under the pubic land laws, except sale under the provisions of the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or on August 6, 2009 unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Terms and Conditions of Sale: Upon successful completion of the sale, the patent issued would contain the following reservations, covenants, terms and conditions:

1. The parcel is subject to valid existing rights.

2. Pursuant to the requirements established by Section 120 (h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), [42 U.S.C. 9620(h)], as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances has been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

3. The purchaser/patentee, by accepting the patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees, their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now, or may in the future become applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damage of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances, as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solids or hazardous substances or waste, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition or potential uses of the land proposed for sale, and the conveyance will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that may affect the subject land or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

For a period until September 20, 2007 interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Timothy O'Brien, Acting Field Manager, BLM–ES, Milwaukee Field Office (address stated above). Comments transmitted via e-mail or facsimile will not be considered. Comments will be available for public review at the BLM–ES, Milwaukee Field Office during regular business hours, except Federal holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Timely received adverse comments will be reviewed by the State Director, Eastern States, Bureau of Land Management who may sustain, vacate, or modify this realty action. In the absence of timely adverse comments, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2)

Timothy P. O'Brien,

Acting Field Manager, Milwaukee Field Office.

[FR Doc. E7–15223 Filed 8–3–07; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National

Register were received by the National Park Service before July 21, 2007. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 21, 2007.

Paul R. Lusignan,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Napa County

Ramos, John, Sherry House—Depot Station, 1468–1478 Railroad Ave., St. Helena, 07000849.

San Diego County

Coyote Canyon Wild Horse Herd Historic District, Anza-Borrego State Park, Borrego Springs, 07000848.

ILLINOIS

Cook County

Community House, 620 Lincoln Ave., Winnetka, 07000854.

Palmer Park, (Chicago Park District MPS), 201 E. 111th St., Chicago, 07000855.

Vassar Swss Underwear Company Building, 2545 W. Diversey Ave., Chicago, 07000859.

Vial, Robert, House, 7425 S. Wolf Rd., Burr Ridge, 07000853.

Rock Island County

Moline Downtown Commercial Historic District, Roughly bounded by 12th St. to 18th St., 4th Ave. to 7th Ave., Moline, 07000856.

IOWA

Henry County

Lewelling, Henderson and Elizabeth (Presnel), House, 401 S. Main St., Salem, 07000851.

Lee County

Fort Madison Downtown Commercial Historic District, (Iowa's Main Street Commercial Architecture MPS), Centered on Ave. G, from near 6th St., to mid-900 Blk, Inc. Ave. H from 7th to 9th, Fort Madison, 07000852.

Woodbury County

Williges Building, 613–615 Pierce St., Sioux City, 07000850.

LOUISIANA

Orleans Parish

Buildings at 445–447–449 South Rampart, 445–447–449 S. Rampart, New Orleans, 07000857.

MARYLAND

Baltimore County,

Goucher College, 1021 Dulaney Valley Rd., Towson, 07000885.

Frederick County

St. John's Church at Creagerstown Historic District, 8619 Blacks Mill Rd., Thurmont, 07000862.

Harford County

Graystone Lodge, 1118 Bel Air Rd., Bel Air, 07000858.

MASSACHUSETTS

Norfolk County

Roberts School, 320 Union St., Holbrook, 07000860.

Suffolk County

Boston Transit Commission Building, 15 Beacon St., Boston, 07000861.

NEW JERSEY

Atlantic County

Egg Harbor Commercial Bank, 134 Philadelphia Ave., Egg Harbor City, 07000875.

Mercer County

Princeton Ice Company, 57 Mountain Ave., Princeton, 07000874.

Somerset County

Presbyterian Church at Bound Brook, 409 Mountain Ave., Bound Brook Borough, 07000876.

Union County

Cedar Brook Park, Roughly bounded Steel Ave., Arlington Ave., Park Ave., Rose St. and Laramie Rd., Kenyon Ave., Parkside Rd., Plainfield, 07000878.

Wallace Chapel AME Zion Church, 138–142 Broad St., Summit Town, 07000877.

NEW YORK

Cayuga County

Burritt, Orrin W., House, 2696 Van Buren St., Weedsport, 07000864.

Erie County

Buffalo, Rochester and Pittsburgh Railway Station, 395 S. Lincoln Ave., Orchard Park, 07000871.

Franklin County

Hastings Farmstead, 12 Conservation Rd., Dickinson Center, 07000872.

Jefferson County

Fairview Manor, 38289 NY 12-E, Clayton, 07000866.

Kings County

Christ Evangelical English Lutheran Church, 1084 Lafayette Ave., Brooklyn, 07000870.

Nassau County

Cornell—Van Nostrand House, New Hyde Park Rd. and Marcus Ave., New Hyde Park, 07000863.

New York County

Engineering Societies' Building and Engineers' Club, 23 and 25–33 W. 39th St., 28,32–34 and 36 W. 40th St., New York, 07000867.

Onondaga County

Burhans, Harry N., House, (Architecture of Ward Wellington Ward in Syracuse MPS), 2627 E. Genesee St., Syracuse, 07000868.

Seneca County

Bull, Julius and Harriet, House, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS), 2534 Lower Lake Rd., Seneca Falls, 07000869.

Kinne, David and Mary, Farmstead, (Freedom Trail, Abolitionism, and African American Life in Central New York MPS), 6858 Kinne Rd., Ovid, 07000865.

Suffolk County

Gamecock Cottage, Shipman's Point/S end of W. Meadow Beach, Stony Brook, 07000886.

Ulster County

Milton Railroad Station, 41 Dock Rd., Milton, 07000873.

NORTH CAROLINA

Franklin County

Wheless, Thomas and Lois, House, 106 John St., Louisburg, 07000887.

Graham County

Graham County Courthouse, 12 N. Main St., Robbinsville, 07000883.

Hertford County

Thomas, Dr. Roscius P. and Mary Mitchell, House and Outbuildings, 734 Thomas Bridge Rd., Bethlehem, 07000884.

Surry County

Gwyn Avenue—Bridge Street Historic District, Roughly bounded by N. Bridge St., Mill View Rd., Market St. and Church St. Elkin, 07000882.

Wake County

Barbee, George and Neva, House, (Wake County MPS), 216 W. Gannon Ave., Zebulon, 07000881.

Rock Cliff Farm, West end of Bent Rd., Wake Forest, 07000879.

PENNSYLVANIA

Allegheny County

Highland Park Residential Historic District, Roughly bounded by Highland Park, Heth's Run and Heth's Ave., Chislett St., Stanton Ave. and Jackson St., Pittsburgh, 07000888.

Turtle Creek High School, 126 Monroeville Ave., Turtle Creek, 07000880.

Bucks County

Walt Disney Elementary School, 200 Lakeside Dr. N, Tullytown, 07000889.

Westmoreland County

Dick Building, 201–203 E. Main St., West Newton, 07000890.

RHODE ISLAND

Kent County

Greene, Christopher Rhodes, House, 2 Potter Court, Coventry, 07000891.

TEXAS

Denton County

Pilot Point Commercial Historic District, Portions of eight blks in downtown Pilot Point centered around the public square, Pilot Point, 07000893.

Jefferson County

Beaumont Commercial District (Boundary Increase), Roughly bounded by Willow, Neches, Gilber and Main Sts., Beaumont, 07000892.

VERMONT

Caledonia County

Wheelock Common Historic District, VT 122, and town hwy 17, Wheelock, 07000894.

VIRGINIA

Mecklenburg County

Syndor, Patrick Robert, Log Cabin, Address Restricted, Clarksbille, 07000896.

WASHINGTON

Skamania County

Region Six Personnel Training Station, Wind River Work Center, 1262 Hemlock Rd., Gifford Pinchot National Forest, 07000895.

A request for REMOVAL has been made for the following resource:

NEW MEXICO

McKinley County

Log Cabin Motel, (Route 66 through New Mexico MPS), 1010 W. 66 Ave., Gallup, 93001213.

[FR Doc. E7–15175 Filed 8–3–07; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1114 and 1115 (Preliminary)]

Certain Steel Nails From China and the United Arab Emirates

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and the United Arab Emirates of certain steel nails, provided for in subheadings 7317.00.55, 7317.00.65, and 7317.00.75 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 29, 2007, a petition was filed with the Commission and Commerce by Davis Wire Corp. (Irwindale, CA), Gerdau Ameristeel Corp. (Tampa, FL), Maze Nails (Peru, IL), Mid-Continent Nail Corp. (Poplar Bluff, MO), and Treasure Coast Fasteners, Inc. (Fort Pierce, FL), alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain steel nails from China and the United Arab Emirates. Accordingly, effective May 29, 2007, the Commission instituted antidumping duty investigation Nos. 731–TA–1114 and 1115 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 2007 (72 FR 30831). The conference was held in Washington, DC, on June 19, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 30, 2007. The views of the Commission are contained in USITC Publication 3939 (August 2007), entitled *Certain Steel Nails from China and the United Arab Emirates: Investigation Nos. 731–TA–1114 and 1115 (Preliminary).*

Issued: July 31, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–15196 Filed 8–3–07; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978; Public Law 95–541

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 5, 2007. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to

designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No.: 2008–007.

1. *Applicant:* Sam Feola, Director, Raytheon Polar Services Company, 7400 S. Tucson Way, Centennial, CO 80112.

Activity for Which Permit is Requested: Enter an Antarctic Specially Protected Area (ASPA). The applicant plans to enter the Cape Hallett (ASPA 106), Cape Royds (ASPA 121), Barwick and Balham Valleys (ASPA 123), Cape Crozer (ASPA 124), Northwest White Island (ASPA 137), and, Linnaeus Terrace (ASPA 138) to: Gather up-to-date information on site status and on any installations or facilities; verify that the values being protected are being maintained; verify that the management measures in place are sufficient to provide protection; and recommend any management measures that may be necessary to maintain the values being protected. Article 6.3 of Annex V to the Madrid Protocol requires ''A review of a (ASPA) Management Plan shall be initiated at least every five years.'' Updating of the ASPA management plan is the responsibility of the country that originally proposed the site, as in this case, the United States.

Location: Cape Hallett (ASPA 106), Cape Royds (ASPA 121), Barwick and Balham Valleys (ASPA 123), Cape Crozer (ASPA 124), Northwest White Island (ASPA 137), and, Linnaeus Terrace (ASPA 138).

Dates: October 1, 2007 to August 31, 2010.

Permit Application No.: 2008–008.

2. *Applicant:* Rennie S. Holt, Director, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

Activity for Which Permit is Requested: Take and enter an Antarctic Specially Protected Area (ASPA). The applicant proposes to enter Cape Shirreff (ASPA 149) to collect blood samples from 30 adult Gentoo and Chinstrap penguins each. In addition, time depth recorders (TDRs) and satellite tags (PTT) will be attached to the penguins to study the foraging ecology and diets of the penguins. The applicant also plans to collect DNA samples from 50 Antarctic Fur seals flippers. These samples will be used to estimate probability of full sib-half sib for successive matings of individual females and will provide information on female choice and degree of site fidelity in breeding. Finally, the applicant would like to annually salvage up to 3 adult females and five pups of Antarctic Fur seals due to accidental mortality. Also the applicant would like to annually salvage up to 2 Leopard seals of any age class due to accidental mortality. Salvage animals will be used for study back at the home institution.

Location: Cape Shirreff, Livingston Island (ASPA 149).

Dates: November 1, 2007 to April 30, 2011.

Permit Application No.: 2008–009.

3. *Applicant:* Sam Feola, Director, Raytheon Polar Services Company, 7400 S. Tucson Way, Centennial, CO 80112.

Activity for Which Permit is Requested: Enter an Antarctic Specially Protected Areas. The applicant proposes to enter the Byers Peninsula, Livingston Island Antarctic Specially Protected Area No. 126 to establish, resupply, transport personnel, and tear down a temporary scientific field camp. Paleontological field work will be conducted at the site under separate permit. Access to the site will be via zodiac from the scientific vessel, *ARSV Laurence M. Gould.*

Location: Byers Peninsula, Livingston Island (ASPA 126).

Dates: 20 November 2007 to December 31, 2008.

Permit Application No.: 2008–010.

4. *Applicant:* David Caron, Department of Biological Sciences, University of Southern California, 3616 Trousdale Parkway, AHF 301, Los Angeles, CA 90089.

Activity for Which Permit is Requested: Introduce non-indigenous species into Antarctica. The applicant proposes to bring genetically engineered E. coli cells for the creation of gene clone libraries. The cells are provided as part of the cloning kits to be used in experiments onboard the *R/V Nathaniel B. Palmer.* At no time will cells be released into the environment and any remnants of cells and equipment that comes in contact with the cells are disposed appropriately as Biohazard.

Location: Ross Sea, Antarctica.

Dates: December 1, 2007 to March 14, 2008.

Permit Application No.: 2008–011.

5. *Applicant:* Sam Feola, Director, Raytheon Polar Services Company, 7400 S. Tucson Way, Centennial, CO 80112.

Activity for Which Permit is Requested: Introduce non-indigenous species into Antarctica. The applicant proposes to import commercially available bacterial host cell, *Escherichia coli,* for experimental use at the McMurdo Station Crary Lab. The experimental purpose is to generate clones of genes and gene fragments. Unused bacterial clones will be destroyed by autoclaving the liquid culture or agar plates. All laboratory plastic and glass ware used in the cloning and culturing process will be autoclaved.

Location: McMurdo Station, Crary Science and Engineering Laboratory.

Dates: October 1, 2007 to April 1, 2010.

Permit Application No.: 2008–012.

6. *Applicant:* Arthur L. DeVries, Department of Animal Biology, University of Illinois, Urbana, IL 61801.

Activity for Which Permit is Requested: Enter and Antarctic Specially Protected Area. The applicant proposes to collect Notothenioid fishes by light Otter trawls or fish traps. Fishing will be done in the Eastern Dallmann Bay (ASPA 153) and Western Bransfield Strait (ASPA 152) areas. Tissues and blood collections are needed for quantification of the amount of antifreeze glycoprotein that is circulated in their circulatory space. Spleen and liver tissues are also needed for isolating genomic DNS and messenger RNA to investigate the size and organization of the antifreeze glycoprotein genome, and to determine in what tissues the antifreeze glycoprotein is expressed.

Location: Eastern Dallmann Bay (ASPA 153) and Western Bransfield Strait (ASPA 152), Antarctic Peninsula.

Dates: June 15, 2008 to October 15, 2008.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E7–15178 Filed 8–3–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 4, ''Cumulative Occupational Dose History'' and NRC Form 5, ''Occupational Exposure Record for a Monitoring Period''.

3. *The form number if applicable:* NRC Form 4 (3150–0005) and NRC Form 5 (3150–0006).

4. *How often the collection is required:* NRC Form 4: Occasionally; NRC Form 5: Annually.

5. *Who is required or asked to report:* NRC licensees who are required to comply with 10 CFR part 20.

6. *An estimate of the number of annual responses:* NRC Form 4: 20,024 (19,822 from reactor sites and 202 from material licensees) and NRC Form 5: 172,419 (160,701 from reactor sites and 11,718 from material licensees.

7. *The estimated number of annual respondents:* NRC Form 4: 218 (104 from reactor sites and 114 from materials licensees) and NRC Form 5: 4,212 (104 reactor sites and 114 materials licensees, plus an additional 3,994 materials licensees recordkeepers).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* NRC Form 4: 10,012 hours on an average of 0.5 hours per response; NRC Form 5: 65,618 hours (56,898 hours for recordkeeping on an average of 0.33 hours per record and 8,720 hours for reporting on an average of 40 hours per licensee).

9. An *indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* NRC Form 4 is used to record the summary of an individual's cumulative occupational radiation dose up to and including the current year to ensure that the dose does not exceed regulatory limits.

NRC Form 5 is used to record and report the results of individual monitoring for occupational radiation exposure during a one-year (calendar year) period to ensure regulatory compliance with annual radiation dose limits.

A copy of the final 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 should be directed to the OMB reviewer listed below by September 5, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0005 and 3150–0006), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan.Frey@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 30th day of July, 2007.

For the Nuclear Regulatory Commission.

Christopher Colburn,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–15190 Filed 8–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; License Nos. DPR–26 and DPR–64; EA–07–189]

In the Matter of Entergy Nuclear Operations, Inc; Indian Point Nuclear Generating Unit Nos. 2 and 3; Order Modifying License (Effective Immediately)

I

Entergy Nuclear Operations, Inc. (Licensee) is the holder of Facility Operating License Nos. DPR–26 and DPR–64 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of Indian Point Nuclear Generating Unit Nos. 2 and 3, in accordance with the conditions specified therein. The facilities are located on the Licensee's site in Buchanan, New York.

II

On April 23, 2007, the NRC issued to Entergy Nuclear Operations, Inc. (Entergy) a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty for a violation involving the failure to meet the requirements of a Confirmatory Order (EA–05–190) that was issued to Entergy on January 31, 2006. On January 23, 2007, the NRC granted Entergy's request, provided in a letter dated January 11, 2007, to extend the full implementation date until April 15, 2007. The NRC issued the NOV and Proposed Civil Penalty after Entergy informed the NRC that the ''radio only activation'' feature of the emergency notification system (ENS) did not meet its test acceptance criteria, resulting in the ENS not being fully operable by April 15, 2007, the date it was required to be operable. Entergy responded to the NOV on May 23, 2007, and committed to declaring the new ENS operable by August 24, 2007. In its response, Entergy admitted to the violation of the Confirmatory Order, identified the apparent causes of the violation, and described corrective actions that were taken or planned to correct the violation.

Subsequent to the Licensee's May 23, 2007, letter, the NRC held a public meeting with Entergy officials on July 9, 2007, to clarify Entergy's actions to comply with the Confirmatory Order, particularly with respect to ensuring that the new ENS met the applicable Federal Emergency Management Agency (FEMA) regulations, as well as to ensure that any specific county needs were identified and addressed prior to Entergy declaring the new ENS operable.

The NRC has evaluated Entergy's response to the NOV and the additional information gathered during the July 9, 2007, public meeting. The NRC has determined that additional actions are needed to ensure that the new ENS with backup power supply capability is operable by August 24, 2007, as committed to in Entergy's May 23, 2007 letter. These actions include: Completing the outstanding requirements delineated in the aforementioned Confirmatory Order issued January 31, 2006, as modified herein; implementing those measures necessary for FEMA to accept the new ENS as the primary ENS for alerting the public by August 24, 2007; and, completing the necessary software and procedure upgrades and training of county personnel responsible for actuation of the system.

III

Adequate backup power for the ENS, as required by the Energy Policy Act of 2005 (Act) (see 42 U.S.C. 2210 et seq.) Section 651(b), requires that: (a) The backup power supply for the Public Alerting System (PAS) must meet commonly-applicable standards, such as National Fire Protection Association (NFPA) Standard 1221, Standard for the Installation, Maintenance, and Use of Emergency Communications Systems (2002) and Underwriters Laboratory (UL) 2017, Section 58.2; (b) each PAS and PAS Alerting Appliance (PASAA) must receive adequate power to perform their intended functions such that backup power is sufficient to allow operation in standby mode for a minimum of 24 hours and in alert mode for a minimum of 15 minutes; (c)

batteries used for backup power must recharge to at least 80 percent of their capacity in a period of not more than 24 hours; (d) except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, immediate automatic indication of a loss of power must be provided to the Licensee and appropriate government agencies; and (e) except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, an automatic notification of an unplanned loss of power must be made to the Licensee in sufficient time to take compensatory action before the backup power supply can not meet the requirements of Section IV, part II. A. 2 of the Confirmatory Order.

The requirements needed to implement the foregoing are set forth in Section IV below. Based on the above, and in consideration of other communications involving the NRC, FEMA, New York State, the four counties within the 10 mile Emergency Planning Zone, and Entergy officials, additional actions are needed to ensure Entergy is in compliance with the Commission's requirements and that the public interest will be protected. Therefore, License Nos. DPR–26 and DPR–64 should be modified to require compliance with Section 651(b) of the Act. Furthermore, pursuant to 10 CFR 2.202, and in consideration of the ongoing violation of the Confirmatory Order, as well as the prior enforcement related to such, I find that the significance of compliance with the Act described above is such that the public interest requires that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended; Section 651(b) of the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat 594); and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, it is hereby ordered, effective immediately, that license nos. Dpr-26 and dpr-64 are modified as follows:

I. The Licensee shall meet all the provisions contained in the January 31, 2006, Confirmatory Order (see Appendix A of this Order), except as specifically modified or supplemented herein. With respect to the requirement to provide and maintain an ENS with backup power supply capability for the Indian Point Nuclear Generating Unit Nos. 2 and 3 facilities, the new ENS intended to comply with that requirement shall meet applicable requirements of state and federal authorities such that it is declared operable and placed into service as the primary system by August 24, 2007.

II. The Licensee shall provide to NRC within 7 days of this order a report describing the steps and the expected schedule for completing each of the steps that the licensee understands are necessary to meet applicable requirements of state and federal authorities to place the new ENS system into service as the Primary Notification system. The report should identify any uncertainties in identification of requirements or in schedules associated with requirements.

III. Prior to declaring the new ENS operable and using it as the primary system, the Licensee shall: (a) Obtain FEMA approval that the system, as installed, meets the design criterion of the approved ENS Design Report and is in compliance with all applicable FEMA regulations and guidance; and, (b) complete all necessary software and procedure upgrades and training of all the four county response organizations, accounting for the specific training needs identified by the counties, in the proper use of the new ENS and response to associated alarming conditions.

IV. The Licensee shall maintain the existing ENS fully available (including conducting routine maintenance and testing activities) and establish the necessary procedures and actions to enable its use as a backup to the new ENS when the new ENS is declared in use as the primary system, until such time that FEMA grants approval to remove the existing ENS from service.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, to the Director, Office of Nuclear Reactor Regulation, and to the Assistant General Counsel for Materials Litigation and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Regional Administrator, NRC Region I, U.S. NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415; and to the Licensee, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601, if the answer or hearing request is by a person other than the Licensee. It is requested that answers and requests for hearing or for time extensions be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If the hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 30th day of July 2007.
For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

Appendix A—Section IV Excerpt From NRC Confirmatory Order, Dated January 31, 2006

IV

I. The Licensee shall provide and maintain a backup power supply for the ENS for the Indian Point Nuclear Generating Unit Nos. 2 and 3, facilities. The ENS is the primary prompt notification system used to alert the public of an event at a nuclear power plant.

II. The Licensee shall implement II.A, II.B, and II.C.1–3 by January 30, 2007. The backup power system for the ENS shall be declared operable by January 30, 2007. The backup power supply for the ENS shall include, as a minimum:

A.1. A backup power supply for the PAS and each PASAA which shall provide adequate power for each component to perform their design function. These functions include the following as examples: sound output, rotation, speech intelligibility, or brightness as applicable. This criterion includes the associated activation, control, monitoring, and testing components for the backup power supply to the ENS including, but not limited to: radio transceivers, testing circuits, sensors to monitor critical operating parameters of the PAS and PASAA.

The Licensee is required to meet all applicable standards, such as NFPA Standard 1221, Standard for the Installation, Maintenance, and Use of Emergency Communications Systems (2002) and UL 2017, Section 58.2.

2. The backup power supply for each PAS and PASAA shall be designed for operation in standby mode, including, but not limited to: radio transceivers, testing circuits, sensors fully operational and providing polling data to the activation, control, monitoring, and test system for at least 24 hours without AC supply power from the local electric distribution grid. The backup power supply then shall be capable of performing its intended function, without recharge, by operating the PAS and PASAA in its alerting mode at its full design capability for a period of at least 15 minutes. This sequence shall be assumed to occur at the most unfavorable environmental conditions including, but not limited to, temperature, wind, and precipitation specified for PAS and PASAA operation and assume that the batteries are approaching the end of their design life (i.e., the ensuing recharge cycle will bring the batteries back to the minimum state that defines their design life).

3. In defining battery design life, automatic charging shall be sized such that batteries in the backup power are fully recharged to at least 80 percent of their maximum rated capacity from the fully discharged state in a period of not more than 24 hours.

4. Battery design life and replacement frequency shall comply with vendor(s) recommendations.

5. Except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, there shall be a feedback system(s) that provides immediate automatic indication of a loss of power to the Licensee and the appropriate government agencies, and an automatic notification of an unplanned loss of power must be made to the Licensee in sufficient time to take compensatory action before the backup power supply can not meet the requirements of Section IV, part II.A.2.

6. The Licensee shall implement a preventative maintenance and testing program of the ENS including, but not limited to: the equipment that activates and monitors the system, equipment that provides backup power, and the alerting device to ensure the ENS system performs to its design specifications.

B.1. The Licensee shall implement any new Department of Homeland Security (DHS) guidance pertaining to backup power for ENS that may affect the system requirements outlined in this Order that is issued prior to obtaining DHS approval of the alerting system design. The Licensee shall not implement any DHS guidance that reduces the effectiveness of the ENS as provided for in this Order without prior NRC approval.

2. The Licensee shall document the evaluation of lessons learned from any evaluation of the current alert and notification system (ANS) and address resolution of identified concerns when designing the backup power system and such consideration shall be included in the design report.

3. The final PAS design must be submitted to DHS for approval prior to May 1, 2006.

C.1. Within 60 days of the issuance of this Order, the Licensee shall submit a response to this Order to the NRC Document Control Desk providing a schedule of planned activities associated with the implementation of the Order including interactions with the Putnam, Rockland, Westchester, and Orange Counties, the State of New York, and DHS. In addition, the Licensee shall provide a progress report on or shortly before June 30, 2006.

2. The Licensee shall submit a proposed revision to its emergency response plan to incorporate the implementation of items A.1–A.6, B.1–B.3, and C.4–C.5. This plan shall be submitted to the NRC for review and approval within 120 days from the issuance of the Order.

3. Prior to declaring the ENS operable, the Licensee shall, in accordance with a test plan submitted to and approved by the NRC in conjunction with the design submittal, demonstrate satisfactory performance of all (100%) of the ENS components including the ability of the backup power supply to meet its design requirements.

4. After declaring the ENS operable, the Licensee shall conduct periodic testing to demonstrate reliable ENS system performance.

5. The results from testing as discussed in paragraph C.4 shall be reported, in writing, to the NRC Document Control Desk, with a copy to the Director of Nuclear Reactor Regulation, documenting the results of each test, until there are 3 consecutive tests testing the operability of all ENS components used during an actual activation), conducted no sooner than 25 days and no more than 45 days from the previous test with a 97% overall entire emergency planning zone success rate with no individual county failure rate greater than 10%. A false negative report from a feedback system will constitute a siren failure for the purposes of this test.

III. The Licensee shall submit a written report to the NRC Document Control Desk, with a copy to the Director of Nuclear Reactor Regulation, when the ENS is declared operable.

IV. The Licensee shall submit a written report to the NRC Document Control Desk and provide a copy to the Director of Nuclear Reactor Regulation when it has achieved full compliance with the requirements contained in this Order.

V. The Licensee may use the criteria contained in 10 CFR 50.54(q) to make changes to the requirements contained in this Order without prior NRC approval provided that they do not reduce the effectiveness of the Order requirements or the approved emergency plan. The Licensee shall notify, in writing, the NRC Document Control Desk, with a copy to the Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response, 30 days in advance of implementing such a change. For other changes, the Licensee may

submit a request, in writing, to the NRC Document Control Desk, with a copy to the Director, Office of Nuclear Reactor Regulation, to relax or rescind any of the above requirements upon a showing of good cause by the Licensee.

[FR Doc. E7–15191 Filed 8–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266, 50–301 Renewed License Nos. DPR–24 and DPR–27]

In the Matter of Wisconsin Electric Power Company and Nuclear Management Company, LLC, (Point Beach Nuclear Plant); Order Approving Transfer of Licenses and Conforming Amendments

I.

Wisconsin Electric Power Company (WEPCO) and Nuclear Management Company, LLC (NMC) are holders of the Renewed Facility Operating Licenses (FOLs), Nos. DPR–24 and DPR–27, which authorize the possession, use and operation of Point Beach Nuclear Plant, Units 1 and 2 (Point Beach or facility). NMC is licensed by the U.S. Nuclear Regulatory Commission (NRC, the Commission) to operate Point Beach. WEPCO is licensed to possess Point Beach with respect to WEPCO's ownership of the facility. Point Beach is located near Two Rivers, Wisconsin.

II.

By letter dated January 26, 2007, as supplemented by letter dated July 11, 2007, NMC, WEPCO and FPL Energy Point Beach, LLC, (FPLE Point Beach) submitted an application requesting approval of the direct license transfers that would be necessary in connection with WEPCO's proposed sale and transfer to FPLE Point Beach of its 100 percent ownership interest in Point Beach. The application also requested the approval of the transfer of NMC's operating authority to FPLE Point Beach. Transfer of the licenses will authorize FPLE Point Beach, pursuant to the general license in Section 72.210 of Title 10 of the Code of Federal Regulations (10 CFR), to store spent fuel in the Independent Spent Fuel Storage Installation (ISFSI) at Point Beach.

As a potential interim step towards the sale of Point Beach, WEPCO and FPLE Point Beach have signed an Interim Operating Agreement that would permit WEPCO, at its option, and upon receipt of applicable regulatory approvals, to transfer NMC's operating authority to FPLE Point Beach prior to the closing of the ownership sale of Point Beach. This interim transfer of the operating authority from NMC to FPLE Point Beach would not change the financial responsibilities or qualifications or the decommissioning funding status of WEPCO as the 100 percent owner of Point Beach.

WEPCO, NMC and FPLE Point Beach requested approval of (1) conforming license amendments that would reflect the proposed transfer of ownership of and operating authority for Point Beach to FPLE Point Beach; and (2) the option of transferring operating authority as an interim step to FPLE Point Beach. The amendments for transferring ownership and operating authority would include the following: (1) The deletion of the references to WEPCO and NMC as owner and operator of Point Beach, respectively, and (2) the authorization of FPLE Point Beach to possess, use, and operate Point Beach under essentially the same conditions and authorization included in the existing licenses. Two footnotes containing historical references to the former licensees also will be deleted. The applicants did not propose any physical or operational changes to the facility. After completion of the proposed transfers, FPLE Point Beach would be the owner and the operator of Point Beach. The amendments for transferring operational authority as an interim step would include the following: (1) The deletion of the references to NMC as operator of Point Beach, and replacement with references to FPLE Point Beach, and (2) the authorization of FPLE Point Beach to operate Point Beach under essentially the same conditions and authorization included in the existing licenses. After completion of the proposed transfers, FPLE Point Beach would be the operator of Point Beach.

The applicants requested approval of the transfer of the renewed FOLs and conforming license amendments pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and opportunity for a hearing were published in the **Federal Register** on February 28, 2007 (72 FR 9035). No comments were received. No requests for hearing or petitions for leave to intervene were received.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that FPLE Point Beach is qualified to hold the licenses for Point Beach to the extent now held by WEPCO regarding its ownership interest, and is qualified to hold the operating authority under the licenses now held by NMC, and the transfer of the licenses as proposed in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has also found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated July 31, 2007.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, *It is hereby ordered* that the transfer of the licenses, as described herein, to FPLE Point Beach is approved, subject to the following conditions:

(1) At the time of the closing of the transfer of the licenses from Wisconsin Electric Power Company (WEPCO) to FPLE Point Beach, WEPCO shall transfer to FPLE Point Beach WEPCO's decommissioning funds in an aggregate minimum value of $200.8 million for Point Beach, Unit 1 and $189.2 million for Point Beach, Unit 2. FPLE Point Beach shall deposit such funds in an external decommissioning trust fund established by FPLE Point Beach for Point Beach Units 1 and 2. The trust agreement shall be in a form acceptable to the NRC.

(2) FPLE Point Beach shall take no actions to cause FPLE Group Capital, or its successors and assigns, to void, cancel, or modify its $70 million Support Agreement (Agreement) to FPLE Point Beach, as presented in the application, or cause it to fail to perform or impair its performance under the Agreement, without prior written consent from the NRC. The Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the Agreement shall be submitted to the NRC no later than 30 days after the completion of the license transfers. Also, FPLE Point Beach shall inform the NRC in writing anytime it draws upon the $70 million Agreement.

(3) Prior to completion of the transfer of any authority under the licenses, FPLE Point Beach shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 of the Commission's regulations.

It is further ordered that FPLE Point Beach shall inform the Director of the Office of Nuclear Reactor Regulation in writing if it wishes to exercise the option to transfer the operating authority prior to closing of the sale no later than 5 business days prior to the desired date for transfer of operational authority. Should FPLE Point Beach not request to exercise the option to transfer operational authority prior to closing of the sale, then the associated amendments to transfer operational authority will be null and void and only the amendments reflecting transfer of both ownership and operating authority will remain approved.

It is further ordered that FPLE Point Beach shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of the closing of the sale no later than 5 business days prior to the closing of the sale and transfer of licenses. Should the transfer of the licenses not be completed by July 31, 2008, this Order shall become null and void, provided however, that upon written application and for good cause shown, such date may be extended by order.

It is further ordered that, consistent with 10 CFR 2.1315(b), the license amendments, indicated in Enclosures 2 or 3 to the cover letter forwarding this Order, that make the applicable changes to conform the licenses to reflect the subject license transfers are approved. The applicable amendments for transfer of ownership and operational authority shall be issued and made effective at the time such proposed license transfers are completed in full. The applicable amendments for the option of first transferring operational authority shall be issued and made effective at the time such transfer closes.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated January 26, 2007, as supplemented by letter dated July 11, 2007, and the non-proprietary safety evaluation dated July 31, 2007, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 31st day of July 2007.

For the Nuclear Regulatory Commission.

J. E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E7–15192 Filed 8–3–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request; Extension: Rule 13e–3 (Schedule 13E–3); OMB Control No. 3235–0007; SEC File No. 270–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e–3 and Schedule 13E–3 (17 CFR 240.13e–3 and 240.13e–100)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with information concerning going private transactions that is important in determining how to respond to such transactions. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. We estimate that Schedule 13E–3 is filed by approximately 600 issuers annually and it takes approximately 137.25 hours per response. We estimate that 25% of the 137.25 hours per response is prepared by the filer for a total annual reporting burden of 20,588 hours.

Written comments are invited on: (a) Whether these collections of information are 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 the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 30, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15181 Filed 8–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27918; 812–13251]

AARP Funds, et al.; Notice of Application

July 31, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: Applicants request an order that would permit them

to enter into and materially amend sub-advisory agreements without shareholder approval.

Applicants: AARP Funds and AARP Portfolios (each a ''Trust'' and together, the ''Trusts''), and AARP Financial Incorporated (the ''Manager'').

Filing Dates: The application was filed on January 3, 2006, and amended on June 14, 2006, and July 30, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 27, 2007, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F. Street, NE., Washington, DC 20549–1090. Applicants, c/o Marc Duffy, Secretary, AARP Funds, 650 F. Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F. Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. Each Trust is a Delaware statutory trust and is registered under the Act as an open-end management investment company. Each Trust currently offers multiple series (each, a ''Fund'' and collectively, the ''Funds''), each with its own investment objectives, policies and restrictions.[1]

2. The Manager, registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to each Fund pursuant to an investment advisory agreement with the Trusts (''Advisory Agreement'') that was approved by the board of trustees of the Trusts (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the shareholders of each Fund. Under the terms of the Advisory Agreement, the Manager provides the Funds with investment research, advice and supervision, and furnishes an investment program for each Fund consistent with the investment objectives and policies of the Fund. Under the Advisory Agreement, the Manager may delegate its responsibility for providing investment advice and making investment decisions for a particular Fund to one or more sub-advisers (each, a ''Sub-Adviser'') who have discretionary authority to invest all or a portion of the Fund's assets pursuant to a separate sub-advisory agreement (''Sub-Advisory Agreement''). Each Sub-Adviser is, and any future Sub-Adviser will be, registered under the Advisers Act. The Manager monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, termination, and replacement. The Manager will select Sub-Advisers for recommendation to the Board based on the Manager's selection and review process. For its services to a Fund, the Manager pays a Sub-Adviser a monthly fee at an annual rate based on the average daily net assets of the Fund. The fees of Sub-Advisers are paid by the Manager (and not by the applicable Fund) out of the fee paid to the Manager by a Fund under the Advisory Agreement.

3. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Funds (''Affiliated Sub-Adviser''). None of the current Sub-Advisers is an Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Manager to select the Sub-Advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirement in section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2

[1] Applicants also request that any relief granted pursuant to the application apply to future series of the Trusts and any other existing or future registered open-end management investment company and its series that: (a) Is advised by the Manager or a person controlling, controlled by, or under common control with the Manager; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the application (included in the term ''Funds''). The only existing registered open-end management investment companies that currently intend to rely on the requested order are named as applicants. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager or the name of the entity controlling, controlled by or under common control with the Manager that serves as the primary adviser to the Fund will precede the name of the Sub-Adviser.

below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has the ultimate responsibility (subject to oversight by the Board) to oversee Sub-Advisers and to recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Adviser for any Fund, shareholders of the affected Fund will be furnished all information about the new Sub-Adviser that would be included in a proxy statement. To meet this condition, each Fund will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of a new Sub-Adviser.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser unless such agreement, including the compensation to be paid thereunder, has been approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

6. When a change of Sub-Adviser is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) Set the Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-Advisers to manage all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) implement procedures reasonably designed to ensure compliance by the Sub-Adviser(s) with the Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trusts, or director or officer of the Manager, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for (a) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15188 Filed 8–3–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27919; 812–13383]

DWS Advisor Funds, et al.; Notice of Application

July 31, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to supercede an existing order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from section 12(d)(1)(G)(i)(II) of the Act.

Summary of Application: Applicants request an order to supercede an existing order that permits funds of funds relying on section 12(d)(1)(G) of the Act to invest in securities and other financial instruments, to include investments in certain other registered investment companies and to add new applicants.

Applicants: DWS Investments Trust (formerly Morgan Grenfell Investment Trust) (''Original Trust''); DWS Advisor Funds; DWS Allocation Series; DWS Blue Chip Fund; DWS Communications Fund, Inc.; DWS Equity Partners Fund, Inc.; DWS Equity Trust; DWS Global/International Fund, Inc.; DWS High Income Series; DWS Income Trust; DWS Institutional Funds; DWS International Fund, Inc.; DWS Investment Trust; DWS Investments VIT Funds; DWS Investors Funds, Inc.; DWS Money Funds; DWS Money Market Trust; DWS Mutual Funds, Inc.; DWS Portfolio Trust; DWS Securities Trust; DWS Strategic Income Fund; DWS Target Fund; DWS Technology Fund; DWS U.S. Government Securities Fund; DWS Value Builder Fund, Inc.; DWS Value Equity Trust; DWS Value Series, Inc.; DWS Variable Series I and DWS Variable Series II (collectively the ''New Funds'') and Deutsche Investment Management Americas, Inc. (''DIMA,'' together with the New Funds, the ''New Applicants'') (collectively with the Original Trust, the ''Applicants'').

Filing Dates: The application was filed on May 9, 2007 and amended on July 24, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 2007 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F. Street, NE., Washington, DC 20549–1090. Applicants, Deutsche Investment Management Americas, Inc., Two International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel at (202) 551–6876, or Nadya Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F. Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Original Trust, which is registered under the Act as an open-end

management investment company and organized as a Massachusetts business trust, received an order (''Existing Order'') permitting certain series of the Original Trust that operate as ''funds of funds'' in reliance on section 12(d)(1)(G) of the Act to invest directly in other securities and financial instruments (''Other Investments'').[1] The Existing Order excluded shares of any registered investment companies outside of the Original Trust's group of investment companies from Other Investments.

2. Each New Trust is organized as a Massachusetts business trust or a Maryland corporation and is registered as an open-end management investment company under the Act. DIMA, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser to the New Funds and to the Original Trust.

3. Applicants request that the relief also apply to any other existing or future registered open-end management investment company or series thereof advised by DIMA or any entity controlling, controlled by, or under common control with DIMA (''Upper Tier Funds''). Any registered open-end management investment company (or series thereof) whose shares are purchased by an Upper Tier Fund, and which is part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Upper Tier Fund is referred to as ''DWS Underlying Fund.''[2]

4. Applicants propose that, in addition to DWS Underlying Funds and Other Investments, Upper Tier Funds be permitted to invest in securities of ''Unaffiliated ETFs'' either within the limits of sections 12(d)(1)(A) and (B) of the Act or in excess of those limits in reliance on exemptive orders obtained by such ''Unaffiliated ETFs.'' ''Unaffiliated ETFs'' are open-end management investment companies or unit investment trusts registered under the Act that operate as exchange-traded funds and are not part of the same group of investment companies as the Upper Tier Fund.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that an Upper Tier Fund's investments will include shares of one or more DWS Underlying Funds as well as Other Investments and Unaffiliated ETFs.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicant state that investments in securities of Unaffiliated ETFs in excess of the limits of sections 12(d)(1)(A) and (B) would be subject to all of the terms and conditions contained in exemptive orders obtained by such Unaffiliated ETFs. Applicants therefore assert that the ability of each Upper Tier Fund to invest in securities of Unaffiliated ETFs would not give rise to any of the concerns that the prohibitions of sections 12(d)(1)(A) and (B) or the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that any order granting the requested relief will supercede the Existing Order and will be subject to the following conditions:

1. Applicants will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts an Upper Tier Fund from investing in Other Investments and Unaffiliated ETFs, as described in the application.

2. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Upper Tier Fund, including a majority of the disinterested board members, will find that the advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any DWS Underlying Fund's or Unaffiliated ETF's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Upper Tier Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–15180 Filed 8–3–07; 8:45 am]

BILLING CODE 8010–01–P

[1] Morgan Grenfell Investment Trust et al., Investment Company Act Release Nos. 25063 (July 13, 2001) (notice) and 25105 (August 9, 2001) (order).

[2] All existing Upper Tier Funds and DWS Underlying Funds currently intending to rely on the requested order are named as applicants, and any other entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before October 5, 2007.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to

Pamela Fenderson, Program Analyst, Office of Business Development, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Pamela Fenderson, Program Analyst, Office of Business Development, 202–205–7408 *pamela.fenderson@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''8(a) Annual Update''.

Description of Respondents: 8(a) Program Participants.

Form No's: 1450.

Annual Responses: 6,700.

Annual Burden: 7,258.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–15183 Filed 8–3–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10927 and #10928]

Oklahoma Disaster Number OK–00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1712–DR), dated 07/07/2007.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/10/2007 and continuing through 07/25/2007.

Effective Date: 07/25/2007.

Physical Loan Application Deadline Date: 09/05/2007.

EIDL Loan Application Deadline Date: 04/07/2008.

ADDRESSES: *Submit completed loan applications to*: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Oklahoma, dated 07/07/2007 is hereby amended to establish the incident period for this disaster as beginning 06/10/2007 and continuing through 07/25/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–15184 Filed 8–3–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #10958 and #0959; Wisconsin Disaster #WI–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Wisconsin dated July 30, 2007.

Incident: Severe storms and flooding.

Incident Period: July 18, 2007.

Effective Date: July 30, 2007.

Physical Loan Application Deadline Date: September 28, 2007.

Economic Injury (Eidl) Loan Application Deadline Date: April 30, 2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Grant

Contiguous Counties: Wisconsin

Crawford, Iowa, Lafayette, Richland

Iowa

Clayton, Dubuque.

Illinois

Jo Daviess

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10958 6 and for economic injury is 10959 0.

The States which received an EIDL Declaration # are Wisconsin, Illinois, and Iowa.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 30, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–15185 Filed 8–3–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or emailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building,

6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Travel Expense Reimbursement—20 CFR 404.999(d) and 416.1499—0960–0434. The Social Security Act provides for travel expense reimbursement by the State agency or Federal agency for claimant travel incidental to medical examinations and to parties, their representatives, and all reasonably necessary witnesses. Reimbursement is applicable to travel exceeding 75 miles to attend medical examinations, reconsideration interviews and proceedings before an administrative law judge. Reimbursement procedures require the claimant to provide (1) A list of expenses incurred, and (2) receipts of such expense. State and Federal personnel review the listings and receipts to verify the amount to be reimbursed to the claimant. The respondents are claimants for Title II benefits and Title XVI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

2. Disability Hearing Officer's Report of Disability Hearing—20 CFR 404.917, 416.1407, 416.1417—0960–0440. Form SSA–1205–BK is used by the Disability Hearing Officer conducting the disability interview in preparation for a written reconsidered determination—specifically for evaluating Title II and Title XVI adult disability claims. The form provides the framework for addressing crucial elements in the case and is used in formulating the completed official document of the decision. Respondents are Disability Hearing Officers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 35,600.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 35,600 hours.

3. Beneficiary Recontact Report—20 CFR 404.703 and 404.705—0960–0536. SSA needs to ensure that eligibility for benefits continues after entitlement is established. Studies show that payees of children who marry fail to report the marriage, which is a terminating event. SSA asks children ages 15, 16, and 17 information about marital status to detect overpayments and avoid continuing payment to those no longer entitled. Form SSA–1587–OCR–SM is used to obtain information regarding marital status from those children who have representative payees. Respondents are recipients of survivor mother/father Social Security benefits who have representative payees.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 982,357.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 49,118 hours.

4. Certificate of Coverage Request—20 CFR 404.1913—0960–0554. The United States has Social Security agreements with 21 countries. These agreements eliminate double Social Security coverage and taxation where, except for the provisions of the agreement, a period of work would be subject to coverage and taxes in both countries. The individual agreements contain rules for determining the country under whose laws the period of work will be covered and to whose system taxes will be paid. The agreements further provide that, upon the request of the worker or employer, the country under whose system the period of work is covered will issue a certificate of coverage. The certificate serves as proof of exemption from coverage and taxation under the system of the other country. The information collected is needed to determine if a period of work is covered by the U.S. Social Security system under an agreement and to issue a U.S. certificate of coverage. Respondents are workers and employers wishing to establish exemption from foreign social security taxes.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Estimated Annual Burden: 25,000 hours.

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Individuals	30,000	1	30	15,000
Private Sector	20,000	1	30	10,000
Totals	50,000			25,000

5. Race & Ethnicity Qualitative Research—0960–NEW.

Collection Background

Currently, the Social Security Administration (SSA) does not have a reliable, statistically valid means of capturing race/ethnicity data in our core business processes. While race/ethnicity data is collected on the Form SS–5, Application for Social Security Card, it is not provided to SSA through other means of enumerating individuals; e.g., the Enumeration at Birth and Enumeration at Entry processes. Consequently, we intend to collect this information in other SSA application processes.

The Office of Management and Budget (OMB) mandated that Federal agencies collecting race and ethnicity information must use consistent standards established by OMB. Adding race/ethnicity as questions to SSA's applications for benefits will enable SSA to improve its administrative data.

Race & Ethnicity Qualitative Research

Before SSA collects race/ethnicity data, we plan to conduct several voluntary focus groups with members of the public to assess their opinions, reactions and recommendations on a proposed form that will be used to collect the information. The questions and race and ethnicity categories will follow the standards developed by OMB. The information from this research will be used to develop a comprehensive collection form. The respondents are members of the public

who volunteer to participate in the RECS questions focus groups.

Type of Request: New information collection.

Number of Respondents: 96 (8 focus groups, 12 participants).

Frequency of Response: 1.

Average Burden per Response: 90 minutes.

Estimated Annual Burden: 144 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Child Care Dropout Questionnaire—20 CFR 404.211(e)(4)—0960–0474. Information colleted on this form is used by SSA to determine if an individual qualifies for a child care exclusion in computing the individual's disability benefit amount. Respondents are applicants for disability benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 167 hours.

Dated: July 30, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–15152 Filed 8–3–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5875]

Determination on U.S. Position on Proposed European Bank for Reconstruction and Development (EBRD) Projects in Serbia and Bosnia and Herzegovina

Pursuant to section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109–102) (FOAA), and Department of State Delegation of Authority Number 289, I hereby determine that the two proposed EBRD projects, one to provide 25.1 million euro equity investment and a 27.5 million euro loan for tourism facility development in the region and one to provide a 35 million euro equity investment for expanded pension fund management in the region, will contribute to a stronger and more integrated economy in Serbia and Bosnia and Herzegovina and directly support implementation of the Dayton Accords. I therefore waive the application of Section 561 of the FOAA to the extent that provision would otherwise prevent the U.S. Executive Directors of the EBRD from voting in favor of these projects.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: February 13, 2007.

Daniel Frie,

Assistant Secretary of State for European and Eurasian Affairs Department of State.

[FR Doc. E7–15241 Filed 8–3–07; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2006–25711; Order 2007–7–24]

Application of Maine Aviation Aircraft Charter, LLC. for Commuter Air Carrier Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Maine Aviation Aircraft Charter, LLC., fit, willing, and able, and awarding it commuter air carrier authority to conduct scheduled passenger and cargo commuter service.

DATES: Persons wishing to file objections should do so no later than August 14, 2007.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2006–25711 and addressed to Docket Operations, (M–30, Room W12–140), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Richard Pittaway, Air Carrier Fitness Division (X–56, Room W86–461), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–8856.

Dated: July 31, 2007.

Andrew B. Steinberg,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. E7–15219 Filed 8–3–07; 8:45 am]

BILLING CODE 4910–9X–P

Federal Register

Monday,
August 6, 2007

Part II

Postal Service

Changes in Domestic Rates and Fees; Notice

POSTAL SERVICE

Changes in Domestic Rates and Fees

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to domestic rates, fees, and classifications.

SUMMARY: This notice sets forth the changes to domestic rates, fees, and classifications to be implemented as a result of the decision of the Board of Governors (Governors) of the United States Postal Service® on the Opinion and Recommended Decision of the Postal Regulatory Commission on Changes in Postal Rates and Fees, Docket No. R2006–1 (March 19, 2007), and the decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision on Reconsideration of the Postal Regulatory Commission on Changes in Postal Rates and Fees, Docket No. R2006–1 (May 1, 2007).

EFFECTIVE DATES: May 14, 2007, except that the rates and classification changes for Periodicals became effective on July 15, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., 202–268–2989.

SUPPLEMENTARY INFORMATION: On May 3, 2006, pursuant to its authority under the former provisions of 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Regulatory Commission (PRC), formerly the Postal Rate Commission, a Request for a Recommended Decision on Changes in Rates of Postage and Fees for Postal Services (Request). The PRC designated the filing as Docket No. R2006–1. On February 26, 2007, pursuant to its authority under the former provisions of 39 U.S.C. 3624, the PRC issued its Opinion and Recommended Decision on the Postal Service's Request to the Governors of the Postal Service.

Pursuant to the former provisions of 39 U.S.C. 3625, on March 19, 2007, the Governors of the United States Postal Service allowed the PRC's recommended decision under protest, and returned three matters to the PRC for reconsideration. Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Regulatory Commission on Changes in Postal Rates and Fees, Docket No. R2006–1 (March 19, 2007). The three matters returned to the PRC for reconsideration pertained to rates recommended for Standard Mail® flats, the Nonmachinable Surcharge for First-Class Mail® letters, and the Priority Mail Flat Rate Box. In addition, the Board of Governors ordered that the implementation of the Periodicals changes be made effective on July 15, 2007, because of the complexity of the new Periodicals rate structure.

On April 27, the Commission issued its Opinion and Recommended Decision on Reconsideration with respect to the Nonmachinable Surcharge for First-Class Mail letters, and the rate for the Priority Mail Flat Rate Box. On May 1, 2007, the Governors approved the recommended changes. The rate, fee, and classification changes ordered into effect by the Governors are reprinted below.

In accordance with the Decision of the Governors and Resolution No. 07–3 of the Board of Governors, the Postal Service hereby gives notice that the rate, fee, and classification changes set forth below became effective at 12:01 a.m. on May 14, 2007, except that the rate and classification changes for Periodicals became effective on July 15, 2007 at 12:01 a.m.[1] Implementing regulations for the rate, fee, and classification changes were published in the **Federal Register** at 72 FR 15365 (March 30, 2007). Implementing regulations for the rate and classification changes for Periodicals were published in the **Federal Register** at 72 FR 29256 (May 25, 2007).

Neva R. Watson,

Attorney, Legislative.

BILLING CODE 7710–12–P

[1] The rate and fee changes for the remaining item approved but returned for reconsideration—Standard Mail flats—will also become effective at 12:01 a.m. on May 14, 2007.

NEW RATE AND FEE SCHEDULES

RATE SCHEDULES

RATE SCHEDULES 121, 122 AND 123

EXPRESS MAIL

Weight (lbs.)	Schedule 121 Same Day Airport Service	Schedule 122 Custom Designed	Schedule 123 Next Day & Second Day PO to PO	Schedule 123 Next Day & Second Day PO to Addressee
0.5		$14.15	$13.85	$16.25
1		17.40	17.10	19.50
2		19.30	19.00	21.40
3		22.40	22.10	24.50
4		25.50	25.20	27.60
5		28.60	28.30	30.70
6		31.70	31.40	33.80
7		34.80	34.50	36.90
8		37.90	37.60	40.00
9		41.00	40.70	43.10
10		43.15	42.85	45.25
11		45.30	45.00	47.40
12		47.45	47.15	49.55
13		49.60	49.30	51.70
14		51.75	51.45	53.85
15		53.90	53.60	56.00
16		56.05	55.75	58.15
17		58.20	57.90	60.30
18		60.35	60.05	62.45
19		62.50	62.20	64.60
20		64.65	64.35	66.75
21		66.80	66.50	68.90
22		68.95	68.65	71.05
23		71.10	70.80	73.20
24		73.25	72.95	75.35
25		75.40	75.10	77.50
26		77.55	77.25	79.65
27		79.70	79.40	81.80
28		81.85	81.55	83.95
29		84.00	83.70	86.10
30		86.15	85.85	88.25
31		88.30	88.00	90.40
32		90.45	90.15	92.55
33		92.60	92.30	94.70
34		94.75	94.45	96.85
35		96.90	96.60	99.00
36		99.05	98.75	101.15
37		101.20	100.90	103.30
38		103.35	103.05	105.45
39		105.50	105.20	107.60
40		107.65	107.35	109.75

EXPRESS MAIL (continued)

Weight (lbs.)	Schedule 121 Same Day Airport Service	Schedule 122 Custom Designed	Schedule 123 Next Day & Second Day PO to PO	Schedule 123 Next Day & Second Day PO to Addressee
41		$109.80	$109.50	$111.90
42		111.95	111.65	114.05
43		114.10	113.80	116.20
44		116.25	115.95	118.35
45		118.40	118.10	120.50
46		120.55	120.25	122.65
47		122.70	122.40	124.80
48		124.85	124.55	126.95
49		127.00	126.70	129.10
50		129.15	128.85	131.25
51		131.30	131.00	133.40
52		133.45	133.15	135.55
53		135.60	135.30	137.70
54		137.75	137.45	139.85
55		139.90	139.60	142.00
56		142.05	141.75	144.15
57		144.20	143.90	146.30
58		146.35	146.05	148.45
59		148.50	148.20	150.60
60		150.65	150.35	152.75
61		152.80	152.50	154.90
62		154.95	154.65	157.05
63		157.10	156.80	159.20
64		159.25	158.95	161.35
65		161.40	161.10	163.50
66		163.55	163.25	165.65
67		165.70	165.40	167.80
68		167.85	167.55	169.95
69		170.00	169.70	172.10
70		172.15	171.85	174.25

SCHEDULES 121, 122 AND 123 NOTES

1. The applicable 1/2-pound rate is charged for matter sent in a flat-rate envelope provided by the Postal Service.
2. Add $14.25 for each Pickup On-Demand stop.
3. Add $14.25 for each Custom Designed delivery stop.

FIRST-CLASS MAIL
RATE SCHEDULE 221

LETTERS AND SEALED PARCELS

	Rate
Single-piece	
First ounce	
Letters	$0.410
Flats	0.800
Parcels	1.130
Additional ounces	0.170
Nonmachinable surcharge	0.170
Qualified Business Reply Mail	0.380
Presorted	
First ounce	
Letters	0.373
Flats	0.699
Additional ounces	0.170
Nonmachinable surcharge	0.170
Automation Letters	
Mixed AADC	0.360
AADC	0.341
3-digit	0.334
5-digit	0.312
Additional ounces	0.125
Automation Flats	
Mixed ADC	0.686
ADC	0.567
3-digit	0.484
5-digit	0.383
Additional ounces	0.170
Business Parcels	
ADC	0.891
3-digit	0.837
5-digit	0.704
Additional ounces	0.170

SCHEDULE 221 NOTES

1. A mailing fee of $175.00 must be paid once each year at each office of mailing by any person who mails at presorted or automation rates. Payment of the fee allows the mailer to mail at any First-Class Mail rate.
2. First-Class Mail rates apply through 13 ounces. Heavier pieces are subject to Priority Mail rates.
3. Add $0.005 per piece for Presorted, Automation Letters and Automation Flats pieces bearing a Repositionable Note as defined in DMCS Sections 221.223, 221.326, and 221.336.
4. For nonmachinable, non-barcoded, or less than 2 ounce business parcels (ADC and 3-digit) add $0.05 per piece.
5. The rate for single-piece, first ounce letters also applies to sales of the Forever Stamp at the time of purchase.

FIRST-CLASS MAIL
RATE SCHEDULE 222

CARDS

	Rate
Regular	
Single-piece cards	$0.260
Qualified Business Reply Mail	0.230
Presorted	0.241
Automation	
Mixed AADC	0.220
AADC	0.208
3-digit	0.204
5-digit	0.191

SCHEDULE 222 NOTES

1. A mailing fee of $175.00 must be paid once each year at each office of mailing by any person who mails at presorted or automation rates. Payment of the fee allows the mailer to mail at any First-Class Mail rate.

FIRST-CLASS MAIL
RATE SCHEDULE 223

PRIORITY MAIL

Weight (lbs.)	Local, Zones 1, 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	$4.60	$4.60	$4.60	$4.60	$4.60	$4.60	$4.60
2	4.60	4.90	5.30	6.20	6.55	7.00	7.50
3	5.05	5.70	6.40	8.25	9.10	9.65	10.55
4	5.70	6.65	7.70	10.20	11.10	12.20	13.45
5	6.30	7.55	8.90	11.90	12.90	14.35	15.85
6	6.85	8.25	10.00	12.95	13.10	14.75	16.05
7	7.35	8.85	11.00	13.95	14.35	16.40	18.30
8	7.75	9.60	11.95	14.90	15.60	18.00	20.55
9	8.15	10.25	12.50	15.90	16.85	19.60	22.85
10	8.50	10.75	13.10	16.95	18.25	21.30	25.05
11	8.80	11.20	13.65	17.95	19.75	22.90	26.35
12	9.15	11.70	14.20	18.95	21.30	24.10	27.50
13	9.50	12.20	14.75	20.00	22.85	25.05	28.45
14	9.80	12.70	15.35	20.90	24.10	26.50	29.85
15	10.15	13.20	15.90	21.55	24.65	26.75	30.50
16	10.35	13.45	16.20	22.00	25.20	27.35	31.25
17	10.50	13.70	16.50	22.55	25.85	28.05	32.10
18	10.70	13.90	16.80	23.00	26.35	28.60	32.85
19	11.10	14.15	17.10	23.55	27.00	29.30	33.70
20	11.60	14.35	17.40	23.95	27.50	29.85	34.40
21	12.00	14.55	17.70	24.35	27.95	30.40	35.10
22	12.50	14.80	17.95	24.90	28.60	31.10	35.95
23	12.90	15.00	18.45	25.30	29.10	31.65	36.60
24	13.35	15.20	19.00	25.85	29.70	32.35	37.50
25	13.85	15.40	19.65	26.25	30.15	32.85	38.15
26	14.25	15.60	20.25	26.80	30.80	33.55	39.35
27	14.70	15.80	20.85	27.20	31.25	34.05	40.80
28	15.15	16.00	21.40	27.55	31.70	34.55	42.30
29	15.60	16.20	22.05	27.90	32.10	35.00	43.70
30	16.10	16.40	22.65	28.30	32.55	35.50	45.15
31	16.50	16.55	23.25	28.65	32.95	35.95	46.65
32	16.95	16.95	23.85	29.00	33.40	36.80	48.10
33	17.40	17.40	24.40	29.35	33.80	37.85	49.50
34	17.85	17.85	25.05	30.00	34.80	38.90	50.95
35	18.30	18.30	25.65	30.65	35.75	39.95	52.40
36	18.75	18.75	26.25	31.30	36.70	41.05	53.85
37	19.20	19.20	26.95	31.90	37.65	42.10	55.30
38	19.65	19.65	27.50	32.55	38.70	43.10	56.75
39	20.05	20.05	28.25	33.20	39.65	44.20	58.25
40	20.45	20.45	28.90	33.85	40.55	45.20	59.65

PRIORITY MAIL (continued)

Weight (lbs.)	Local, Zones 1, 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
41	$20.85	$20.85	$29.50	$34.20	$41.50	$46.25	$61.10
42	21.25	21.25	30.25	34.90	42.40	47.35	62.55
43	21.65	21.65	30.90	35.70	43.45	48.40	64.00
44	22.05	22.05	31.50	36.50	44.35	49.50	65.45
45	22.45	22.45	32.20	37.25	45.30	50.55	66.90
46	22.85	22.85	32.90	38.00	46.25	51.60	68.35
47	23.25	23.25	33.50	38.80	47.30	52.70	69.75
48	23.65	23.65	34.25	39.60	48.25	53.75	71.25
49	24.05	24.05	34.90	40.30	49.15	54.85	72.70
50	24.40	24.40	35.55	41.10	50.10	55.90	74.15
51	24.85	24.85	36.20	41.90	51.05	56.95	75.60
52	25.20	25.20	36.90	42.70	52.10	58.00	77.05
53	25.65	25.65	37.50	43.45	53.00	59.10	78.50
54	26.00	26.00	38.15	44.25	53.90	60.10	79.90
55	26.45	26.45	38.90	45.05	54.85	61.10	81.35
56	26.80	26.80	39.50	45.75	55.90	62.20	82.85
57	27.25	27.25	40.15	46.50	56.80	63.25	84.30
58	27.60	27.60	40.85	47.30	57.75	64.30	85.70
59	28.05	28.05	41.50	48.10	58.70	65.35	87.20
60	28.40	28.40	42.15	48.90	59.70	66.40	88.65
61	28.85	28.85	42.90	49.65	60.70	67.45	90.10
62	29.20	29.20	43.50	50.45	61.60	68.50	91.50
63	29.65	29.65	44.20	51.25	62.55	69.55	92.95
64	30.00	30.00	44.85	52.05	63.50	70.55	94.45
65	30.45	30.45	45.45	52.70	64.50	71.65	95.90
66	30.80	30.80	46.15	53.50	65.40	72.70	97.30
67	31.25	31.25	46.90	54.30	66.35	73.70	98.80
68	31.60	31.60	47.50	55.10	67.30	74.80	100.20
69	32.05	32.05	48.15	55.90	68.30	75.85	101.65
70	32.45	32.45	48.90	56.65	69.25	76.90	103.10

SCHEDULE 223 NOTES

1. The 1-pound rate is charged for matter sent in a flat-rate envelope provided by the Postal Service.

2. A rate of $[9.15] 8.95 is charged for matter sent in a flat-rate box provided by the Postal Service.

3. Exception: In Zones 1 - 4 (including Local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (though not more than 108 inches) are charged the applicable rate for a 20-pound parcel (balloon rate).

4. Exception: In Zones 5 - 8, parcels exceeding one cubic foot are rated at the actual weight or the dimensional weight, whichever is greater.

5. Add $14.25 for each Pickup On-Demand stop.

STANDARD MAIL
RATE SCHEDULE 321A

REGULAR
NONAUTOMATION CATEGORIES

	Rate
Letter, minimum piece rate	
Piece Rate	
Mixed ADC	$0.255
AADC	0.246
Mixed ADC (Nonmachinable)	0.520
ADC (Nonmachinable)	0.440
3-digit (Nonmachinable)	0.411
5-digit (Nonmachinable)	0.328
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, minimum piece rate	
Piece Rate	
Mixed ADC	0.515
ADC	0.461
3-digit	0.427
5-digit	0.363
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, piece and pound rate	
Piece Rate	
Mixed ADC	0.365
ADC	0.311
3-digit	0.277
5-digit	0.213
Pound Rate	0.739
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203

REGULAR
NONAUTOMATION CATEGORIES (continued)

Parcels, minimum piece rate	
Piece Rate	
Mixed ADC (Nonmachinable Parcels)	$1.129
ADC (Nonmachinable Parcels)	0.914
3-digit (Nonmachinable Parcels)	0.653
5-digit (Nonmachinable Parcels)	0.607
Destination Entry Discounts	
BMC	0.033
SCF	0.042
DDU	0.051
Parcels, piece and pound rate	
Piece Rate	
Mixed BMC (Machinable Parcels)	0.909
BMC (Machinable Parcels)	0.716
5-digit (Machinable Parcels)	0.346
Mixed ADC (Nonmachinable Parcels)	0.979
ADC (Nonmachinable Parcels)	0.764
3-digit (Nonmachinable Parcels)	0.503
5-digit (Nonmachinable Parcels)	0.457
Pound Rate	0.739
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248
NFM Pieces, minimum piece rate	
Piece Rate	
Mixed ADC/Mixed BMC	1.028
ADC/BMC	0.767
3-digit	0.506
5-digit	0.460
Destination Entry Discounts	
BMC	0.033
SCF	0.042
DDU	0.051

REGULAR
NONAUTOMATION CATEGORIES (continued)

NFM Pieces, piece and pound rate

Piece Rate	
Mixed ADC/Mixed BMC	$0.878
ADC/BMC	0.617
3-digit	0.356
5-digit	0.310
Pound Rate	0.739
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248

SCHEDULE 321A NOTES

1. A fee of $175.00 must be paid each 12-month period for each bulk mailing permit.
2. For non-barcoded parcels and NFM pieces, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
3. For flats, parcels and NFMs, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Letters forwarded as defined in DMCS section 353a are charged $0.35 per piece. Flats forwarded as defined in DMCS sectuib 353a are charged $1.05 per piece. Mailpieces forwarded as defined in DMCS section 353b are charged the appropriate First-Class Mail Rate for the piece plus the rate multiplied by a weighted factor of 2.472.
5. Pieces entered as Customized Market Mail, as defined in DMCS section 321.5, pay $0.460 per piece.
6. Add $0.015 per piece for pieces bearing a Repositionable Note as defined in DMCS section 321.8.

STANDARD MAIL
RATE SCHEDULE 321B

REGULAR
AUTOMATION CATEGORIES

	Rate
Letters, minimum piece-rate	
Piece Rate	
Mixed AADC	$ 0.252
AADC	0.238
3-digit	0.233
5-digit	0.218
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, minimum piece rate	
Piece Rate	
Mixed ADC	0.477
ADC	0.424
3-digit	0.392
5-digit	0.335
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, piece and pound rate	
Piece Rate	
Mixed ADC	0.328
ADC	0.275
3-digit	0.243
5-digit	0.186
Pound Rate	0.739
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203

SCHEDULE 321B NOTES

1. A fee of $175.00 must be paid once each 12-month period for each bulk mailing permit.
2. Letters that weigh more than 3.3 ounces but not more than 3.5 ounces pay the flats piece and pound rate but receive a discount off the piece rate equal to the applicable flats minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct presort tier.
3. For flats, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Add $0.015 per piece for pieces bearing a Repositionable Note as defined in DMCS section 321.8.
5. Letters forwarded as defined in DMCS section 353a are charged $0.35 per piece. Flats forwarded as defined in DMCS section 353a are charged $1.05 per piece. Mailpieces forwarded as defined in DMCS section 353b are charged the appropriate First-Class Mail Rate for the piece plus the rate multiplied by a weighted factor of 2.472.

STANDARD MAIL
RATE SCHEDULE 322

ENHANCED CARRIER ROUTE

	Rate
Letters, minimum piece rate	
Piece Rate	
Basic	$ 0.226
High density	0.186
Saturation	0.177
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, minimum piece rate	
Piece Rate	
Basic	0.249
High density	0.205
Saturation	0.187
Destination Entry Discounts	
BMC	0.033
SCF	0.042
DDU	0.051
Flats, piece and pound rate	
Piece Rate	
Basic	0.121
High density	0.077
Saturation	0.059
Pound Rate	0.621
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248

ENHANCED CARRIER ROUTE (continued)

Parcels, minimum piece rate	
Piece Rate	
Basic	$0.499
High density	0.378
Saturation	0.369
Destination Entry Discounts	
BMC	0.033
SCF	0.042
DDU	0.051
Parcels, piece and pound rate	
Piece Rate	
Basic	0.371
High density	0.250
Saturation	0.241
Pound Rate	0.621
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248

SCHEDULE 322 NOTES

1. A fee of $175.00 must be paid each 12-month period for each bulk mailing permit.
2. Pieces that do not qualify for letter or flats rate categories are subject to parcels rates.
3. For flats and parcels, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Pieces that otherwise meet the requirements for high density and saturation letter rates that weigh more than 3.3 ounces but not more than 3.5 ounces pay the flats piece and pound rate but receive a discount off the piece rate equal to the applicable flats minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct density tier.
5. For letter-size pieces, not meeting the automation requirements specified by the Postal Service, the mailer pays the flats rate for the applicable density tier.
6. Add $0.015 per piece for pieces bearing a Repositionable Note as defined in DMCS section 322.8.
7. Add $0.015 per piece for flat-shaped and parcel-shaped pieces addressed using detached address labels (DALs).
8. Letters forwarded as defined in DMCS section 353a are charged $0.35 per piece. Flats forwarded as defined in DMCS section 353a are charged $1.05 per piece. Mailpieces forwarded as defined in DMCS section 353b are charged the appropriate First-Class Mail Rate for the piece plus the rate multiplied by a weighted factor of 2.472.

STANDARD MAIL
RATE SCHEDULE 323A

NONPROFIT
REGULAR NONAUTOMATION CATEGORIES

	Rate
Letters, minimum piece rate	
Piece Rate	
Mixed AADC	$0.164
AADC	0.155
Mixed ADC (Nonmachinable)	0.429
ADC (Nonmachinable)	0.349
3-digit (Nonmachinable)	0.320
5-digit (Nonmachinable)	0.237
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, minimum piece rate	
Piece Rate	
Mixed ADC	0.389
ADC	0.335
3-digit	0.301
5-digit	0.237
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, piece and pound rate	
Piece Rate	
Mixed ADC	0.263
ADC	0.209
3-digit	0.175
5-digit	0.111
Pound Rate	0.622
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203

NONPROFIT
REGULAR NONAUTOMATION CATEGORIES (continued)

Parcels, minimum piece rate	
Piece Rate	
Mixed ADC (Nonmachinable Parcels)	$1.003
ADC (Nonmachinable Parcels)	0.788
3-digit (Nonmachinable Parcels)	0.527
5-digit (Nonmachinable Parcels)	0.481
Destination Entry Discounts	
BMC	0.033
SCF	0.042
DDU	0.051
Parcels, piece and pound rate	
Piece Rate	
Mixed BMC (Machinable Parcels)	0.807
BMC (Machinable Parcels)	0.614
5-digit (Machinable Parcels)	0.244
Mixed ADC (Nonmachinable Parcels)	0.877
ADC (Nonmachinable Parcels)	0.662
3-digit (Nonmachinable Parcels)	0.401
5-digit (Nonmachinable Parcels)	0.355
Pound Rate	0.622
Destination Entry Discount (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248
NFM Pieces, minimum piece rate	
Piece Rate	
Mixed ADC/Mixed BMC	0.902
ADC/BMC	0.641
3-digit	0.380
5-digit	0.334
Destination Entry Discounts	
BMC	0.033
SCF	0.042
DDU	0.051

NONPROFIT
REGULAR NONAUTOMATION CATEGORIES (continued)

NFM Pieces, piece and pound rate	
Piece Rate	
Mixed ADC/Mixed BMC	$0.776
ADC/BMC	0.515
3-digit	0.254
5-digit	0.208
Pound Rate	0.622
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248

SCHEDULE 323A NOTES

1. A fee of $175.00 must be paid each 12-month period for each bulk mailing permit.
2. For non-barcoded parcels and NFM pieces, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
3. For flats, parcels and NFMs, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Letters forwarded as defined in DMCS section 353a are charged $0.35 per piece. Flats forwarded as defined in DMCS section 353a are charged $1.05 per piece. Mailpieces forwarded as defined in DMCS section 353b are charged the appropriate First-Class Mail Rate for the piece plus the rate multiplied by a weighted factor of 2.472.
5. Pieces entered as Customized Market Mail, as defined in DMCS section 321.5, pay $0.334 per piece.
6. Add $0.015 per piece for pieces bearing a Repositionable Note as defined in DMCS section 323.8.

STANDARD MAIL
RATE SCHEDULE 323B

NONPROFIT REGULAR
AUTOMATION CATEGORIES

	Rate
Letters, minimum piece rate	
Piece Rate	
Mixed AADC	$ 0.161
AADC	0.147
3-digit	0.142
5-digit	0.127
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, minimum piece rate	
Piece Rate	
Mixed ADC	0.354
ADC	0.301
3-digit	0.269
5-digit	0.212
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, piece and pound rate	
Piece Rate	
Mixed ADC	0.228
ADC	0.175
3-digit	0.143
5-digit	0.086
Pound Rate	0.622
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203

SCHEDULE 323B NOTES

1. A fee of $175.00 must be paid each 12-month period for each bulk mailing permit.
2. Letters that weigh more than 3.3 ounces but not more than 3.5 ounces pay the flats piece and pound rate but receive a discount off the piece rate equal to the applicable flats minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct presort tier.
3. For flats, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Add $0.015 per piece for pieces bearing a Repositionable Note as defined in DMCS section 323.8.
5. Letters forwarded as defined in DMCS section 353a are charged $0.35 per piece. Flats forwarded as defined in DMCS section 353a are charged $1.05 per piece. Mailpieces forwarded as defined in DMCS section 353b are charged the appropriate First-Class Mail Rate for the piece plus the rate multiplied by a weighted factor of 2.472.

STANDARD MAIL
RATE SCHEDULE 324

NONPROFIT ENHANCED CARRIER ROUTE

	Rate
Letters, minimum piece rate	
Piece Rate	
Basic	$0.157
High density	0.117
Saturation	0.108
Destination Entry Discounts	
BMC	0.033
SCF	0.042
Flats, minimum piece rate	
Piece Rate	
Basic	0.180
High density	0.136
Saturation	0.118
Destination Entry Discounts	
BMC	0.033
SCF	0.042
DDU	0.051
Flats, piece and pound rate	
Piece Rate	
Basic	0.091
High density	0.047
Saturation	0.029
Pound Rate	0.432
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248

NONPROFIT ENHANCED CARRIER ROUTE (continued)

Parcels, minimum piece rate	
Piece Rate	
Basic	$0.430
High density	0.309
Saturation	0.300
Destination Entry discounts	
BMC	0.033
SCF	0.042
DDU	0.051
Parcels, piece and pound rate	
Piece Rate	
Basic	0.341
High density	0.220
Saturation	0.211
Pound Rate	0.432
Destination Entry Discounts (off pound rate)	
BMC	0.159
SCF	0.203
DDU	0.248

SCHEDULE 324 NOTES

1. A fee of $175.00 must be paid each 12-month period for each bulk mailing permit.
2. Pieces that do not qualify for letter or flats rate categories are subject to parcels rates.
3. For flats and parcels, the mailer pays either the minimum piece rate or the pound rate, whichever is higher.
4. Pieces that otherwise meet the requirements for high density and saturation letter rates that weigh more than 3.3 ounces but not more than 3.5 ounces pay the flats piece and pound rate but receive a discount off the piece rate equal to the applicable flats minimum piece rate minus the applicable letter minimum piece rate corresponding to the correct density tier.
5. For letter-size pieces, not meeting the automation requirements specified by the Postal Service, the mailer pays the flats rate for the applicable density tier.
6. Add $0.015 per piece for pieces bearing a Repositionable Note as defined in DMCS section 324.8.
7. Add $0.015 per piece for flat-shaped and parcel-shaped pieces addressed using detached address labels (DALs).
8. Letters forwarded as defined in DMCS section 353a are charged $0.35 per piece. Flats forwarded as defined in DMCS section 353a are charged $1.05 per piece. Mailpieces forwarded as defined in DMCS section 353b are charged the appropriate First-Class Mail Rate for the piece plus the rate multiplied by a weighted factor of 2.472.

PERIODICALS
RATE SCHEDULE 421

OUTSIDE COUNTY (INCLUDING SCIENCE OF AGRICULTURE)

	Postage Rate Unit	Rate
Outside County		
Advertising		
Destination Delivery Unit	Pound	$ 0.160
Destination SCF	Pound	0.209
Destination ADC	Pound	0.219
Zones 1 & 2	Pound	0.239
Zone 3	Pound	0.257
Zone 4	Pound	0.303
Zone 5	Pound	0.372
Zone 6	Pound	0.446
Zone 7	Pound	0.534
Zone 8	Pound	0.610
Nonadvertising		
Destination Delivery Unit	Pound	0.133
Destination SCF	Pound	0.174
Destination ADC	Pound	0.182
All other editorial (nonadvertising)	Pound	0.199
Science of Agriculture		
Advertising		
Destination Delivery Unit	Pound	0.120
Destination SCF	Pound	0.157
Destination ADC	Pound	0.164
Zones 1 & 2	Pound	0.179
Zone 3	Pound	0.257
Zone 4	Pound	0.303
Zone 5	Pound	0.372
Zone 6	Pound	0.446
Zone 7	Pound	0.534
Zone 8	Pound	0.610
Nonadvertising		
Destination Delivery Unit	Pound	0.133
Destination SCF	Pound	0.174
Destination ADC	Pound	0.182
All other editorial (nonadvertising)	Pound	0.199

OUTSIDE COUNTY (INCLUDING SCIENCE OF AGRICULTURE) (continued)

Piece Rates

Mixed ADC Bundle Pieces		
Nonautomation Nonmachinable	Piece	$0.534
Nonautomation Machinable	Piece	0.431
Automation Nonmachinable	Piece	0.504
Automation Machinable	Piece	0.404
Automation Letter	Piece	0.327
ADC Bundle Pieces		
Nonautomation Nonmachinable	Piece	0.432
Nonautomation Machinable	Piece	0.370
Automation Nonmachinable	Piece	0.412
Automation Machinable	Piece	0.350
Automation Letter	Piece	0.289
SCF/3-Digit Bundle Pieces		
Nonautomation Nonmachinable	Piece	0.373
Nonautomation Machinable	Piece	0.348
Automation Nonmachinable	Piece	0.362
Automation Machinable	Piece	0.331
Automation Letter	Piece	0.275
5-digit Bundle Pieces		
Nonautomation Nonmachinable	Piece	0.289
Nonautomation Machinable	Piece	0.276
Automation Nonmachinable	Piece	0.285
Automation Machinable	Piece	0.268
Automation Letter	Piece	0.211
Carrier Route Bundle Pieces		
Basic	Piece	0.169
High Density	Piece	0.149
Saturation	Piece	0.131
Firm bundle\4	Bundle	0.169
Ride-Along Piece		
Per Piece	Piece	0.155
Discounts		
Per-piece editorial discount\5	Piece	(0.091)

OUTSIDE COUNTY (INCLUDING SCIENCE OF AGRICULTURE) (continued)

Bundle Rates

Mixed ADC Sack		
Mixed ADC bundle	Bundle	$0.100
ADC bundle	Bundle	0.129
3-digit/SCF bundle	Bundle	0.134
5-digit bundle	Bundle	0.161
Firm Bundle	Bundle	0.079
ADC Sack or Pallet		
ADC bundle	Bundle	0.038
3-digit/SCF bundle	Bundle	0.063
5-digit bundle	Bundle	0.095
Carrier Route bundle	Bundle	0.104
Firm bundle	Bundle	0.048
3-Digit/SCF Sack or Pallet		
3-digit/SCF bundle	Bundle	0.039
5-digit bundle	Bundle	0.084
Carrier Route bundle	Bundle	0.095
Firm bundle	Bundle	0.045
5-digit Sack or Pallet		
5-digit bundle	Bundle	0.008
Carrier Route bundle	Bundle	0.039
Firm bundle	Bundle	0.027

Sack Rates

Mixed ADC Sack		
OSCF Entry	Sack	0.42
OADC Entry	Sack	0.42
ADC Sack		
OSCF Entry	Sack	1.80
OADC Entry	Sack	1.80
OBMC Entry	Sack	1.80
DBMC Entry	Sack	1.10
DADC Entry	Sack	0.60
3-Digit/SCF Sack		
OSCF Entry	Sack	1.90
OADC Entry	Sack	1.90
OBMC Entry	Sack	1.90
DBMC Entry	Sack	1.20
DADC Entry	Sack	1.00
DSCF Entry	Sack	0.60

OUTSIDE COUNTY (INCLUDING SCIENCE OF AGRICULTURE) (continued)

5-Digit/Carrier Route Sack		
OSCF Entry	Sack	$2.24
OADC Entry	Sack	2.24
OBMC Entry	Sack	2.24
DBMC Entry	Sack	1.50
DADC Entry	Sack	1.30
DSCF Entry	Sack	0.90
DDU Entry	Sack	0.70
Pallet Rates		
ADC Pallet		
OSCF Entry	Pallet	18.61
OADC Entry	Pallet	18.61
OBMC Entry	Pallet	18.61
DBMC Entry	Pallet	13.00
DADC Entry	Pallet	8.90
3-Digit/SCF Pallet		
OSCF Entry	Pallet	22.98
OADC Entry	Pallet	22.98
OBMC Entry	Pallet	22.98
DBMC Entry	Pallet	14.40
DADC Entry	Pallet	12.20
DSCF Entry	Pallet	6.70
5-Digit Pallet		
OSCF Entry	Pallet	26.95
OADC Entry	Pallet	26.95
OBMC Entry	Pallet	26.95
DBMC Entry	Pallet	17.50
DADC Entry	Pallet	15.50
DSCF Entry	Pallet	8.00
DDU Entry	Pallet	1.20

SCHEDULE 421 NOTES

1. The rates in this schedule also apply to Nonprofit (DMCS Section 422.2) and Classroom rate categories. These categories receive a 5 percent discount on all components of postage except advertising pounds. Moreover, the 5 percent discount does not apply to commingled nonsubscriber, nonrequestor, complimentary, and sample copies in excess of the 10 percent allowance under DMCS sections 412.34 and 413.42, or to Science of Agriculture mail.
2. Rates do not apply to otherwise Outside County mail that qualifies for the Within County rates in Schedule 423.
3. Charges are computed by adding the appropriate per-piece charge, per-bundle charge, per-sack, and per-pallet charge to the sum of the editorial (nonadvertising) pound portion and the advertising pound portion, as applicable.
4. Firm bundles are charged a single piece charge.
5. For postage calculations, multiply the proportion of editorial (nonadvertising) content by this factor and subtract from the applicable piece rate.
6. Advertising pound rate is not applicable to qualifying Nonprofit and Classroom publications containing 10 percent or less advertising content.
7. For a Ride-Along item enclosed with or attached to a Periodical, add $0.155 per copy.
8. Add $0.015 per piece for pieces bearing a Repositionable Note as defined in DMCS section 424.

PERIODICALS
RATE SCHEDULE 423

WITHIN COUNTY

	Postage Rate Unit	Rate
Delivery Unit	Pound	$ 0.132
All other zones	Pound	0.171
Basic		
Nonautomation	Piece	0.122
Automation letter	Piece	0.055
Automation flat	Piece	0.107
3-Digit		
Nonautomation	Piece	0.110
Automation letter	Piece	0.046
Automation flat	Piece	0.099
5-Digit		
Nonautomation	Piece	0.098
Automation letter	Piece	0.044
Automation flat	Piece	0.093
Carrier Route		
Basic	Piece	0.056
High density	Piece	0.041
Saturation	Piece	0.028
Discounts		
Worksharing Discount DDU	Piece	(0.008)
Ride-Along	Piece	0.155

SCHEDULE 423 NOTES

1. Charges are computed by adding the appropriate per-piece charge to the appropriate pound charge.
2. For a Ride-Along item enclosed with or attached to a Periodical, add $0.155 per copy.
3. Add $0.015 per-piece for pieces bearing a Repositionable Note as defined in DMCS section 424.

PACKAGE SERVICES
RATE SCHEDULE 521.2A

PARCEL POST
INTER-BMC RATES

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1	$4.38	$4.50	$4.50	$4.50	$4.50	$4.50	$4.50
2	4.50	4.80	5.20	5.67	6.00	6.15	6.15
3	4.95	5.60	6.30	7.02	7.05	7.33	7.93
4	5.60	6.55	7.47	7.78	8.04	8.45	9.25
5	6.20	7.45	8.23	8.59	8.98	9.50	10.50
6	6.75	8.15	8.97	9.36	9.83	10.48	11.77
7	7.25	8.61	9.67	10.09	10.64	11.44	12.88
8	7.65	8.94	10.36	10.79	11.41	12.32	14.08
9	8.05	9.27	10.99	11.47	12.14	13.14	15.21
10	8.40	10.37	11.62	12.12	12.84	13.92	16.17
11	8.70	10.69	12.22	12.75	13.52	14.68	17.08
12	8.96	10.97	12.80	13.36	14.17	15.40	17.96
13	9.14	11.22	13.37	13.95	14.80	16.10	18.80
14	9.32	11.53	13.91	14.53	15.41	16.77	19.61
15	9.48	11.79	14.44	15.09	15.99	17.43	20.40
16	9.62	12.04	14.96	15.64	16.56	18.06	21.16
17	9.80	12.25	15.46	16.18	17.12	18.67	21.89
18	9.93	12.48	15.78	16.70	17.66	19.27	22.61
19	10.10	12.71	16.13	17.21	18.18	19.85	23.30
20	10.22	12.92	16.42	17.71	18.70	20.41	23.98
21	10.37	13.14	16.72	18.20	19.19	20.96	24.64
22	10.49	13.31	17.02	18.69	19.68	21.50	25.28
23	10.63	13.55	17.33	19.16	20.16	22.02	25.90
24	10.73	13.72	17.58	19.62	20.62	22.54	26.51
25	10.87	13.90	17.85	20.08	21.08	23.04	27.11
26	10.97	14.07	18.10	20.53	21.53	23.53	27.69
27	11.12	14.25	18.33	20.97	21.97	24.01	28.26
28	11.21	14.42	18.60	21.40	22.39	24.48	28.82
29	11.34	14.60	18.84	21.83	22.81	24.94	29.36
30	11.44	14.74	19.05	22.24	23.23	25.39	29.90
31	11.57	14.89	19.27	22.66	23.63	25.83	30.42
32	11.65	15.05	19.49	23.06	24.03	26.27	30.94
33	11.75	15.21	19.71	23.46	24.42	26.69	31.44
34	11.87	15.31	19.88	23.86	24.81	27.11	31.93
35	11.97	15.48	20.09	24.25	25.19	27.53	32.42
36	12.06	15.61	20.31	24.63	25.56	27.93	32.90
37	12.16	15.73	20.46	25.01	25.92	28.33	33.37
38	12.25	15.90	20.64	25.38	26.28	28.72	33.83
39	12.36	15.99	20.81	25.76	26.64	29.11	34.28
40	12.45	16.15	21.00	26.12	26.99	29.49	34.73

PARCEL POST
INTER-BMC RATES (continued)

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
41	$12.57	$16.28	$21.15	$26.48	$27.33	$29.87	$35.17
42	12.65	16.39	21.32	26.84	27.67	30.23	35.60
43	12.71	16.51	21.49	27.19	28.01	30.60	36.03
44	12.81	16.60	21.63	27.53	28.34	30.96	36.45
45	12.90	16.74	21.80	27.88	28.66	31.31	36.86
46	12.99	16.85	21.96	28.22	28.98	31.66	37.27
47	13.10	16.98	22.09	28.42	29.30	32.00	37.67
48	13.17	17.08	22.26	28.59	29.62	32.34	38.06
49	13.23	17.20	22.39	28.76	29.92	32.67	38.46
50	13.31	17.28	22.50	28.93	30.23	33.01	38.84
51	13.42	17.41	22.66	29.09	30.53	33.33	39.22
52	13.48	17.51	22.79	29.24	30.83	33.65	39.59
53	13.59	17.59	22.88	29.39	31.12	33.97	39.97
54	13.65	17.73	23.04	29.54	31.41	34.28	40.33
55	13.72	17.77	23.17	29.69	31.70	34.60	40.69
56	13.82	17.93	23.28	29.84	31.98	34.90	41.05
57	13.90	18.01	23.41	29.97	32.26	35.20	41.40
58	13.96	18.10	23.52	30.11	32.54	35.50	41.75
59	14.05	18.19	23.65	30.24	32.82	35.80	42.09
60	14.13	18.28	23.78	30.37	33.09	36.09	42.43
61	14.24	18.41	23.87	30.49	33.36	36.38	42.77
62	14.30	18.47	23.99	30.62	33.62	36.67	43.10
63	14.35	18.58	24.10	30.73	33.88	36.95	43.42
64	14.42	18.64	24.19	30.85	34.14	37.23	43.75
65	14.50	18.75	24.31	30.97	34.40	37.51	44.07
66	14.60	18.84	24.40	31.07	34.66	37.78	44.39
67	14.68	18.93	24.52	31.19	34.91	38.05	44.70
68	14.73	19.01	24.64	31.29	35.16	38.32	45.01
69	14.79	19.07	24.73	31.40	35.41	38.59	45.32
70	14.89	19.19	24.83	31.49	35.65	38.85	45.62
Oversized	50.54	55.19	58.28	69.40	83.99	97.82	127.24

SCHEDULE 521.2A NOTES

1. For Origin Bulk Mail Center (OBMC) Presort Discount, deduct $1.50 per piece.
2. For BMC Presort Discount, deduct $0.26 per piece.
3. For barcode discount, deduct $0.03 per piece (machinable parcels only).
4. For nonmachinable parcels, add $3.89 per piece.
5. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
6. Pieces exceeding 84 inches in length and girth combined and weighing less than 20 pounds are subject to a rate equal to that for a 20-pound parcel for the zone to which the parcel is addressed.
7. For each Pickup On-Demand stop, add $14.25.

PACKAGE SERVICES
RATE SCHEDULE 521.2B

PARCEL POST
INTRA-BMC RATES

Weight (lbs.)	Local Zone	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	$3.42	$3.67	$3.70	$3.78	$3.96
2	3.80	4.34	4.38	4.47	4.72
3	4.15	4.96	5.00	5.11	5.46
4	4.47	5.37	5.58	5.69	6.13
5	4.76	5.74	6.07	6.21	6.76
6	5.03	6.09	6.53	6.67	7.32
7	5.24	6.42	6.94	7.10	7.86
8	5.42	6.95	7.33	7.50	8.34
9	5.60	7.24	7.69	7.90	8.79
10	5.77	7.55	8.07	8.53	9.21
11	5.93	7.82	8.38	8.86	9.59
12	6.09	8.10	8.69	9.18	9.96
13	6.25	8.28	8.97	9.48	10.30
14	6.39	8.44	9.22	9.81	10.61
15	6.53	8.59	9.49	10.07	10.90
16	6.68	8.74	9.76	10.33	11.20
17	6.80	8.92	10.01	10.61	11.45
18	6.93	9.05	10.25	10.84	11.70
19	7.05	9.20	10.49	11.08	11.94
20	7.19	9.35	10.73	11.28	12.15
21	7.30	9.46	10.95	11.49	12.36
22	7.42	9.62	11.17	11.71	12.55
23	7.53	9.72	11.40	11.93	12.76
24	7.65	9.85	11.61	12.15	12.93
25	7.76	9.96	11.81	12.35	13.11
26	7.86	10.10	12.00	12.56	13.26
27	7.97	10.21	12.21	12.76	13.42
28	8.07	10.31	12.41	12.94	13.59
29	8.18	10.43	12.60	13.13	13.79
30	8.29	10.54	12.78	13.31	13.97
31	8.38	10.65	12.94	13.49	14.17
32	8.46	10.76	13.13	13.67	14.34
33	8.57	10.86	13.29	13.83	14.52
34	8.63	10.96	13.40	14.00	14.69
35	8.70	11.05	13.55	14.16	14.86
36	8.78	11.14	13.66	14.31	15.02
37	8.83	11.26	13.78	14.47	15.18
38	8.89	11.35	13.91	14.62	15.34
39	8.98	11.45	14.04	14.76	15.49
40	9.06	11.52	14.14	14.91	15.64

PARCEL POST
INTRA-BMC RATES (continued)

Weight (lbs.)	Local Zone	Zones 1 & 2	Zone 3	Zone 4	Zone 5
41	$9.14	$11.65	$14.29	$15.00	$15.79
42	9.20	11.71	14.39	15.11	15.93
43	9.28	11.79	14.50	15.18	16.07
44	9.37	11.90	14.61	15.26	16.20
45	9.43	11.96	14.70	15.48	16.33
46	9.48	12.09	14.82	15.55	16.57
47	9.57	12.18	14.91	15.63	16.96
48	9.63	12.25	15.03	15.68	17.37
49	9.69	12.35	15.13	15.74	17.77
50	9.75	12.39	15.22	15.80	18.19
51	9.84	12.51	15.30	15.87	18.61
52	9.88	12.60	15.44	15.93	19.05
53	9.95	12.64	15.51	15.96	19.50
54	10.04	12.71	15.56	16.03	19.96
55	10.10	12.79	15.63	16.09	20.15
56	10.14	12.88	15.68	16.16	20.23
57	10.21	12.97	15.70	16.19	20.37
58	10.28	13.04	15.76	16.24	20.46
59	10.35	13.12	15.80	16.29	20.56
60	10.37	13.21	15.83	16.32	20.67
61	10.49	13.29	15.89	16.38	20.76
62	10.52	13.36	15.93	16.46	20.85
63	10.60	13.43	15.95	16.55	20.94
64	10.66	13.51	15.98	16.63	21.04
65	10.71	13.59	16.03	16.71	21.11
66	10.75	13.68	16.06	16.80	21.22
67	10.86	13.75	16.09	16.90	21.29
68	10.91	13.78	16.12	16.95	21.37
69	10.92	13.88	16.15	17.04	21.46
70	10.93	13.95	16.19	17.13	21.54
Oversized	28.82	41.78	42.17	43.01	44.28

SCHEDULE 521.2B NOTES

1. For barcode discount deduct $0.03 per piece (machinable parcels only).
2. For nonmachinable parcels, add $2.87 per piece.
3. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
4. Pieces exceeding 84 inches in length and girth combined and weighing less than 20 pounds are subject to a rate equal to that for a 20-pound parcel for the zone to which the parcel is addressed.
5. For each Pickup On-Demand stop, add $14.25.

PACKAGE SERVICES
RATE SCHEDULE 521.2C

PARCEL POST
PARCEL SELECT DESTINATION BULK MAIL CENTER RATES

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	$2.38	$2.72	$3.05	$3.91
2	2.68	3.35	3.99	4.67
3	2.96	3.95	4.85	5.41
4	3.24	4.52	5.58	6.08
5	3.49	5.05	6.10	6.71
6	3.73	5.54	6.53	7.27
7	3.95	5.99	6.92	7.81
8	4.17	6.43	7.28	8.29
9	4.38	6.84	7.66	8.74
10	4.58	7.24	8.48	9.16
11	4.77	7.63	8.81	9.54
12	4.96	8.00	9.13	9.91
13	5.14	8.33	9.43	10.25
14	5.32	8.59	9.76	10.56
15	5.49	8.87	10.02	10.85
16	5.65	9.14	10.28	11.15
17	5.81	9.35	10.56	11.40
18	5.96	9.54	10.79	11.65
19	6.12	9.71	11.03	11.89
20	6.26	9.89	11.23	12.10
21	6.41	10.07	11.41	12.31
22	6.55	10.22	11.60	12.50
23	6.68	10.40	11.77	12.71
24	6.82	10.55	11.93	12.88
25	6.95	10.70	12.08	13.06
26	7.08	10.82	12.23	13.21
27	7.21	10.99	12.37	13.37
28	7.33	11.15	12.49	13.51
29	7.45	11.28	12.65	13.64
30	7.57	11.41	12.76	13.79
31	7.69	11.51	12.86	13.92
32	7.81	11.65	12.98	14.05
33	7.92	11.76	13.10	14.15
34	8.03	11.88	13.19	14.27
35	8.14	12.00	13.31	14.38
36	8.26	12.58	13.40	14.48
37	8.37	12.68	13.49	14.58
38	8.47	12.80	13.58	14.68
39	8.58	12.91	13.66	14.77
40	8.68	13.02	13.74	14.84

PARCEL POST
PARCEL SELECT DESTINATION BULK MAIL CENTER RATES (continued)

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
41	$8.78	$13.15	$13.81	$14.93
42	8.88	13.25	13.90	15.01
43	8.98	13.36	13.98	15.38
44	9.07	13.44	14.05	15.74
45	9.17	13.52	14.24	16.14
46	9.26	13.64	14.30	16.52
47	9.36	13.73	14.36	16.91
48	9.44	13.84	14.44	17.32
49	9.53	13.92	14.50	17.72
50	9.63	14.02	14.54	18.14
51	9.71	14.10	14.60	18.56
52	9.80	14.21	14.66	19.00
53	9.89	14.27	14.71	19.45
54	9.97	14.33	14.77	19.91
55	10.05	14.38	14.83	20.10
56	10.14	14.42	14.86	20.18
57	10.22	14.46	14.90	20.32
58	10.30	14.51	14.95	20.41
59	10.38	14.54	14.99	20.51
60	10.46	14.58	15.02	20.62
61	10.54	14.62	15.07	20.71
62	10.62	14.66	15.16	20.80
63	10.69	14.69	15.24	20.89
64	10.77	14.72	15.30	20.99
65	10.85	14.76	15.38	21.06
66	10.92	14.80	15.48	21.17
67	10.99	14.82	15.54	21.24
68	11.06	14.83	15.61	21.32
69	11.14	14.86	15.68	21.41
70	11.21	14.89	15.77	21.49
Oversized	21.08	29.49	39.77	41.33

SCHEDULE 521.2C NOTES

1. For nonmachinable parcels, add $2.14 per piece.
2. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
3. Pieces exceeding 84 inches in length and girth combined and weighing less than 20 pounds are subject to a rate equal to that for a 20-pound parcel for the zone to which the parcel is addressed.
4. A mailing fee of $175.00 must be paid once each 12-month period for Parcel Select.

PACKAGE SERVICES
RATE SCHEDULE 521.2D

PARCEL POST
PARCEL SELECT DESTINATION SECTIONAL CENTER FACILITY RATES

Weight (lbs.)	Rate	Weight (lbs.)	Rate
1	$1.90	36	$5.81
2	2.11	37	5.88
3	2.30	38	5.94
4	2.47	39	6.02
5	2.63	40	6.08
6	2.79	41	6.14
7	2.93	42	6.22
8	3.07	43	6.28
9	3.21	44	6.34
10	3.33	45	6.40
11	3.45	46	6.47
12	3.57	47	6.53
13	3.69	48	6.58
14	3.79	49	6.64
15	3.92	50	6.70
16	4.03	51	6.76
17	4.14	52	6.80
18	4.24	53	6.85
19	4.35	54	6.90
20	4.45	55	6.97
21	4.54	56	7.02
22	4.64	57	7.07
23	4.73	58	7.12
24	4.83	59	7.18
25	4.91	60	7.22
26	5.00	61	7.26
27	5.09	62	7.31
28	5.18	63	7.36
29	5.26	64	7.42
30	5.34	65	7.45
31	5.42	66	7.50
32	5.51	67	7.55
33	5.58	68	7.58
34	5.66	69	7.64
35	5.74	70	7.68
		Oversized	13.56

SCHEDULE 521.2D NOTES

1. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
2. Pieces exceeding 84 inches in length and girth combined and weighing less than 20 pounds are subject to a rate equal to that for a 20-pound parcel for the zone to which the parcel is addressed.
3. A mailing fee of $175.00 must be paid once each 12-month period for Parcel Select.
4. For nonmachinable parcels sorted to 3-digit ZIP Code areas, add $0.96 per piece.

PACKAGE SERVICES
RATE SCHEDULE 521.2E

PARCEL POST
PARCEL SELECT DESTINATION DELIVERY UNIT RATES

Weight (lbs.)	Rate	Weight (lbs.)	Rate
1	$1.40	36	$2.60
2	1.47	37	2.62
3	1.52	38	2.64
4	1.58	39	2.66
5	1.63	40	2.69
6	1.68	41	2.71
7	1.72	42	2.73
8	1.76	43	2.75
9	1.81	44	2.77
10	1.85	45	2.79
11	1.88	46	2.81
12	1.92	47	2.83
13	1.96	48	2.85
14	1.99	49	2.87
15	2.03	50	2.89
16	2.06	51	2.90
17	2.09	52	2.92
18	2.13	53	2.94
19	2.16	54	2.95
20	2.19	55	2.96
21	2.22	56	2.98
22	2.25	57	2.99
23	2.27	58	3.00
24	2.30	59	3.01
25	2.33	60	3.02
26	2.36	61	3.04
27	2.38	62	3.05
28	2.41	63	3.06
29	2.43	64	3.07
30	2.46	65	3.08
31	2.48	66	3.10
32	2.51	67	3.11
33	2.53	68	3.12
34	2.55	69	3.13
35	2.58	70	3.14
		Oversized	7.36

SCHEDULE 521.2E NOTES

1. Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.
2. Pieces exceeding 84 inches in length and girth combined and weighing less than 20 pounds are subject to a rate equal to that for a 20-pound parcel for the zone to which the parcel is addressed.
3. A mailing fee of $175.00 must be paid once each 12-month period for Parcel Select.

PACKAGE SERVICES
RATE SCHEDULE 521.2F

PARCEL POST
PARCEL SELECT RETURN SERVICES
RETURN DELIVERY UNIT RATE CATEGORY

Weight (lbs.)	Rate	Weight (lbs.)	Rate
1	$2.20	36	$2.20
2	2.20	37	2.20
3	2.20	38	2.20
4	2.20	39	2.20
5	2.20	40	2.20
6	2.20	41	2.20
7	2.20	42	2.20
8	2.20	43	2.20
9	2.20	44	2.20
10	2.20	45	2.20
11	2.20	46	2.20
12	2.20	47	2.20
13	2.20	48	2.20
14	2.20	49	2.20
15	2.20	50	2.20
16	2.20	51	2.20
17	2.20	52	2.20
18	2.20	53	2.20
19	2.20	54	2.20
20	2.20	55	2.20
21	2.20	56	2.20
22	2.20	57	2.20
23	2.20	58	2.20
24	2.20	59	2.20
25	2.20	60	2.20
26	2.20	61	2.20
27	2.20	62	2.20
28	2.20	63	2.20
29	2.20	64	2.20
30	2.20	65	2.20
31	2.20	66	2.20
32	2.20	67	2.20
33	2.20	68	2.20
34	2.20	69	2.20
35	2.20	70	2.20
		Oversized	8.08

SCHEDULE 521.2F NOTES

1. Regardless of weight, any parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

PACKAGE SERVICES
RATE SCHEDULE 521.2G

PARCEL POST
PARCEL SELECT RETURN SERVICE
RETURN BMC RATE CATEGORY
MACHINABLE PIECES

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	$2.22	$2.25	$2.33	$2.51
2	2.89	2.93	3.02	3.27
3	3.51	3.55	3.66	4.01
4	3.92	4.13	4.24	4.68
5	4.29	4.62	4.76	5.31
6	4.64	5.08	5.22	5.87
7	4.93	5.49	5.65	6.41
8	5.50	5.88	6.05	6.89
9	5.79	6.24	6.45	7.34
10	6.04	6.62	7.08	7.76
11	6.19	6.93	7.41	8.14
12	6.38	7.24	7.73	8.51
13	6.55	7.52	8.03	8.85
14	6.71	7.77	8.36	9.16
15	6.84	8.04	8.62	9.45
16	6.98	8.31	8.88	9.75
17	7.15	8.56	9.16	10.00
18	7.26	8.80	9.39	10.25
19	7.42	9.04	9.63	10.49
20	7.54	9.23	9.83	10.70
21	7.66	9.41	10.04	10.91
22	7.79	9.56	10.26	11.10
23	7.90	9.77	10.48	11.31
24	8.00	9.91	10.70	11.48
25	8.11	10.07	10.90	11.66
26	8.23	10.21	11.11	11.81
27	8.34	10.37	11.31	11.97
28	8.42	10.52	11.45	12.14
29	8.53	10.68	11.58	12.34
30	8.64	10.80	11.71	12.52
31	8.74	10.91	11.82	12.72
32	8.86	11.05	11.95	12.89
33	8.93	11.18	12.05	13.07
34	9.04	11.28	12.16	13.21
35	9.11	11.42	12.25	13.33

SCHEDULE 521.2G NOTES

1. Parcels that weigh less than 20 pounds but measure more than 84 inches in combined length and girth are charged the applicable rate for a 20-pound parcel.

PACKAGE SERVICES
RATE SCHEDULE 521.2G (continued)

PARCEL POST
PARCEL SELECT RETURN SERVICE
RETURN BMC RATE CATEGORY
NONMACHINABLE PIECES

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	$5.09	$5.12	$5.20	$5.38
2	5.76	5.80	5.89	6.14
3	6.38	6.42	6.53	6.88
4	6.79	7.00	7.11	7.55
5	7.16	7.49	7.63	8.18
6	7.51	7.95	8.09	8.74
7	7.80	8.36	8.52	9.28
8	8.37	8.75	8.92	9.76
9	8.66	9.11	9.32	10.21
10	8.91	9.49	9.95	10.63
11	9.06	9.80	10.28	11.01
12	9.25	10.11	10.60	11.38
13	9.42	10.39	10.90	11.72
14	9.58	10.64	11.23	12.03
15	9.71	10.91	11.49	12.32
16	9.85	11.18	11.75	12.62
17	10.02	11.43	12.03	12.87
18	10.13	11.67	12.26	13.12
19	10.29	11.91	12.50	13.36
20	10.41	12.10	12.70	13.57
21	10.53	12.28	12.91	13.78
22	10.66	12.43	13.13	13.97
23	10.77	12.64	13.35	14.18
24	10.87	12.78	13.57	14.35
25	10.98	12.94	13.77	14.53
26	11.10	13.08	13.98	14.68
27	11.21	13.24	14.18	14.84
28	11.29	13.39	14.32	15.01
29	11.40	13.55	14.45	15.21
30	11.51	13.67	14.58	15.39
31	11.61	13.78	14.69	15.59
32	11.73	13.92	14.82	15.76
33	11.80	14.05	14.92	15.94
34	11.91	14.15	15.03	16.08
35	11.98	14.29	15.12	16.20
36	12.10	14.43	15.25	16.35
37	12.19	14.52	15.33	16.42

PARCEL POST
PARCEL SELECT RETURN SERVICE
RETURN BMC RATE CATEGORY
NONMACHINABLE PIECES (continued)

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
38	$12.24	$14.61	$15.39	$16.48
39	12.31	14.71	15.45	16.54
40	12.36	14.77	15.49	16.61
41	12.45	14.88	15.54	16.67
42	12.48	14.95	15.60	16.72
43	12.53	15.03	15.66	16.75
44	12.60	15.10	15.71	16.79
45	12.64	15.16	15.89	16.84
46	12.72	15.25	15.93	16.87
47	12.78	15.30	15.96	16.91
48	12.82	15.39	15.99	16.95
49	12.89	15.46	16.02	16.98
50	12.90	15.52	16.05	17.02
51	12.99	15.57	16.08	17.07
52	13.03	15.67	16.12	17.10
53	13.05	15.71	16.13	17.14
54	13.11	15.73	16.17	17.17
55	13.15	15.76	16.20	17.21
56	13.20	15.78	16.23	17.25
57	13.26	15.78	16.23	17.29
58	13.31	15.81	16.25	17.33
59	13.35	15.82	16.27	17.37
60	13.41	15.83	16.27	17.40
61	13.45	15.84	16.30	17.44
62	13.49	15.85	16.36	17.47
63	13.54	15.85	16.42	17.52
64	13.59	15.85	16.45	17.56
65	13.62	15.89	16.50	17.59
66	13.68	15.89	16.56	17.63
67	13.73	15.90	16.63	17.67
68	13.73	15.90	16.66	17.70
69	13.80	15.90	16.72	17.75
70	13.84	15.90	16.77	17.79
Oversized	27.39	27.78	28.62	29.89

SCHEDULE 521.2G NOTES

1. Parcels that weigh less than 20 pounds but measure more than 84 inches in combined length and girth are charged the applicable rate for a 20-pound parcel. Regardless of weight, any parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized rate.

PACKAGE SERVICES
RATE SCHEDULE 522A

BOUND PRINTED MATTER
SINGLE-PIECE RATES

Weight (lbs.)	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1.0	$2.12	$2.17	$2.23	$2.30	$2.38	$2.45	$2.62
1.5	2.12	2.17	2.23	2.30	2.38	2.45	2.62
2.0	2.21	2.27	2.35	2.45	2.55	2.65	2.87
2.5	2.30	2.38	2.48	2.60	2.73	2.85	3.13
3.0	2.39	2.48	2.60	2.75	2.90	3.05	3.38
3.5	2.48	2.59	2.73	2.90	3.08	3.25	3.64
4.0	2.57	2.69	2.85	3.05	3.25	3.45	3.89
4.5	2.66	2.80	2.98	3.20	3.43	3.65	4.15
5.0	2.75	2.90	3.10	3.35	3.60	3.85	4.40
6.0	2.93	3.11	3.35	3.65	3.95	4.25	4.91
7.0	3.11	3.32	3.60	3.95	4.30	4.65	5.42
8.0	3.29	3.53	3.85	4.25	4.65	5.05	5.93
9.0	3.47	3.74	4.10	4.55	5.00	5.45	6.44
10.0	3.65	3.95	4.35	4.85	5.35	5.85	6.95
11.0	3.83	4.16	4.60	5.15	5.70	6.25	7.46
12.0	4.01	4.37	4.85	5.45	6.05	6.65	7.97
13.0	4.19	4.58	5.10	5.75	6.40	7.05	8.48
14.0	4.37	4.79	5.35	6.05	6.75	7.45	8.99
15.0	4.55	5.00	5.60	6.35	7.10	7.85	9.50

SCHEDULE 522A NOTES

1. For barcode discount, deduct $0.03 per piece (machinable parcels and automatable flats only).
2. For flats, deduct $0.16 per piece.

PACKAGE SERVICES
RATE SCHEDULE 522B

BOUND PRINTED MATTER
PRESORTED AND CARRIER ROUTE RATES
FLATS, PARCELS, AND NONMACHINABLE PARCELS

Flats

	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
Per-Piece							
Presorted	$1.289	$1.289	$1.289	$1.289	$1.289	$1.289	$1.289
Carrier Route	1.178	1.178	1.178	1.178	1.178	1.178	1.178
Per Pound	0.122	0.148	0.195	0.249	0.311	0.359	0.477

Parcels and Nonmachinable Parcels

	Zones 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
Per-Piece							
Presorted	$1.447	$1.447	$1.447	$1.447	$1.447	$1.447	$1.447
Carrier Route	1.336	1.336	1.336	1.336	1.336	1.336	1.336
Per Pound	0.122	0.148	0.195	0.249	0.311	0.359	0.477

SCHEDULE 522B NOTES

1. For barcode discount, deduct $0.03 per piece (machinable parcels and automatable flats only). Barcode discount is not available for Carrier Route rates.

PACKAGE SERVICES
RATE SCHEDULE 522C

BOUND PRINTED MATTER
PRESORTED RATES, DESTINATION ENTRY
FLATS, PARCELS, AND NONMACHINABLE PARCELS

Flats

				DBMC		
	DDU	DSCF	Zones 1 & 2	Zone 3	Zone 4	Zone 5
Per Piece	$0.505	$0.589	$0.972	$0.972	$0.972	$0.972
Per Pound	0.040	0.083	0.086	0.124	0.164	0.218

Parcels and Nonmachinable Parcels

				DBMC		
	DDU	DSCF	Zones 1 & 2	Zone 3	Zone 4	Zone 5
Per Piece	$0.663	$0.747	$1.130	$1.130	$1.130	$1.130
Per Pound	0.040	0.083	0.086	0.124	0.164	0.218

SCHEDULE 522C NOTES

1. For barcode discount, deduct $0.03 per piece (machinable parcels and automatable flats only). Barcode discount is not available for carrier route parcels, or parcels entered at DDU or DSCF rates or DBMC mail entered at an ASF (except Phoenix, AZ, ASF); or flats entered at DDU rates, or carrier route rates.
2. A mailing fee of $175.00 must be paid once each 12-month period to mail at any destination entry Bound Printed Matter rate.
3. The DDU rate is not available for flats that weigh 1 pound or less.

PACKAGE SERVICES
RATE SCHEDULE 522D

BOUND PRINTED MATTER
CARRIER ROUTE RATES, DESTINATION ENTRY
FLATS, PARCELS, AND NONMACHINABLE PARCELS

Flats

				DBMC		
	DDU	DSCF	Zones 1 & 2	Zone 3	Zone 4	Zone 5
Per Piece	$0.394	$0.478	$0.861	$0.861	$0.861	$0.861
Per Pound	0.040	0.083	0.086	0.124	0.164	0.218

Parcels and Nonmachinable Parcels

				DBMC		
	DDU	DSCF	Zones 1 & 2	Zone 3	Zone 4	Zone 5
Per Piece	$0.552	$0.636	$1.019	$1.019	$1.019	$1.019
Per Pound	0.040	0.083	0.086	0.124	0.164	0.218

SCHEDULE 522D NOTES

1. A mailing fee of $175.00 must be paid once each 12-month period to mail at any destination entry Bound Printed Matter rate.

PACKAGE SERVICES
RATE SCHEDULE 523

MEDIA MAIL

	Rate
First Pound	
Single-Piece	$2.13
5-Digit Presort	1.30
Basic Presort	1.80
Each additional pound, through 7 pounds	0.34
Each additional pound, over 7 pounds	0.34

SCHEDULE 523 NOTES

1. A mailing fee of $175.00 must be paid once each 12-month period to mail at any Media Mail presorted rate.
2. For barcode discount, deduct $0.03 per piece (machinable parcels only). Barcode discount is not available for pieces mailed at the 5-digit rate.

PACKAGE SERVICES
RATE SCHEDULE 524

LIBRARY MAIL

	Rate
First Pound	
Single-Piece	$2.02
5-Digit Presort	1.24
Basic Presort	1.71
Each additional pound, through 7 pounds	0.32
Each additional pound, over 7 pounds	0.32

SCHEDULE 524

1. A mailing fee of $175.00 must be paid once each 12-month period to mail at any Library Mail presorted rate.
2. For barcode discount, deduct $0.03 per piece (machinable parcels only). Barcode discount is not available for pieces mailed at the 5-digit rate.

NEGOTIATED SERVICE AGREEMENTS
CAPITAL ONE NSA
RATE SCHEDULE 610A

Volume Block	Incremental Discounts
1,225,000,001 - 1,275,000,000	3.0¢
1,275,000,001 - 1,325,000,000	3.5¢
1,325,000,001 - 1,375,000,000	4.0¢
1,375,000,001 - 1,450,000,000	4.5¢
1,450,000,001 - 1,525,000,000	5.0¢
1,525,000,001 - 1,600,000,000	5.5¢
1,600,000,001 and above	6.0¢

CAPITAL ONE NSA
RATE SCHEDULE 610B

Volume Block	Incremental Discounts
1,025,000,001 - 1,075,000,000	1.0¢
1,075,000,001 - 1,125,000,000	1.5¢
1,125,000,001 - 1,175,000,000	2.0¢
1,175,000,001 - 1,225,000,000	2.5¢

CAPITAL ONE NSA
RATE SCHEDULE 610C
FOR ADJUSTED THRESHOLD (A.T.)

Volume Block	Incremental Discounts
A.T. + 1 - A.T. + 50,000,000	3.0¢
A.T. + 50,000,001 - A.T. + 100,000,000	3.5¢
A.T. + 100,000,001 - A.T. + 150,000,000	4.0¢
A.T. + 150,000,001 - A.T. + 225,000,000	4.5¢
A.T. + 225,000,001 - A.T. + 300,000,000	5.0¢
A.T. + 300,000,001 - A.T. + 375,000,000	5.5¢
A.T. + 375,000,001 and above	6.0¢

CAPITAL ONE NSA
RATE SCHEDULE 610D
FOR ADJUSTED THRESHOLD (A.T.)

Volume Block	Incremental Discounts
A.T. + 1 - A.T. + 50,000,000	1.0¢
A.T. + 50,000,001 - A.T. + 100,000,000	1.5¢
A.T. + 100,000,001 - A.T. + 150,000,000	2.0¢
A.T. + 150,000,001 - A.T. + 200,000,000	2.5¢

DISCOVER FINANCIAL SERVICES NSA
RATE SCHEDULE 611A

Volume Block	Incremental Discounts
405,000,000 to 435,000,000	2.5¢
435,000,001 to 465,000,000	3.0¢
465,000,001 to 490,000,000	3.5¢
490,000,001 to 515,000,000	4.0¢
515,000,001 and above	4.5¢

DISCOVER FINANCIAL SERVICES NSA
RATE SCHEDULE 611B
FOR ADJUSTED THRESHOLD (A.T.)

Volume Block	Incremental Discounts
A.T. to A.T. + 30,000,000	2.5¢
A.T. + 30,000,001 to A.T. + 60,000,000	3.0¢
A.T. + 60,000,001 to A.T. + 85,000,000	3.5¢
A.T. + 85,000,001 to A.T. + 110,000,000	4.0¢
A.T. + 110,000,001 and above	4.5¢

BANK ONE NSA
RATE SCHEDULE 612A

Volume Block	Incremental Discounts
535,000,001 to 560,000,000	2.5¢
560,000,001 to 585,000,000	3.0¢
585,000,001 to 610,000,000	3.5¢
610,000,001 to 645,000,000	4.0¢
645,000,001 to 680,000,000	4.5¢
680,000,001 and above	5.0¢

BANK ONE NSA
RATE SCHEDULE 612B
FOR ADJUSTED THRESHOLD (A.T.)

Volume Block			Incremental Discounts
A.T.	to	A.T. + 25,000,000	2.5¢
A.T. + 25,000,001	to	A.T. + 50,000,000	3.0¢
A.T. + 50,000,001	to	A.T. + 75,000,000	3.5¢
A.T. + 75,000,001	to	A.T. + 110,000,000	4.0¢
A.T. + 110,000,001	to	A.T. + 145,000,000	4.5¢
A.T. + 145,000,001	and above		5.0¢

HSBC NORTH AMERICA HOLDINGS INC. NSA
RATE SCHEDULE 613A

(FIRST YEAR OF AGREEMENT)

Volume Block	Incremental Discounts
615,000,001 to 655,000,000	2.5¢
655,000,001 to 675,000,000	3.0¢
675,000,001 to 695,000,000	3.5¢
695,000,001 to 715,000,000	4.0¢
715,000,001 to 735,000,000	4.5¢
735,000,001 and above	5.0¢

HSBC NORTH AMERICA HOLDINGS INC. NSA
RATE SCHEDULE 613B

(SECOND YEAR OF AGREEMENT)

Volume Block	Incremental Discounts
725,000,001 to 765,000,000	2.5¢
765,000,001 to 785,000,000	3.0¢
785,000,001 to 805,000,000	3.5¢
805,000,001 to 825,000,000	4.0¢
825,000,001 to 845,000,000	4.5¢
845,000,001 and above	5.0¢

HSBC NORTH AMERICA HOLDINGS INC. NSA
RATE SCHEDULE 613C

(THIRD YEAR OF AGREEMENT)

Volume Block	Incremental Discounts
810,000,001 to 850,000,000	2.5¢
850,000,001 to 870,000,000	3.0¢
870,000,001 to 890,000,000	3.5¢
890,000,001 to 910,000,000	4.0¢
910,000,001 to 930,000,000	4.5¢
930,000,001 and above	5.0¢

HSBC NORTH AMERICA HOLDINGS INC. NSA
RATE SCHEDULE 613D
FOR ADJUSTED THRESHOLDS (A.T.)

Volume Block	Incremental Discounts
A.T. to A.T. + 40,000,000	2.5¢
A.T. + 40,000,001 to A.T. + 60,000,000	3.0¢
A.T. + 60,000,001 to A.T. + 80,000,000	3.5¢
A.T. + 80,000,001 to A.T. + 100,000,000	4.0¢
A.T. + 100,000,001 to A.T. + 120,000,000	4.5¢
A.T. + 120,000,001 and above	5.0¢

BOOKSPAN NSA
RATE SCHEDULE 620A

(FIRST YEAR OF AGREEMENT)

Volume Block[1]	Incremental Discounts
87,000,001 to 120,000,000	2.0¢
120,000,001 to 150,000,000	3.0¢

[1] Volume block beginning and ending thresholds are subject to adjustment for mergers or acquisitions by adding the new entities' volume in accordance with DMCS § 620.24.

BOOKSPAN NSA
RATE SCHEDULE 620B

(SECOND YEAR OF AGREEMENT)

Volume Block[1]	Incremental Discounts
85,000,001 to 110,000,000	2.0¢
110,000,001 to 150,000,000	3.0¢

[1] Volume block beginning and ending thresholds are subject to adjustment for mergers or acquisitions by adding the new entities' volume in accordance with DMCS § 620.24.

BOOKSPAN NSA
RATE SCHEDULE 620C

(THIRD YEAR OF AGREEMENT)

Volume Block[1]	Incremental Discounts
94,000,001 to 100,000,000	1.0¢
100,000,001 to 120,000,000	2.0¢
120,000,001 to 150,000,000	3.0¢

[1] Volume block beginning and ending thresholds are subject to adjustment for mergers or acquisitions by adding the new entities' volume in accordance with DMCS § 620.24.

FEE SCHEDULES

FEE SCHEDULE 911

ADDRESS CORRECTIONS

Description	Fee
Manual correction, each	$0.50
Electronic correction, each	
First-Class Mail	0.06
Other	0.25
Automated correction (Letters Only)	
First-Class Mail	
First two notices, each[1]	0.00
Additional notices, each[2]	0.05
Standard Mail	
First two notices, each[1]	0.02
Additional notices, each[2]	0.15

SCHEDULE 911 NOTES

1. For a given address change.
2. After the second notice for a given address change.

FEE SCHEDULE 912

ZIP CODING OF MAILING LISTS

Description	Fee
Per 1,000 addresses, or fraction	$110.00

CORRECTION OF MAILING LISTS

Description	Fee
Per submitted address	$0.33
Minimum charge per list (30 items)	9.90

ADDRESS CHANGES FOR ELECTION BOARDS AND REGISTRATION COMMISSIONS

Description	Fee
Per change of address	$0.32

SEQUENCING OF ADDRESS CARDS

Description	Fee
Per correction	$0.33
Insertion of blanks	0.00

SCHEDULE 912 NOTES

1. When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the routes involved.

FEE SCHEDULE 921

POST OFFICE BOXES AND CALLER SERVICE

I. Post Office Boxes

Semi-annual Box Fees

	Fee Group							
Box Size	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**E**
1	$ 42.00	$ 35.00	$ 28.00	$ 20.00	$ 18.00	$ 13.00	$ 10.00	$ 0.00
2	64.00	54.00	46.00	34.00	26.00	20.00	16.00	0.00
3	118.00	94.00	84.00	52.00	48.00	35.00	28.00	0.00
4	242.00	184.00	150.00	102.00	88.00	62.00	48.00	0.00
5	390.00	326.00	250.00	196.00	148.00	110.00	86.00	0.00

Key Duplication and Lock Charges

Description	Fee
Key duplication or replacement	$ 6.00
Post office box lock replacement	14.00

II. Caller Service

Semi-annual Caller Service Fees	
Group 1	630.00
Group 2	550.00
Group 3	485.00
Group 4	475.00
Group 5	465.00
Group 6	415.00
Group 7	370.00
Annual Call Number Reservation Fee	38.00

SCHEDULE 921 NOTES

1. When the Postal Service determines not to provide carrier delivery to a customer's physical address or business location that constitutes a potential carrier delivery point, as defined by the Postal Service, that customer becomes eligible for one post office box at the Group E fee.
2. Box Size 1 = under 296 cubic inches; 2 = 296-499 cubic inches; 3 = 500-999 cubic inches; 4 = 1000-1999 cubic inches; 5 = 2000 cubic inches and larger.

FEE SCHEDULE 931

BUSINESS REPLY MAIL

Description	Fee
Regular (no account maintenance fee)	
Permit fee (per year)	$175.00
Per-piece charge	0.70
Regular (with account maintenance fee)	
Permit fee (per year)	175.00
Account maintenance fee (per year)	550.00
Per-piece charge	0.08
Qualified Business Reply Mail, low-volume	
Permit fee (per year)	175.00
Account maintenance fee (per year)	550.00
Per-piece charge, basic	0.05
Qualified Business Reply Mail, high-volume	
Permit fee (per year)	175.00
Account maintenance fee (per year)	550.00
Quarterly fee	1,800.00
Per-piece charge, high-volume	0.005
Bulk Weight Averaged	
Permit fee (per year)	175.00
Account maintenance fee (per year)	550.00
Per-piece charge, bulk weight averaged	0.011
Monthly maintenance fee	900.00

FEE SCHEDULE 932

MERCHANDISE RETURN SERVICE

Description	Fee
Permit fee (per year)	$175.00
Account maintenance fee (per year)	550.00
Per-piece charge	0.00

FEE SCHEDULE 933

RESERVED

FEE SCHEDULE 934

RESERVED

FEE SCHEDULE 935

BULK PARCEL RETURN SERVICE

Description	Fee
Permit fee (per year)	$175.00
Account maintenance fee (per year)	550.00
Per-piece charge	2.10

FEE SCHEDULE 936

SHIPPER PAID FORWARDING

Description	Fee
Account maintenance fee (per year)	$550.00

FEE SCHEDULE 937

PREMIUM FORWARDING SERVICE

Description	Fee
Enrollment fee	$10.00
Weekly reshipment fee	$ 2.85

SCHEDULE 937 NOTE

1. The weekly reshipment fee is in addition to the postage applicable to a 3-pound parcel mailed to zone 6, as stated in Rate Schedule 223 (Priority Mail).

FEE SCHEDULE 941

CERTIFIED MAIL

Description	Fee
Fee per piece, in addition to postage	$2.65

FEE SCHEDULE 942

REGISTERED MAIL

Declared Value	Fee (in addition to postage)	
$ 0.00	$9.50	
0.01 to 100	10.15	
100.01 to 500	11.25	
500.01 to 1,000	12.35	
1,000.01 to 2,000	13.45	
2,000.01 to 3,000	14.55	
3,000.01 to 4,000	15.65	
4,000.01 to 5,000	16.75	
5,000.01 to 6,000	17.85	
6,000.01 to 7,000	18.95	
7,000.01 to 8,000	20.05	
8,000.01 to 9,000	21.15	
9,000.01 to 10,000	22.25	
10,000.01 to 11,000	23.35	
11,000.01 to 12,000	24.45	
12,000.01 to 13,000	25.55	
13,000.01 to 14,000	26.65	
14,000.01 to 15,000	27.75	
15,000.01 to 16,000	28.85	
16,000.01 to 17,000	29.95	
17,000.01 to 18,000	31.05	
18,000.01 to 19,000	32.15	
19,000.01 to 20,000	33.25	
20,000.01 to 21,000	34.35	
21,000.01 to 22,000	35.45	
22,000.01 to 23,000	36.55	
23,000.01 to 24,000	37.65	
24,000.01 to 25,000	38.75	
25,000.01 to $15 million	38.75	plus $1.10 handling charge for each $1,000 or fraction thereof over $25,000.00
Over $15 million	16,511.25	plus amount determined by the Postal Service based on weight, space, and value

SCHEDULE 942 NOTES

1. Articles with a declared value of more than $25,000 can be registered, but compensation for loss or damage is limited to $25,000.

FEE SCHEDULE 943

INSURANCE

Description	Fee
Express Mail Insurance	
Merchandise coverage	
$0.01 to 100.00	$0.00
100.01 to 200.00	0.75
200.01 to 500.00	2.10
500.01 to 5,000.00	$2.10 plus $1.35 for each $500 or fraction thereof over $500.00
Document reconstruction coverage	
$0.00 to 100.00	0.00
Regular Insurance	
Amount of coverage	
$0.01 to 50.00	1.65
50.01 to 100.00	2.05
100.01 to 200.00	2.45
200.01 to 300.00	4.60
300.01 to 5,000.00	$4.60 plus $.90 for each $100 or fraction thereof over $300.00
Bulk Insurance	
Amount of coverage	
$0.01 to 50.00	0.85
50.01 to 100.00	1.25
100.01 to 200.00	1.65
200.01 to 300.00	3.80
300.01 to 5,000.00	$3.80 plus $.90 for each $100 or fraction thereof over $300.00

SCHEDULE 943 NOTES

1. Fees for bulk insurance represent a discount of $0.80.

FEE SCHEDULE 944

COLLECT ON DELIVERY

Description			Fee
Amount to be collected, or Insurance Coverage Desired			
$ 0.01	to	$ 50	$5.10
50.01	to	100	6.25
100.01	to	200	7.40
200.01	to	300	8.55
300.01	to	400	9.70
400.01	to	500	10.85
500.01	to	600	12.00
600.01	to	700	13.15
700.01	to	800	14.30
800.01	to	900	15.45
900.01	to	1000	16.60
Notice of nondelivery			3.40
Alteration of COD charges			3.40
Designation of new addressee			3.40
Registered COD			4.55

FEE SCHEDULE 945

RETURN RECEIPTS

Description	Fee
Return Receipt	
Requested at time of mailing	
Original signature	$2.15
Copy of signature (electronic)	0.85
Requested after mailing	3.80
Return Receipt for Merchandise	
Requested at time of mailing	$3.50
Delivery record	3.80

FEE SCHEDULE 946

RESTRICTED DELIVERY

Description	Fee
Per piece	$4.10

FEE SCHEDULE 947

CERTIFICATE OF MAILING

Description	Fee
Individual Pieces	
Original certificate of mailing for listed pieces of all classes of ordinary mail	$1.05
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	0.35
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	1.05
Bulk	
Identical pieces of First-Class and Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
Up to 1,000 pieces (one certificate for total number)	5.50
Each additional 1,000 pieces or fraction	0.60
Duplicate copy	1.05

FEE SCHEDULE 948

DELIVERY CONFIRMATION

Description	Fee
First-Class Mail Letters and Sealed Parcels	
Electronic	$0.18
Retail	0.75
Priority Mail	
Electronic	0.00
Retail	0.65
Standard Mail	
Electronic	0.18
Package Services Parcel Select	
Electronic	0.00
Other Package Services	
Electronic	0.18
Retail	0.75

FEE SCHEDULE 949

SIGNATURE CONFIRMATION

Description	Fee
First-Class Mail Letters and Sealed Parcels	
Electronic	$1.75
Retail	2.10
Priority Mail	
Electronic	1.75
Retail	2.10
Package Services	
Electronic	1.75
Retail	2.10

FEE SCHEDULE 951

PARCEL AIR LIFT

Description	Fee
For pieces weighing:	
Not more than 2 pounds	$0.50
Over 2 but not more than 3 pounds	$1.00
Over 3 but not more than 4 pounds	$1.45
Over 4 but not more than 30 pounds	$2.00

FEE SCHEDULE 952

SPECIAL HANDLING

Description	Fee
For pieces weighing:	
Not more than 10 pounds	$6.90
More than 10 pounds	9.60

FEE SCHEDULE 961

STAMPED ENVELOPES

Description	Fee
Plain stamped envelopes	
Basic, size 6-3/4, each	$0.09
Basic, size 6-3/4, 500	14.50
Basic, over size 6-3/4, each	0.09
Basic, over size 6-3/4, 500	16.50
Personalized stamped envelopes	
Basic, size 6-3/4, 50	4.25
Basic, size 6-3/4, 500	20.00
Basic, over size 6-3/4, 50	4.25
Basic, over size 6-3/4, 500	23.00

FEE SCHEDULE 962

STAMPED CARDS

Description	Fee
Single card	$0.02
Double reply-paid card	0.04
Sheet of 40 cards (uncut)	0.80

FEE SCHEDULE 971

MONEY ORDERS

Description	Fee
Domestic ($0.01 to $500.00)	$1.05
Domestic ($500.01 to $1,000.00)	1.50
APO/FPO ($0.01 to $1,000.00)	0.30
Inquiry, including a copy of paid money order	5.00

FEE SCHEDULE 991

CONFIRM

Description	Fee
Silver	
Subscription Fee (3 months)	$2,000.00
Additional Scans (block of 2 million)	500.00
Gold	
Subscription Fee (12 months)	6,000.00
Additional Scans (block of 6 million)	750.00
Platinum	
Subscription Fee (12 months)	19,500.00
Additional ID Codes	
Annual	2,000.00
Quarterly	750.00

FEE SCHEDULE 1000

MISCELLANEOUS FEES

Description	Fee
First-Class Presorted Mailing Fee (per year)	$175.00
Standard Mail Mailing Fee (per year)	175.00
Periodicals	
A. Original Entry	500.00
B. Additional Entry	75.00
C. Re-entry	55.00
D. Registration for News Agents	45.00
Parcel Select Mailing Fee (per year)	175.00
Bound Printed Matter: Destination Entry Mailing Fee (per year)	175.00
Media Mail Presorted Mailing Fee (per year)	175.00
Library Mail Presorted Mailing Fee (per year)	175.00
Authorization to Use Permit Imprint (one-time only)	175.00
Account Maintenance Fee (per year)	550.00
Permit Fee (per year)	175.00
Parcel Return Service Account Maintenance Fee (per year)	550.00
Parcel Return Service Permit Fee (per year)	175.00
Change of Address Service	1.00

CHANGES TO THE DOMESTIC MAIL CLASSIFICATION SCHEDULE

The Domestic Mail Classification Schedule (DMCS) is published here in legislative format. Additions are underlined and deletions appear in brackets.

EXPEDITED MAIL
CLASSIFICATION SCHEDULE

110 DEFINITION

Expedited Mail is mail matter entered as Express Mail under the provisions of this Schedule. Any matter eligible for mailing may, at the option of the mailer, be mailed as Express Mail. Insurance is either included in Express Mail postage or is available for an additional charge, depending on the value and nature of the item sent by Express Mail.

120 DESCRIPTION OF SERVICES

121 Same Day Airport Service

Same Day Airport service is available between designated airport mail facilities.

122 Custom Designed Service

122.1 **General.** Custom Designed service is available between designated postal facilities or other designated locations for mailable matter tendered under a service agreement between the Postal Service and the mailer. Service under a service agreement shall be offered in a manner consistent with 39 U.S.C. 403(c).

122.2 **Service Agreement.** A service agreement shall set forth the following:

a. The scheduled place for each shipment tendered for service to each specific destination;

b. Scheduled place for claim, or delivery, at destination for each scheduled shipment;

c. Scheduled time of day for tender at origin and for claim or delivery at destination.

122.3 **Pickup and Delivery.** Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided under terms and conditions as specified by the Postal Service.

122.4 **Commencement of Service Agreement.** Service provided pursuant to a service agreement shall commence not more than 10 days after the signed service agreement is tendered to the Postal Service.

122.5 **Termination of Service Agreement**

122.51 **Termination by Postal Service.** Express Mail service provided pursuant to a service agreement may be terminated by the Postal Service upon 10 days prior written notice to the mailer if:

a. Service cannot be provided for reasons beyond the control of the Postal Service or because of changes in Postal Service facilities or operations, or

b. The mailer fails to adhere to the terms of the service agreement or this schedule.

122.52 **Termination by Mailers.** The mailer may terminate a service agreement, for any reason, by notice to the Postal Service.

123 **Next Day Service and Second Day Service**

123.1 **Availability of Services.** Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for delivery on the second day or, in certain circumstances, the second delivery day, as specified by the Postal Service. For purposes of this schedule, the "second delivery day" is the next delivery day following the second day.

123.2 **Pickup Service.** Pickup service is available for Next Day and Second Day Services under terms and conditions as specified by the Postal Service. Service shall be offered in a manner consistent with 39 U.S.C. 403(c).

130 **PHYSICAL LIMITATIONS**

Express Mail may not exceed 70 pounds or 108 inches in length and girth combined.

140 POSTAGE AND PREPARATION

Except as provided in Rate Schedules 121, 122 and 123, postage on Express Mail is charged on each piece. For shipments tendered in Express Mail pouches under a service agreement, each pouch is a piece.

150 DEPOSIT AND DELIVERY

151 Deposit

Express Mail must be deposited at places designated by the Postal Service.

152 Receipt

A receipt showing the time and date of mailing will be provided to the mailer upon acceptance of Express Mail by the Postal Service. This receipt serves as evidence of mailing.

153 Service

Express Mail service provides a high speed, high reliability service. Same Day Airport Express Mail will be dispatched on the next available transportation to the destination airport mail facility. Custom Designed Express Mail will be available for claim or delivery as specified in the service agreement.

154 Forwarding and Return

When Express Mail is returned, or forwarded, as specified by the Postal Service, there will be no additional charge.

160 ANCILLARY SERVICES

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Service	Schedule
a.	Address correction	911
b.	Return receipts	945
c.	COD	944
d.	Express Mail Insurance	943

170 RATES AND FEES

The rates for Express Mail are set forth in the following rate schedules:

		Schedule
a.	Same Day Airport	121
b.	Custom Designed	122
c.	Next Day Post Office-to-Post Office	123
d.	Second Day Post Office-to-Post Office	123
e.	Next Day Post Office-to-Addressee	123
f.	Second Day Post Office-to-Addressee	123

180 REFUNDS

181 Procedure

Claims for refunds of postage must be filed within the period of time and under terms and conditions specified by the Postal Service.

182 Availability

182.1 **Same Day Airport.** Except as provided in 182.5, the Postal Service will refund the postage for Same Day Airport Express Mail not available for claim by the time specified.

182.2 **Custom Designed.** Except where a service agreement provides for claim, or delivery, of Custom Designed Express Mail more than 24 hours after scheduled tender at point of origin, the Postal Service will refund postage for such mail not available for claim, or not delivered, within 24 hours of mailing, except as provided in 182.5.

182.3 **Next Day.** Except as provided in 182.5, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) specified by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service; <u>or</u>

b. By 3:00 p.m., or earlier time(s) specified by the Postal Service, of the next delivery day in the case of Post Office-to-Addressee service.

182.4 **Second Day.** Except as provided in 182.5, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) specified by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service; or

b. By 3:00 p.m., or earlier time(s) specified by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

182.5 **Limitations**

182.51 Refunds may not be available if delivery was attempted within the times required for the specific service, or if the delay was caused by:

a. proper detention for law enforcement purposes;

b. strike or work stoppage;

c. late deposit of shipment, forwarding, return, incorrect address, or incorrect ZIP code;

d. delay or cancellation of flights;

e. governmental action beyond the control of the Postal Service or air carriers;

f. war, insurrection, or civil disturbance;

g. breakdowns of a substantial portion of the USPS transportation network resulting from events or factors outside the control of the Postal Service; or

h. acts of God.

FIRST-CLASS MAIL
CLASSIFICATION SCHEDULE

210 DEFINITION

Any matter eligible for mailing, except Regular and Nonprofit Presort category mail entered as Customized Market Mail under sections 321.22 and 323.22, may, at the option of the mailer, be mailed as First-Class Mail. The following must be mailed as First-Class Mail, unless mailed as Express Mail or exempt under title 39, United States Code, or except as authorized under sections 344.12, 344.23 and 443:

a. Mail sealed against postal inspection as set forth in section 5000;

b. Matter wholly or partially in handwriting or typewriting except as specifically permitted by sections 312, 313, 520, 544.2, and 446;

c. Matter having the character of actual and personal correspondence except as specifically permitted by sections 312, 313, 520, 544.2, and 446; and

d. Bills and statements of account.

220 DESCRIPTION OF SUBCLASSES

221 Letters and Sealed Parcels Subclass

221.1 **General.** The Letters and Sealed Parcels subclass consists of First-Class Mail weighing 13 ounces or less that is not mailed under section 222 or 223.

221.2 **Regular Rate Categories.** The regular rate categories consist of Letters and Sealed Parcels subclass mail not mailed under section 221.3 or 221.4.

221.21 **Single-Piece Rate Category.** The single-piece rate category applies to regular rate Letters and Sealed Parcels subclass mail not mailed under section 221.22 or 221.24.

221.211 **Letters.** The letter rates apply to pieces that:

a. Do not exceed 3.5 ounces in weight;

b. Exhibit a length between 5.0 and 11.5 inches;

c. Exhibit a height between 3.5 and 6.125 inches; and

d. Exhibit a thickness between 0.007 and 0.25 inches.

221.212 **Flats.** The flat rates apply to pieces that:

a. Exceed 3.5 ounces in weight, but otherwise meet the requirements specified in section 221.211 for letters; or

b. Exhibit the following dimensions:

i. A length more than 11.5 inches, or a height more than 6.125 inches, or a thickness more than 0.25 inches; and

ii. A length not more than 15 inches, or a height not more than 12 inches, or a thickness not more than 0.75 inches.

221.213 **Parcels.** The parcel rates apply to single-piece rate category pieces that are not eligible for letter or flat rates as defined in sections 221.211 and 221.212.

221.22 **Presort Rate Category.** The presort rate category applies to Letters and Sealed Parcels subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; and

c. Meets the addressing and other preparation requirements specified by the Postal Service.

221.221 **Letters.** The letter rates apply to pieces that:

a. Do not exceed 3.5 ounces in weight;

b. Exhibit a length between 5.0 and 11.5 inches;

c. Exhibit a height between 3.5 and 6.125 inches; and

d. Exhibit a thickness between 0.007 and 0.25 inches.

221.222 **Flats.** The flat rates apply to pieces that:

a. Exceed 3.5 ounces in weight, but otherwise meet the requirements specified in section 221.221 for letters; or

b. Exhibit the following dimensions:

i. A length more than 11.5 inches, or a height more than 6.125 inches, or a thickness more than 0.25 inches; and

ii. A length not more than 15 inches, or a height not more than 12 inches, or a thickness not more than 0.75 inches.

221.22[1]3 Repositionable Notes. Repositionable Notes may be attached to the exterior of letter-size and flat-size presort rate category mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 3 to Rate Schedule 221.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such request.

b. If the Postal Service determines not to file such request, this provision expires on such date as [specifiefd] specified by the Postal Service, but no later than April 3, 2007.

221.23 ***Reserved***

221.24 Qualified Business Reply Mail Rate Category. The qualified business reply mail rate category applies to Letters and Sealed Parcels subclass mail that:

a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including "correction" digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the letter machinability and other preparation requirements specified by the Postal Service.

221.25 ***Reserved***

221.26 **Nonmachinable Surcharge.** Single-piece and presort letter-shaped mail as defined in section 221.211 or 221.221 [weighing one ounce or less] is subject to a surcharge if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive; or

b. It does not meet letter machinability requirements as specified by the Postal Service.

[221.26 **Nonmachinable Surcharge.** Regular rate category Letters and Sealed Parcels subclass mail is subject to a surcharge if it is nonmachinable mail, as defined in section 232.]

[221.27 **Presort Discount for Pieces Weighing More Than Two Ounces.** Presort rate category Letters and Sealed Parcels subclass mail is eligible for an additional presort discount on each piece weighing more than two ounces.]

221.3 **Automation Rate Categories — Letters and Flats**

221.31 **General.** The automation rate categories consist of Letters and Sealed Parcels subclass mail weighing 13 ounces or less that:

a. Is presorted, marked, and presented as specified by the Postal Service;

b. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service; and

c. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

221.32 **Letter Categories**

221.321 **General.** The letter rates apply to pieces that:

a. Do not exceed 3.5 ounces in weight;

b. Exhibit a length between 5.0 and 11.5 inches;

c. Exhibit a height between 3.5 and 6.125 inches; and

d. Exhibit a thickness between 0.007 and 0.25 inches.

221.32[1]2 Mixed AADC Rate Category. The Mixed AADC rate category applies to letter-size automation rate category mail not mailed under section [221.322,] 221.323, 221.324, or 221.325.

221.32[2]3 AADC Rate Category. The AADC rate category applies to letter-size automation rate category mail presorted to automated area distribution center destinations as specified by the Postal Service.

221.32[3]4 Three-Digit Rate Category. The three-digit rate category applies to letter-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

221.32[4]5 Five-Digit Rate Category. The five-digit rate category applies to letter-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[221.325 Carrier Route Rate Category. The carrier route rate category applies to letter-size automation rate category mail presorted to carrier routes. It is available only for those carrier routes specified by the Postal Service.]

221.326 Repositionable Notes. Repositionable Notes may be attached to the exterior of automation letter rate category mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 3 to Rate Schedule 221.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such request.

b. If the Postal Service determines not to file such request, this provision expires on such date as specified by the Postal Service, but no later than April 3, 2007.

221.33 Flats Categories

221.331 General. The flat rates apply to pieces that exhibit:

a. A length more than 11.5 inches, or a height more than 6.125 inches, or a thickness more than 0.25 inches; and

b. A length not more than 15 inches, or a height not more than 12 inches, or a thickness not more than 0.75 inches.

221.33[1]2 Mixed ADC Flats Rate Category. The Mixed ADC flats rate category applies to flat-size automation rate category mail not mailed under section 221.33[2]3, 221.33[3]4, or 221.33[4]5.

221.33[2]3 ADC Flats Rate Category. The ADC flats rate category applies to flat-size automation rate category mail presorted to area distribution center destinations as specified by the Postal Service.

221.33[3]4 Three-Digit Flats Rate Category. The three-digit flats rate category applies to flat-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

221.33[4]5 Five-Digit Flats Rate Category. The five-digit flats rate category applies to flat-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[221.335 Nonmachinable Surcharge. Flat-size automation rate category pieces are subject to a surcharge if they are nonmachinable mail, as defined in section 232.]

221.336 Repositionable Notes. Repositionable Notes may be attached to the exterior of automation flats rate category mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 3 to Rate Schedule 221.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such[requeset] request.

b. If the Postal Service determines not to file such request, this provision expires on such date as specified by the Postal Service, but no later than April 3, 2007.

[221.34 **Presort Discount for Pieces Weighing More Than Two Ounces.** Presorted automation rate category mail is eligible for an additional presort discount on each piece weighing more than two ounces.]

221.4 Business Parcels Categories.

221.41 General. The business parcels categories apply to Letters and Sealed Parcels subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service;

c. Exhibit lengths between 3.5 and 18.0 inches;

d. Exhibit heights between 3.0 and 15.0 inches;

e. Exhibit thicknesses between 0.05 and 22.0 inches; and

f. Meets the addressing and other preparation requirements as specified by the Postal Service.

221.42 Single-Piece Rate. The single-piece rate category as defined in 221.213 applies to pieces not qualifying under section 221.43, 221.44, or 221.45.

221.43 ADC Parcels Rate Category. The ADC parcels rate category applies to parcel rate category mail presorted to area distribution center destinations as specified by the Postal Service.

221.44 Three-Digit Parcels Rate Category. The three-digit parcels rate category applies to parcels rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

221.45 Five-Digit Parcels Rate Category. The five-digit parcels rate category applies to parcels rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

221.46 Nonbarcoded and Nonmachinable Surcharge. Parcels rate category pieces qualifying for sections 221.43 and 221.44 are subject to a surcharge

if non-barcoded, less than 2 ounces, or nonmachinable as specified by the Postal Service.

222 Cards Subclass

222.1 Definition

222.11 Cards. The Cards subclass consists of Stamped Cards, defined in section 962.1, and postcards. A postcard is a privately printed mailing card for the transmission of messages. To be eligible to be mailed as a First-Class Mail postcard, a card must be of uniform thickness, prepared as specified by the Postal Service, and must not exceed any of the following dimensions:

a. 6 inches in length;

b. 4 1/4 inches in [width] height; or

c. 0.016 inch in thickness.

222.12 Double Cards. Double Stamped Cards or double postcards may be mailed as Stamped Cards or postcards. Double Stamped Cards are defined in section 962.1. A double postcard consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single postcard.

222.2 ***Reserved***

222.3 Regular Rate Categories

222.31 Single-Piece Rate Category. The single-piece rate category applies to regular rate Cards subclass mail not mailed under section 222.32 or 222.34.

222.32 Presort Rate Category. The presort rate category applies to Cards subclass mail that:

a. Is prepared in a mailing of at least 500 pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; and

c. Meets the addressing and other preparation requirements specified by the Postal Service.

222.33 ***Reserved***

222.34 **Qualified Business Reply Mail Rate Category.** The qualified business reply mail rate category applies to Cards subclass mail that:

a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including "correction" digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the card machinability and other preparation requirements specified by the Postal Service.

222.4 **Automation Rate Categories**

222.41 **General.** The automation rate categories consist of Cards subclass mail that:

a. Is presorted, marked, and presented as specified by the Postal Service;

b. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service; and

c. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

222.42 **Mixed AADC Rate Category.** The Mixed AADC rate category applies to automation rate category cards not mailed under section 222.43, 222.44, <u>or</u> 222.45[, or 222.46].

222.43 **AADC Rate Category.** The AADC rate category applies to automation rate category cards presorted to automated area distribution center destinations as specified by the Postal Service.

222.44 **Three-Digit Rate Category.** The three-digit rate category applies to automation rate category cards presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

222.45 **Five-Digit Rate Category.** The five-digit rate category applies to automation rate category cards presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[222.46 **Carrier Route Rate Category.** The carrier route rate category applies to automation rate category cards presorted to carrier routes. It is available only for those carrier routes specified by the Postal Service.]

223 **Priority Mail Subclass**

223.1 **General.** The Priority Mail subclass consists of:

a. First-Class Mail weighing more than 13 ounces; and

b. Any mailable matter which, at the option of the mailer, is mailed for expeditious handling and transportation.

223.2 **Single-Piece Priority Mail Rate Category.** The single-piece Priority Mail rate category applies to Priority Mail subclass mail not mailed under section 223.3.

223.3 ***Reserved***

223.4 **Flat Rate Box**

223.41 **General.** Priority Mail subclass mail sent in a "flat rate" box <u>with an external size of 0.34 cubic feet,</u> provided by the Postal Service, is charged the rate designated in Rate Schedule 223<u>, note 2</u>. [A "flat rate" box with an internal capacity of .34 cubic feet is charged the rate designated in note 5[1] for Rate Schedule 223.]

[223.42 **Duration of the Flat Rate Box Experiment.** The provisions of section 223.4 expire the later of:

a. two years after the implementation date specified by the Postal Service Board of Governors, or

b. if, by the expiration date specified above, a request for the establishment of a permanent Flat Rate Box classification is pending before the Postal Rate Commission, the later of:

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[1] [The expiration of provisions related to Docket No. MC2001-1 eliminated Note 4. Note 5 now becomes Note 4 in this new version.]

(1) three months after the Commission takes action on such proposal under section 3624 of Title 39, or, if applicable,

(2) on the implementation date for a permanent Flat Rate Box classification.]

223.5 **Flat Rate Envelope.** Priority Mail subclass mail sent in a "flat rate" envelope provided by the Postal Service is charged the one-pound rate.

223.6 **Pickup On-Demand [Service].** Pickup On-Demand service is available for Priority Mail subclass mail under terms and conditions specified by the Postal Service.

223.7 **[Bulk] Bulky Parcels.** In zones 1 through 4 including Local), Priority Mail subclass mail weighing less than [15] 20 pounds[, and] but measuring [over] more than 84 inches [combined,] in combined length and girth is charged [a minimum rate equal to that] the applicable rate for a [15-pound] 20-pound parcel [for the zone to which the piece is addressed] (balloon rate).

223.8 **Low-Density Parcels.** In zones 5 through 8, Priority Mail subclass mail exceeding one cubic foot is rated at the actual weight or the dimensional weight, whichever is greater.

a. For box-shaped parcels, the dimensional weight, in pounds, is calculated as the length times the width times the height, all in inches, divided by 194.

b. For irregularly-shaped parcels (not appearing box-shaped), the dimensional weight, in pounds, is calculated as the length times the width times the height at their maximum cross-sections, all in inches, divided by 194, and multiplied by an adjustment factor of 0.785.

230 **PHYSICAL LIMITATIONS**

231 **Size and Weight**

First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined. Additional size and weight limitations apply to individual First-Class Mail subclasses.

[232 Nonmachinable Mail

Letters and Sealed Parcels subclass mail weighing one ounce or less is nonmachinable if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive; it exceeds any of the following dimensions:

   i. 11.5 inches in length;

   ii. 6.125 inches in width; or

   iii. 0.25 inch in thickness; or

b. For letter-sized pieces:

   i. it does not meet the machinability requirements of the Postal Service; or

   ii. manual processing is requested.]

240 POSTAGE AND PREPARATION

Postage on First-Class Mail must be paid as set forth in section 3000. Postage is computed separately on each piece of mail. Pieces not within the same postage rate increment may be mailed at other than a single-piece rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed. All mail mailed at other than a single-piece rate must have postage paid in a manner not requiring cancellation.

241 FOREVER STAMP

Postage for the first ounce of a First-Class Mail single-piece letter may be paid through the application of a Forever Stamp. The Forever Stamp is sold at the prevailing rate for single-piece letters, first ounce, in Rate Schedule 221. Once purchased, the Forever Stamp may be used for first ounce letter postage at any time in the future, regardless of the prevailing rate at the time of use.

250 DEPOSIT AND DELIVERY

251 Deposit

First-Class Mail must be deposited at places and times designated by the Postal Service.

252 Service

First-Class Mail receives expeditious handling and transportation, except that when First-Class Mail is attached to or enclosed with mail of another class, the service of that class applies.

253 Forwarding and Return

First-Class Mail that is undeliverable-as-addressed is forwarded or returned to the sender without additional charge.

260 ANCILLARY SERVICES

The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

Service	Schedule
a. Address Correction	911
b. Business Reply Mail	931
c. Certificates of Mailing	947
d. Certified Mail	941
e. COD	944
f. Insurance	943
g. Registered Mail	942
h. Return Receipt (limited to merchandise sent by Priority Mail)	945
i. Merchandise Return	932
j. Delivery Confirmation (limited to parcel-shaped Letters and Sealed Parcels and Priority Mail)	948
k. Signature Confirmation (limited to parcel-shaped Letters and Sealed Parcels and Priority Mail)	949

270 RATES AND FEES

271 **First-Class Mail.** The rates and fees for First-Class Mail are set forth in the following rate schedules:

	Schedule
a. Letters and Sealed Parcels	221
b. Cards	222
c. Priority Mail	223

272 **Keys and Identification Devices.** Keys, identification cards, identification tags, or similar identification devices that:

a. weigh no more than 2 pounds;

b. are mailed without cover; and

c. bear, contain, or have securely attached the name and address information, as specified by the Postal Service, of a person, organization, or concern, with instructions to return to the address and a statement guaranteeing the payment of postage due on delivery; are subject to the following rates and fees:

i. the applicable single-piece rates in schedules 221 or 223; and

ii. the fee set forth in Fee Schedule 931 for payment of postage due charges if an active business reply mail advance deposit account is not used. [; and

iii. if applicable, the surcharge for nonmachinable mail, as defined in section 232.]

280 AUTHORIZATIONS AND LICENSES

The mailing fee set forth in schedule 1000 must be paid once each year at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of other than single-piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate.

STANDARD MAIL
CLASSIFICATION SCHEDULE

310 DEFINITION

311 General

Any mailable matter weighing less than 16 ounces may be mailed as Standard Mail except:

a. Matter required to be mailed as First-Class Mail;

b. Copies of a publication that is entered as Periodicals class mail, except copies sent by a printer to a publisher, and except copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (currently Periodicals class mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.)

312 Printed Matter

Printed matter, including printed letters which according to internal evidence are being sent in identical terms to several persons, but which do not have the character of actual and personal correspondence, may be mailed as Standard Mail. Printed matter does not lose its character as Standard Mail when the date and name of the addressee and of the sender are written thereon. For the purposes of the Standard Mail Classification Schedule, "printed" does not include reproduction by handwriting or typewriting.

313 Written Additions

Standard Mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article:

a. Marks, numbers, name, or letters descriptive of contents;

b. "Please Do Not Open Until Christmas," or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in printed matter;

g. Manuscripts accompanying related proof sheets, and corrections in proof sheets to include: corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction;

h. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication; or

i. An invoice.

320 DESCRIPTION OF SUBCLASSES

321 Regular Subclass

321.1 General. The Regular subclass consists of Standard Mail that is not mailed under sections 322, 323, or 324. Eligibility for Regular subclass rate categories is based on the size or mail processing shape of the mailpiece as specified by the Postal Service. Mail processing shapes include letter-size mail, flat-size mail, parcels and not flat-machinable (NFM) mail.

321.2 [Presort] Nonautomation Rate Categories

321.21 General. The [presort] nonautomation rate categories apply to Regular subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; [and]

c. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service[.] ; and

d. Is not entered as Customized Market Mail under section 321.5.

[321.22 **Basic Rate Categories.** The basic rate categories apply to presort rate category mail not mailed under section 321.23, and to all mail entered as Customized Market Mail (CMM). CMM must be marked and bear endorsements as specified by the Postal Service, and must meet the preparation, addressing, and acceptance requirements specified by the Postal Service. Notwithstanding section 6020, Customized Market Mail may be nonrectangular in shape. The following size standards apply to Customized Market Mail:

a. Thickness: at least 0.007 inch and no more than 0.75 inch;

b. Length: at least 5 inches and no more than 15 inches, measured for nonrectangular shapes as specified by the Postal Service;

c. Height: at least 3.5 inches and no more than 12 inches, measured for nonrectangular shapes as specified by the Postal Service.]

321.22 **Mixed AADC Rate Category.** The Mixed AADC rate category applies to nonautomation rate category letter-size mail that meets machinability criteria specified by the Postal Service and that is not mailed under section 321.23.

[321.23 **Three- and Five-Digit Rate Categories.** The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.]

321.23 **AADC Rate Category.** The AADC rate category applies to letter-size nonautomation rate category mail that meets machinability criteria specified by the Postal Service and that has been presorted to automated area distribution center destinations as specified by the Postal Service.

321.24 **Mixed ADC Rate Categories.** The Mixed ADC rate categories apply to nonautomation rate category mail not mailed under sections 321.22, 321.23, 321.25, 321.26, 321.27, 321.28 or 321.29.

321.25 **ADC Rate Categories.** The ADC rate categories apply to nonautomation rate category mail that has been presorted to area distribution center destinations as specified by the Postal Service.

321.26 **Three-Digit Rate Categories.** The three-digit rate categories apply to nonautomation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

321.27 **Five-Digit Rate Categories.** The five-digit rate categories apply to nonautomation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

321.28 **Mixed BMC Rate Category.** The Mixed BMC rate category applies to parcel-shaped nonautomation rate category mail that meets machinability criteria specified by the Postal Service and that is not mailed under section 321.29.

321.29 **BMC Rate Category.** The BMC rate category applies to parcel-shaped nonautomation rate category mail that meets machinability criteria specified by the Postal Service and that has been presorted to bulk mail center (or equivalent facility) destinations as specified by the Postal Service.

321.3 Automation Rate Categories

321.31 **General.** The automation rate categories apply to Regular subclass mail that:

a. Is presorted, marked, and presented as specified by the Postal Service;

b. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service; and

c. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

321.32 **Mixed AADC Rate Category.** The Mixed AADC rate category applies to letter-size automation rate category mail not mailed under section 321.33, 321.34, or 321.35.

321.33 **AADC Rate Category.** The AADC rate category applies to letter-size automation rate category mail presorted to automated area distribution center destinations as specified by the Postal Service.

321.34 **Three-Digit Barcoded Rate [Category] Categories.** The three-digit barcoded rate [category applies] categories apply to letter-size or flat-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

321.35 **Five-Digit Barcoded Rate [Category] Categories.** The five-digit barcoded rate [category applies] categories apply to letter-size or flat-size automation

rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

321.36 **[Basic Barcoded Flats] Mixed ADC Rate Category.** The [basic barcoded flats] Mixed ADC rate category applies to flat-size automation rate category mail not mailed under section 321.37.

321.37 **[Three- and Five-Digit Barcoded Flats] ADC Rate Category.** The [three- and five-digit barcoded flats] ADC rate category applies to flat-size automation rate category mail presorted to [single or multiple three- and five-digit ZIP Code] area distribution center destinations as specified by the Postal Service.

321.4 **Destination Entry Discounts.** The destination entry discounts apply to Regular subclass mail, except [Regular Presort category] mail entered as Customized Market Mail under section [321.22] 321.5, prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), [or] sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

[**321.5** **Residual Shape Surcharge.** Regular subclass mail is subject to a surcharge if it is entered as Customized Market Mail under section 321.22 or is prepared as a parcel or if it is not letter or flat shaped.]

321.5 **Customized Market Mail (CMM).** CMM must be marked and bear endorsements as specified by the Postal Service, and must meet the preparation, addressing, and acceptance requirements specified by the Postal Service. Notwithstanding section 6020, Customized Market Mail may be nonrectangular in shape. The following size standards apply to Customized Market Mail:

a. Thickness: at least 0.007 inch and no more than 0.75 inch;

b. Length: at least 5 inches and no more than 15 inches, measured for nonrectangular shapes as specified by the Postal Service;

c. Height: at least 3.5 inches and no more than 12 inches, measured for nonrectangular shapes as specified by the Postal Service; and

d. Weight: not to exceed the maximum weight for CMM specified by the Postal Service.

321.6 **[Barcode Discount] Non-barcoded Surcharge.** [The barcode discount applies to Regular Subclass mail, except Regular Presort category mail entered as Customized Market Mail under section 321.22, that is subject to the residual shape surcharge in 321.5, is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.] Regular nonautomation mailpieces not qualifying for letter-size or flat-size rate categories and that do not bear a barcode specified by the Postal Service are subject to a Non-barcoded Surcharge. The surcharge will not apply to pieces sorted to 5-digit ZIP Codes.

321.7 **Nonmachinable [Surcharge] Rate Categories.** The nonmachinable [surcharge applies] rate categories apply to Regular [presort] nonautomation category letter-size[d] pieces and pieces to which the parcel rate categories apply, [except Regular Presort category mail entered as Customized Market Mail under section 321.22, (i)] that do not meet the machinability requirements specified by the Postal Service[; or (ii) for which manual processing is requested].

321.8 **Repositionable Notes.** Repositionable Notes may be attached to the exterior of letter-size or flat-size Regular subclass mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 6 to Rate Schedule 321A or note 4 to Rate Schedule 321B.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such request.

b. If the Postal Service determines not to file such request, this provision expires on such date as specified by the Postal Service, but no later than April 3, 2007.

321.9 **Standard Mail Forwarding.** As described in section 353, undeliverable-as-addressed Standard Mail Regular subclass mail that is forwarded on request of the mailer is charged the appropriate rate shown in note 4 to Rate Schedule 321A or note 5 to Rate Schedule 321B. Mail for which Standard Mail Forwarding is purchased must meet preparation requirements and bear endorsements as specified by the Postal Service. Payment for Standard

Mail Forwarding is made through an advance deposit account, or as specified by the Postal Service.

322 Enhanced Carrier Route Subclass

322.1 Definition. The Enhanced Carrier Route subclass consists of Standard Mail [weighing less than 16 ounces] that is not mailed under section 321, 323, or 324, and that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is prepared, marked, and presented as specified by the Postal Service;

c. Is presorted to carrier routes as specified by the Postal Service;

d. Is sequenced as specified by the Postal Service;

e. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service; and

f. For high-density and saturation category letters, bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service.

Eligibility for Enhanced Carrier Route subclass rate categories is based on the size or mail processing shape of the mailpiece as specified by the Postal Service. Mail processing shapes include letter-size mail, flat-size mail, parcels and not flat-machinable (NFM) mail.

322.2 Basic Rate Category. The basic rate category applies to Enhanced Carrier Route subclass mail not mailed under section 322.3[,] or 322.4 [or 322.5].

[322.3 Basic Pre-Barcoded Rate Category. The basic pre-barcoded rate category applies to letter-size Enhanced Carrier Route subclass mail which bears a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.]

322.[4]3 High Density Rate Category. The high density rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements specified by the Postal Service.

High density rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.

322.[5]4 **Saturation Rate Category.** The saturation rate category applies to Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements specified by the Postal Service. Saturation rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.

322.[6]5 **Destination Entry Discounts.** Destination entry discounts apply to Enhanced Carrier Route subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service. Letter-size mail is not eligible for the DDU discount.

[322.7 **Residual Shape Surcharge.** Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.]

322.6 **DAL Surcharge.** Flat-shaped and parcel-shaped Enhanced Carrier Route subclass mail are subject to a per-piece surcharge if they are addressed using a detached address label (DAL).

322.7 **Standard Mail Forwarding.** As described in section 353, undeliverable-as-addressed Standard Mail Enhanced Carrier Route subclass mail that is forwarded on request of the mailer is charged the appropriate rate shown in note 8 to Rate Schedule 322. Mail for which Standard Mail Forwarding is purchased must meet preparation requirements and bear endorsements as specified by the Postal Service. Payment for Standard Mail Forwarding is made through an advance deposit account, or as specified by the Postal Service.

322.8 **Repositionable Notes.** Repositionable Notes may be attached to the exterior of letter-size or flat-size Enhanced Carrier Route subclass mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 6 to Rate Schedule 322.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such request.

b. If the Postal Service determines not to file such request, this provision expires on such date as specified by the Postal Service, but no later than April 3, 2007.

323 Nonprofit Regular Subclass

323.1 General. The Nonprofit Regular subclass consists of Standard Mail weighing less than 16 ounces that is not mailed under section 321, 322, or 324, and that is mailed by authorized nonprofit organizations or associations of the following types:

a. Religious, as defined in section 1009;

b. Educational, as defined in section 1009;

c. Scientific, as defined in section 1009;

d. Philanthropic, as defined in section 1009;

e. Agricultural, as defined in section 1009;

f. Labor, as defined in section 1009;

g. Veterans', as defined in section 1009;

h. Fraternal, as defined in section 1009;

i. Qualified political committees; or

j. State or local voting registration officials when making a mailing required or authorized by the National Voter Registration Act of 1993.

Eligibility for Nonprofit Regular subclass rate categories is based on the size or mail processing shape of the mailpiece as specified by the Postal Service. Mail processing shapes include letter-size mail, flat-size mail, parcels and not flat-machinable (NFM) mail.

323.11 **Qualified Political Committees.** The term "qualified political committee" means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee:

a. The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and

b. The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.

323.12 **Limitation on Authorization.** An organization authorized to mail at the nonprofit Standard rates for qualified nonprofit organizations may mail only its own matter at these rates. An organization may not delegate or lend the use of its permit to mail at nonprofit Standard rates to any other person, organization or association.

323.2 **[Presort] <u>Nonautomation</u> Rate Categories**

323.21 **General.** The [presort] <u>nonautomation</u> rate categories apply to Nonprofit <u>Regular</u> subclass mail that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is presorted, marked, and presented as specified by the Postal Service; [and]

c. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service[.]; <u>and</u>

<u>d. Is not entered as Customized Market Mail under section 323.5.</u>

[323.22 **Basic Rate Categories.** The basic rate categories apply to presort rate category mail not mailed under section 322.23, and to all mail entered as Customized Market Mail, as defined in section 321.22.]

[323.23 **Three- and Five-Digit Rate Categories.** The three- and five-digit rate categories apply to presort rate category mail presorted to single or multiple

three- and five-digit ZIP Code destinations as specified by the Postal Service.]

323.22 **Mixed AADC Rate Category.** The Mixed AADC rate category applies to nonautomation rate category letter-size mail that meets machinability criteria specified by the Postal Service and that is not mailed under section 323.23.

323.23 **AADC Rate Category.** The AADC rate category applies to letter-size nonautomation rate category mail that meets machinability criteria specified by the Postal Service and that has been presorted to automated area distribution center destinations as specified by the Postal Service.

323.24 **Mixed ADC Rate Categories.** The Mixed ADC rate categories apply to nonautomation rate category mail not mailed under sections 323.22, 323.23, 323.25, 323.26, 323.27, 323.28 or 323.29.

323.25 **ADC Rate Categories.** The ADC rate categories apply to nonautomation rate category mail that has been presorted to area distribution center destinations as specified by the Postal Service.

323.26 **Three-Digit Rate Categories.** The three-digit rate categories apply to nonautomation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

323.27 **Five-Digit Rate Categories.** The five-digit rate categories apply to nonautomation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

323.28 **Mixed BMC Rate Category.** The Mixed BMC rate category applies to parcel-shaped nonautomation rate category mail that meets machinability criteria specified by the Postal Service and that is not mailed under section 323.29.

323.29 **BMC Rate Category.** The BMC rate category applies to parcel-shaped nonautomation rate category mail that meets machinability criteria specified by the Postal Service and that has been presorted to bulk mail center (or equivalent facility) destinations as specified by the Postal Service.

323.3 Automation Rate Categories

323.31 **General.** The automation rate categories apply to Nonprofit Regular subclass mail that:

a. Is presorted, marked, and presented as specified by the Postal Service;

b. Bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service; and

c. Meets the machinability, addressing, barcoding, and other preparation requirements specified by the Postal Service.

323.32 **Mixed AADC Rate Category.** The Mixed AADC rate category applies to letter-size automation rate category mail not mailed under section 323.33, 323.34, or 323.35.

323.33 **AADC Rate Category.** The AADC rate category applies to letter-size automation rate category mail presorted to automated area distribution center destinations as specified by the Postal Service.

323.34 **Three-Digit Barcoded Rate [Category] Categories.** The three-digit barcoded rate [category applies] categories apply to letter-size or flat-size automation rate category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

323.35 **Five-Digit Barcoded Rate [Category] Categories.** The five-digit barcoded rate [category applies] categories apply to letter-size or flat-size automation rate category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

323.36 **[Basic Barcoded Flats] Mixed ADC Rate Category.** The [basic barcoded flats] Mixed ADC rate category applies to flat-size automation rate category mail not mailed under section 323.37.

323.37 **[Three- and Five-Digit Barcoded Flats] ADC Rate Category.** The [three- and five-digit barcoded flats] ADC rate category applies to flat-size automation rate category mail presorted to [single or multiple three- and five-digit ZIP Code] area distribution center destinations as specified by the Postal Service.

323.4 **Destination Entry Discounts.** Destination entry discounts apply to Nonprofit Regular subclass mail, except [Nonprofit Presort category] mail entered as Customized Market Mail under section 323.[22]5, prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), [or] sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service.

[323.5 **Residual Shape Surcharge.** Nonprofit subclass mail is subject to a surcharge if it is entered as Customized Market Mail under section 323.22 or is prepared as a parcel or if it is not letter or flat shaped.]

323.5 **Customized Market Mail (CMM).** Nonprofit Regular subclass mail may be entered as CMM as defined in section 321.5.

323.6 **[Barcode Discount] Non-barcoded Surcharge.** [The barcode discount applies to Nonprofit subclass mail, except Nonprofit Presort category mail entered as Customized Market Mail under section 323.22, that is subject to the residual shape surcharge in 323.5, is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service and meets all other preparation and machinability requirements of the Postal Service.] Nonprofit Regular nonautomation mailpieces not qualifying for letter-size or flat-size rate categories and that do not bear a barcode specified by the Postal Service are subject to a Non-barcoded Surcharge. The surcharge will not apply to pieces sorted to 5-digit ZIP Codes.

323.7 **Nonmachinable [Surcharge] Rate Categories.** The nonmachinable [surcharge applies] rate categories apply to Nonprofit [presort] Regular nonautomation category letter-size[d] pieces and pieces to which the parcel rate categories apply, [except Nonprofit Presort category mail entered as Customized Market Mail under section 323.22,] [(i)] that do not meet the machinability requirements specified by the Postal Service [; or (ii) for which manual processing is requested].

323.8 **Repositionable Notes.** Repositionable Notes may be attached to the exterior of letter-size or flat-size Nonprofit Regular subclass mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 6 to Rate Schedule 323A or note 4 to Rate Schedule 323B.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such request.

b. If the Postal Service determines not to file such request, this provision expires on such date as specified by the Postal Service, but no later than April 3, 2007.

323.9 **Standard Mail Forwarding.** As described in section 353, undeliverable-as-addressed Standard Mail Nonprofit Regular subclass mail that is forwarded on request of the mailer is charged the appropriate rate shown in note 4 to Rate Schedule 323A or note 5 to Rate Schedule 323B. Mail for which Standard Mail Forwarding is purchased must meet preparation requirements and bear endorsements as specified by the Postal Service. Payment for Standard Mail Forwarding is made through an advance deposit account, or as specified by the Postal Service.

324 Nonprofit Enhanced Carrier Route Subclass

324.1 **Definition.** The Nonprofit Enhanced Carrier Route subclass consists of Standard Mail [[]weighing less than 16 ounces[]] that is not mailed under section 321, 322, or 323, that is mailed by authorized nonprofit organizations or associations (as defined in section 323) under the terms and limitations stated in section 323.12, and that:

a. Is prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces;

b. Is prepared, marked, and presented as specified by the Postal Service;

c. Is presorted to carrier routes as specified by the Postal Service;

d. Is sequenced as specified by the Postal Service;

e. Meets the machinability, addressing, and other preparation requirements specified by the Postal Service; and

f. For high-density and saturation letters, bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service.

Eligibility for Nonprofit Enhanced Carrier Route subclass rate categories is based on the size or mail processing shape of the mailpiece as specified by the Postal Service. Mail processing shapes include letter-size mail, flat-size mail, parcels and not flat-machinable (NFM) mail.

324.2 **Basic Rate Category.** The basic rate category applies to Nonprofit Enhanced Carrier Route subclass mail not mailed under section 324.3[,] or 324.4 [, or 324.5].

[324.3 **Basic Pre-Barcoded Rate Category.** The basic pre-barcoded rate category applies to letter-size Nonprofit Enhanced Carrier Route subclass mail which bears a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.]

324.[4]3 **High Density Rate Category.** The high density rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the high density requirements specified by the Postal Service. High density rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.

324.[5]4 **Saturation Rate Category.** The saturation rate category applies to Nonprofit Enhanced Carrier Route subclass mail presented in walk-sequence order and meeting the saturation requirements specified by the Postal Service. Saturation rate category letters must meet the applicable automation requirements specified by the Postal Service, and must bear a barcode representing not more than 11 digits (not including "correction" digits), as specified by the Postal Service.

324.[6]5 **Destination Entry Discounts.** Destination entry discounts apply to Nonprofit Enhanced Carrier Route subclass mail prepared as specified by the Postal Service and addressed for delivery within the service area of the BMC (or auxiliary service facility), sectional center facility (SCF), or destination delivery unit (DDU) at which it is entered, as defined by the Postal Service. Letter-size mail is not eligible for the DDU discount.

324.6 **DAL Surcharge.** Flat-shaped and parcel-shaped Nonprofit Enhanced Carrier Route subclass mail are subject to a per-piece surcharge if they are addressed using a detached address label (DAL).

[324.7 **Residual Shape Surcharge.** Nonprofit Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.]

324.7 **Standard Mail Forwarding.** As described in section 353, undeliverable-as-addressed Standard Mail Nonprofit Enhanced Carrier Route subclass mail that is forwarded on request of the mailer is charged the appropriate rate shown in note 8 to Rate Schedule 324. Mail for which Standard Mail Forwarding is purchased must meet preparation requirements and bear endorsements as specified by the Postal Service. Payment for Standard Mail Forwarding is made through an advance deposit account, or as specified by the Postal Service.

324.8 **Repositionable Notes.** Repositionable Notes may be attached to the exterior of letter-size or flat-size Nonprofit Enhanced Carrier Route subclass mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 6 to Rate Schedule 324.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such request.

b. If the Postal Service determines not to file such request, this provision expires on such date as specified by the Postal Service, but no later than April 3, 2007.

330 PHYSICAL LIMITATIONS

331 Size

Standard Mail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual rate categories. The maximum size for mail in the Enhanced Carrier Route and Nonprofit Enhanced Carrier Route subclasses is [14 inches in length, 11.75 inches in width, and 0.75 inch in thickness] the same as the maximum size for flat-size mail in the Regular and Nonprofit Regular subclasses, except that merchandise samples mailed with detached address [cards] labels, prepared as specified by the Postal Service, may exceed those dimensions.

332 Weight

Standard Mail may not weigh more than 16 ounces.

340 POSTAGE AND PREPARATION

341 Postage

Postage must be paid as set forth in section 3000. When the postage is higher than the rate prescribed in any of the Package Services subclasses for which the piece also qualifies, the piece is eligible for the applicable lower rate. All mail mailed at a bulk or presort rate must have postage paid in a manner not requiring cancellation.

342 Preparation

All pieces in a Standard mailing must be separately addressed. All pieces in a Standard mailing must be identified as specified by the Postal Service, and must contain the ZIP Code of the addressee when specified by the Postal Service. All Standard mailings must be prepared and presented as specified by the Postal Service. Two or more Standard mailings may be commingled and mailed only when specific methods approved by the Postal Service for determining and verifying postage are followed.

343 Non-Identical Pieces

Pieces not identical in size and weight may be mailed at a bulk or presort rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed.

344 Attachments and Enclosures

344.1 **General.** First-Class Mail may be attached to or enclosed in Standard Mail, except Regular and Nonprofit [Presort] Regular subclass category mail entered as Customized Market Mail under sections 321.[22] 5 and 323.[22] 5. The piece must be marked as specified by the Postal Service. Except as provided in section 344.2, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class rate for which it qualifies.

344.2 **Incidental First-Class Attachments and Enclosures.** First-Class Mail, as defined in subsections b through d of section 210, may be attached to or enclosed with Standard Mail containing merchandise, including books, but excluding merchandise samples, with postage paid on the combined piece at the applicable Standard rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

350 DEPOSIT AND DELIVERY

351 Deposit

Standard Mail must be deposited at places and times designated by the Postal Service.

352 Service

Standard Mail may receive deferred service.

353 Forwarding and Return

Undeliverable-as-addressed Standard Mail, except Regular and Nonprofit [Presort category] Regular subclass mail entered as Customized Market Mail under sections 321.[22]5 and 323.[22]5, will be returned on request of the mailer, or forwarded and returned on request of the mailer. Undeliverable-as-addressed combined First-Class and Standard Mail pieces will be returned as specified by the Postal Service. Except as provided in section 935, the applicable First-Class Mail rate is charged for each piece receiving return only service. Except as provided in sections 935 and 936, charges for forwarding-and-return service are assessed [only on those pieces which cannot be forwarded and are returned. Except as provided in sections 935 and 936, the charge for those returned pieces is the appropriate First-Class Mail rate for the piece plus that rate multiplied by a factor equal to the number of Standard Mail pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.] as follows:

a. If used in conjunction with Address Correction Service (automated or electronic),

   i. Returned pieces are charged the appropriate First-Class Mail rate.

   ii. Forwarded pieces are charged as described in section 321.9, 322.7, 323.9, or 324.7.

b. If used in conjunction with Address Correction Service (manual), or if no Address Correction Service requested,

   i. Returned pieces are charged the appropriate First-Class Mail rate for the piece plus the rate multiplied by a factor equal to the number of Standard Mail pieces successfully forwarded (using this method

of payment) for every one piece that cannot be forwarded and must be returned.

360 ANCILLARY SERVICES

361 All Subclasses

All Standard Mail, except Regular and Nonprofit [Presort category] Regular subclass mail entered as Customized Market Mail under sections 321.[22]5 and 323.[22]5, will receive the following services upon payment of the appropriate fees:

Service	Schedule
a. Address correction	911
b. Certificates of mailing indicating that a specified number of pieces have been mailed	947

Certificates of mailing are not available for Standard Mail when postage is paid with permit imprint.

362 Regular and Nonprofit Regular

362.1 Regular and Nonprofit Regular subclass mail, except Regular and Nonprofit [Presort category] Regular subclass mail entered as Customized Market Mail under sections 321.[22]5 and 323.[22]5, will receive the following additional services upon payment of the appropriate fees.

Service	Schedule
a. Bulk Parcel Return Service	935
b. Shipper-Paid Forwarding	936

362.2 Regular and Nonprofit Regular subclass mail [subject to the residual shape surcharge in 321.5 and 323.6] to which the parcels or not flat-machinable (NFM) rate categories apply, [respectively, except Regular and Nonprofit Presort category mail entered as Customized Market Mail under sections

321.22 and 323.22,] will receive the following additional services upon payment of the appropriate fees.

Parcel Service	Schedule
a. Bulk Insurance	943
b. Return Receipt (merchandise only)	945
c. Delivery Confirmation	948

NFM Service	Schedule
a. Delivery Confirmation	948

Bulk Insurance may not be used selectively for individual pieces in a multi-piece Standard Mail mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.

370 RATES AND FEES

The rates and fees for Standard Mail are set forth as follows:

	Schedule
a. Regular subclass	
[Presort] Nonautomation categor[y] ies	321A
Automation categor[y] ies	321B
b. Enhanced Carrier Route subclass	322
c. Nonprofit Regular subclass	
[Presort] Nonautomation categor[y] ies	323A
Automation categor[y] ies	323B
d. Nonprofit Enhanced Carrier Route subclass	324
e. Fees	1000

380 AUTHORIZATIONS AND LICENSES

The mailing fee set forth in Schedule 1000 must be paid once each year at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of Standard Mail. Payment of the fee allows the mailer to mail at any Standard Mail rate.

PERIODICALS
CLASSIFICATION SCHEDULE

410 DEFINITION

411 General Requirements

411.1 **Definition.** A publication may qualify for mailing under the Periodicals Classification Schedule if it meets all the requirements in sections 411.2 through 411.5 and the requirements for one of the qualification categories in sections 412 through 415. Eligibility for specific Periodicals rates is prescribed in section 420.

411.2 **Periodicals.** Periodicals class mail is mailable matter consisting of newspapers and other periodical publications. The term "periodical publications" includes, but is not limited to:

a. Any catalog or other course listing including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education; and

b. Any looseleaf page or report (including any index, instruction for filing, table, or sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

411.3 Issuance

411.31 **Regular Issuance.** Periodicals class mail must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively.

411.32 **Separate Publication.** For purposes of determining Periodicals rate eligibility, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication when the following conditions exist:

a. The issue is published at a regular frequency more often than once a month either on (1) the same day as another regular issue of the same publication; or (2) on a day different from regular issues of the same publication;

b. More than 10 percent of the total number of copies of the issue is distributed on a regular basis to recipients who do not subscribe to it or request it; and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other issue distributed to nonsubscribers or nonrequesters on that same day, or, if no other issue that day, any other issue distributed during the same period. "During the same period" shall be defined as the periods of time ensuing between the distribution of each of the issues whose eligibility is being examined. Such separate publications must independently meet the qualifications for Periodicals eligibility.

411.4 **Office of Publication.** Periodicals class mail must have a known office of publication. A known office of publication is a public office where business of the publication is transacted during the usual business hours. The office must be maintained where the publication is authorized original entry.

411.5 **Printed Sheets.** Periodicals class mail must be formed of printed sheets. It may not be reproduced by stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting. Reproduction by any other printing process is permissible. Any style of type may be used.

412 **General Publications**

412.1 **Definition.** To qualify as a General Publication, Periodicals class mail must meet the requirements in section 411 and in sections 412.2 through 412.4.

412.2 **Dissemination of Information.** A General Publication must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry.

412.3 **Paid Circulation**

412.31 **Total Distribution.** A General Publication must be designed primarily for paid circulation. At least 50 percent or more of the copies of the publication must be distributed to persons who have paid above a nominal rate.

412.32 **List of Subscribers.** A General Publication must be distributed to a legitimate list of persons who have subscribed by paying or promising to pay at a rate above nominal for copies to be received during a stated time.

Copies mailed to persons who are not on a legitimate list of subscribers are nonsubscriber copies.

412.33 **Nominal Rates.** As used in section 412.31, nominal rate means:

a. A token subscription price that is so low that it cannot be considered a material consideration; and

b. A reduction to the subscriber, under a premium offer or any other arrangements, of more than 70 percent of the amount charged at the basic annual rate for a subscriber to receive one copy of each issue published during the subscription period. The value of a premium is considered to be its actual cost to the publishers, the recognized retail value, or the represented value, whichever is highest.

412.34 **Nonsubscriber Copies**

412.341 **Up to Ten Percent.** Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to subscribers during the calendar year are mailable at the rates that apply to subscriber copies provided that the nonsubscriber copies would have been eligible for those rates if mailed to subscribers.

412.342 **Over Ten Percent.** Nonsubscriber copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to subscribers during the calendar year which are presorted and commingled with subscriber copies are charged the applicable rates for Outside County Periodicals, but are not eligible for preferred rate discounts. The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to subscribers during the calendar year.

412.35 **Advertiser's Proof Copies.** One complete copy of each issue of a General Publication may be mailed to each advertiser in that issue as an advertiser's proof copy at the rates that apply to subscriber copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as subscriber copies.

412.36 **Expired Subscriptions.** For six months after a subscription has expired, copies of a General Publication may be mailed to a former subscriber at the rates that apply to copies mailed to subscribers, if the publisher has

attempted during that six months to obtain payment, or a promise to pay, for renewal. These copies do not count as subscriber copies.

412.4 Advertising Purposes

A General Publication may not be designed primarily for advertising purposes. A publication is "designed primarily for advertising purposes" if it:

a. Has advertising in excess of 75 percent in more than one-half of its issues during any 12-month period;

b. Is owned or controlled by individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it;

c. Consists principally of advertising and editorial write-ups of the advertisers;

d. Consists principally of advertising and has only a token list of subscribers, the circulation being mainly free;

e. Has only a token list of subscribers and prints advertisements free for advertisers who pay for copies to be sent to a list of persons furnished by the advertisers; or

f. Is published under a license from individuals or institutions and features other businesses of the licensor.

413 Requester Publications

413.1 Definition. A publication which is circulated free or mainly free may qualify for Periodicals class as a Requester Publication if it meets the requirements in sections 411, and 413.2 through 413.4.

413.2 Minimum Pages. It must contain at least 24 pages.

413.3 Advertising Purposes

413.31 Advertising Percentage. It must devote at least 25 percent of its pages to nonadvertising and not more than 75 percent to advertisements.

413.32 **Ownership and Control.** It must not be owned or controlled by one or more individuals or business concerns and conducted as an auxiliary to and essentially for the advancement of the main business or calling of those who own or control it.

413.4 **Circulated to Requesters**

413.41 **List of Requesters.** It must have a legitimate list of persons who request the publication, and 50 percent or more of the copies of the publication must be distributed to persons making such requests. Subscription copies paid for or promised to be paid for, including those at or below a nominal rate may be included in the determination of whether the 50 percent request requirement is met. Persons will not be deemed to have requested the publication if their request is induced by a premium offer or by receipt of material consideration, provided that mere receipt of the publication is not material consideration.

413.42 **Nonrequester Copies**

413.421 **Up to Ten Percent.** Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year up to and including 10 percent of the total number of copies mailed to requesters during the calendar year are mailable at the rates that apply to requester copies provided that the nonrequester copies would have been eligible for those rates if mailed to requesters.

413.422 **Over Ten Percent.** Nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to requesters during the calendar year which are presorted and commingled with requester copies are charged the applicable rates for Outside County Periodicals, but are not eligible for preferred rate discounts. The 10 percent limitation for a publication is based on the total number of all copies of that publication mailed to requesters during the calendar year.

413.43 **Advertiser's Proof Copies.** One complete copy of each issue of a Requester Publication may be mailed to each advertiser in that issue as an advertiser's proof copy at the rates that apply to requester copies, whether the advertiser's proof copy is mailed to the advertiser directly or, instead, to an advertising representative or agent of the publication. These copies count as requester copies.

414 Publications of Institutions and Societies

414.1 Publisher's Own Advertising. Except as provided in section 414.2, a publication which meets the requirements of sections 411 and 412.4, and which contains no advertising other than that of the publisher, qualifies for Periodicals class as a publication of an institution or society if it is:

a. Published by a regularly incorporated institution of learning;

b. Published by a regularly established state institution of learning supported in whole or in part by public taxation;

c. A bulletin issued by a state board of health or a state industrial development agency;

d. A bulletin issued by a state conservation or fish and game agency or department;

e. A bulletin issued by a state board or department of public charities and corrections;

f. Published by a public or nonprofit private elementary or secondary institution of learning or its administrative or governing body;

g. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof, or by a nonprofit educational radio or television station;

h. Published by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons;

i. Published by or under the auspices of a trade(s) union;

j. Published by a strictly professional, literary, historical, or scientific society; or,

k. Published by a church or church organization.

414.2 General Advertising. A publication published by an institution or society identified in sections 414.1 h through k, may contain advertising of other persons, institutions, or concerns, if the following additional conditions are met:

a. The publication is originated and published to further the objectives and purposes of the society;

b. Circulation is limited to:

i. Copies mailed to members who pay either as a part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers; and

iii. Exchange copies.

c. The circulation of nonsubscriber copies, including sample and complimentary copies, does not exceed 10 percent of the total number of copies referred to in 414.2b.

415 Publications of State Departments of Agriculture

A publication which is issued by a state department of agriculture and which meets the requirements of sections 411 qualifies for Periodicals class as a publication of a state department of agriculture if it contains no advertising and is published for the purpose of furthering the objects of the department.

416 Foreign Publications

Foreign newspapers and other periodicals of the same general character as domestic publications entered as Periodicals class mail may be accepted on application of the publishers thereof or their agents, for transmission through the mail at the same rates as if published in the United States. This section does not authorize the transmission through the mail of a publication which violates a copyright granted by the United States.

420 DESCRIPTION OF SUBCLASSES

421 Outside County Subclass

421.1 ***Reserved***

421.11 **Definition.** The Outside County subclass consists of Periodicals class mail that is not mailed under section 423 and that:

a. Is presorted, marked, and presented as specified by the Postal Service; and

b. Meets machinability, addressing, and other preparation requirements specified by the Postal Service.

421.12 Description of structure. The Outside County rate structure consists of pound, piece, bundle, sack, and pallet elements. The rate associated with the pound element is comprised of two main components. One, applicable to advertising content, is a zoned rate. The other, applicable to nonadvertising (editorial) content, is uniform across all zones, but may be reduced by certain destination entry discounts. The rate associated with the piece element is subject to presorting, pre-barcoding and machinability distinctions. Piece rates are reduced by a discount for the percentage of editorial content. Bundle charges generally are determined by the presort level of the pieces in the bundle.

421.2 Outside County Pound Rates

An unzoned pound rate applies to the nonadvertising portion of Outside County subclass mail and may be reduced by applicable destination entry discounts. A zoned pound rate applies to the advertising portion and may be reduced by applicable destination entry discounts. The pound rate postage is the sum of the nonadvertising portion charge and the advertising portion charges.

421.3 Outside County Piece Rates

421.31 ***Reserved*. [Basic Rate Category.** The basic rate category applies to all Outside County subclass mail not mailed under section 421.32, 421.33, or 421.34.]

421.311 **Mixed ADC Rate Category.** The Mixed ADC rate category applies to all Outside County subclass mail not mailed under section 421.312, 431.32, 421.33, or 421.34.

421.312 **ADC Rate Category.** The Mixed ADC rate category applies to all Outside County subclass mail not mailed under section 421.311, 431.32, 421.33, or 421.34.

421.32 **Three-Digit Rate Category.** The three-digit rate category applies to Outside County subclass mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

421.33 **Five-Digit Rate Category.** The five-digit rate category applies to Outside County subclass mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

421.34 **Carrier Route Rate Category.** The carrier route rate category applies to Outside County subclass mail presorted to carrier routes as specified by the Postal Service. Firm bundles are included in this category.

421.4 **Outside County [Subclass] Piece Discounts**

421.41 **Barcoded Letter Discounts.** Barcoded letter discounts apply to letter size Outside County subclass mail mailed under sections [421.31] 421.311, 421.312, 421.32, and 421.33 which bears a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

421.42 **Barcoded Flats Discounts.** Barcoded flats discounts apply to flat size Outside County subclass mail mailed under sections [421.31] 421.311, 421.312, 421.32, and 421.33 which bear a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

421.43 **High Density Discount.** The high density discount applies to Outside County subclass mail mailed under section 421.34, presented in walk sequence order, and meeting the high density and preparation requirements specified by the Postal Service.

421.44 **Saturation Discount.** The saturation discount applies to Outside County subclass mail mailed under section 421.34, presented in walk-sequence order, and meeting the saturation and preparation requirements specified by the Postal Service.

421.45 ***Reserved.*** **[Destination Entry Discounts.** Destination entry discounts apply to Outside County subclass mail which is prepared as specified by the Postal Service and addressed for delivery within the service area of the destination area distribution center (ADC), destination sectional center facility (SCF) or the destination delivery unit (DDU) at which it is entered, as defined by the Postal Service. The DDU discount only applies to Carrier Route rate category mail.]

421.46 **Nonadvertising Discount.** The nonadvertising discount applies to all Outside County subclass mail and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedule 421 and subtracting that amount from the applicable piece rate.

421.47 **Preferred Rate Discount.** Periodicals Mail qualifying as Nonprofit or Classroom mail under sections 422.2 and 422.3 is eligible for the Preferred rate discount set forth in Rate Schedule 421.

421.48 ***Reserved.*** **[Pallet Discount.** The pallet discount applies to Outside Country subclass nonletter mail that is presented on pallets and meets the preparation requirements specified by the Postal Service.]

421.49 ***Reserved.*** **[Dropship Pallet Discount.** The dropship pallet discount applies to Outside County subclass nonletter mail under section 421.45, that is presented on pallets and meets the preparation requirements specified by the Postal Service.]

421.50 ***Reserved.*** **[Co-palletization Dropship Discounts.** Either a per-piece or a per-pound co-palletization dropship discount (but not both) applies to Outside County subclass nonletter mail qualifying under section 421.49, that is presented on sectional center facility (SCF) or area distribution center (ADC) pallets containing more than one publication, as specified by the Postal Service. The discount is limited to those pieces which could not be prepared on a qualifying pallet under section 421.48 or 421.49, if the mail had been prepared without such combining. The per-pound discounts apply only to editorial pounds, and are also limited to publications that weigh 9 ounces or more, which contain no more than 15 percent advertising matter, and which have a mailed circulation of no more than 75,000 copies per issue. A participating mailer or consolidator must provide pre-consolidation and post-consolidation documentation for all qualifying pieces, as specified by the Postal Service. This section expires the later of:

a. October 3, 2006, or

b. if, by the expiration date specified in (a), a proposal for a permanent replacement for the co-palletization dropship discounts is pending before the Postal Rate Commission:

   i. three months after the Commission takes action on such request under 39 U.S.C. § 3624 or, if applicable,

ii. on the implementation date for a permanent replacement for the co-palletization dropship discounts.]

421.51 **Machinability Discounts.** Machinability discounts apply to Outside County subclass mail mailed under sections 421.311, 421.312, 421.32, and 421.33 which meet machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

421.6 **Outside County Bundle Rates (For Bundles in Sacks or on Pallets)**

421.61 **Bundles in Mixed ADC Sacks**

421.611 Mixed ADC Bundle rate. The Mixed ADC bundle rate applies to all Outside County subclass mail bundles mailed under section 421.61 which contain pieces presorted to Mixed ADC and meeting preparation requirements as specified by the Postal Service.

421.612 ADC Bundle rate. The ADC bundle rate applies to all Outside County subclass mail bundles mailed under section 421.61 which contain pieces presorted to ADC and meeting preparation requirements as specified by the Postal Service.

421.613 Three-Digit/SCF Bundle rate. The three-digit/SCF bundle rate applies to all Outside County subclass mail bundles mailed under section 421.61 which contain pieces presorted to three-digit/SCF and meeting preparation requirements as specified by the Postal Service.

421.614 Five-Digit Bundle rate. The five-digit bundle rate applies to all Outside County subclass mail bundles mailed under section 421.61 which contain pieces presorted to five-digit and meeting preparation requirements as specified by the Postal Service.

421.615 Firm Bundle rate. The firm bundle rate applies to all Outside County subclass mail bundles mailed under section 421.61 which contain firm pieces and meeting preparation requirements as specified by the Postal Service.

421.62 **Bundles in ADC Sacks or on ADC Pallets**

421.621 ADC Bundle rate. The ADC bundle rate applies to all Outside County subclass mail bundles mailed under section 421.62 which contain pieces presorted to ADC and meeting preparation requirements as specified by the Postal Service.

421.622 Three-Digit/SCF Bundle rate. The three-digit/SCF bundle rate applies to all Outside County subclass mail bundles mailed under section 421.62 which contain pieces presorted to three-digit/SCF and meeting preparation requirements as specified by the Postal Service.

421.623 Five-Digit Bundle rate. The five-digit bundle rate applies to all Outside County subclass mail bundles mailed under section 421.62 which contain pieces presorted to five-digit and meeting preparation requirements as specified by the Postal Service.

421.624 Carrier Route Bundle rate. The carrier route bundle rate applies to all Outside County subclass mail bundles mailed under section 421.62 which contain pieces presorted to carrier route and meeting preparation requirements as specified by the Postal Service.

421.625 Firm Bundle rate. The firm bundle rate applies to all Outside County subclass mail firm bundles mailed under section 421.62 and meeting preparation requirements as specified by the Postal Service.

421.63 Bundles in Three-Digit/SCF Sacks or on Three-Digit/SCF Pallets

421.631 Three-Digit/SCF Bundle rate. The three-digit/SCF bundle rate applies to all Outside County subclass mail bundles mailed under section 421.63 which contain pieces presorted to three-digit/SCF and meeting preparation requirements as specified by the Postal Service.

421.632 Five-Digit Bundle rate. The five-digit bundle rate applies to all Outside County subclass mail bundles mailed under section 421.63 which contain pieces presorted to five-digit and meeting preparation requirements as specified by the Postal Service.

421.633 Carrier Route Bundle rate. The carrier route bundle rate applies to all Outside County subclass mail bundles mailed under section 421.63 which contain pieces presorted to carrier route and meeting preparation requirements as specified by the Postal Service.

421.634 Firm Bundle rate. The firm bundle rate applies to all Outside County subclass mail firm bundles mailed under section 421.63 and meeting preparation requirements as specified by the Postal Service.

421.64 Bundles in Five-Digit Sacks or on Five-Digit Pallets

421.641 Five-Digit Bundle rate. The five-digit bundle rate applies to all Outside County subclass mail bundles mailed under section 421.64 which contain pieces presorted to five-digit and meeting preparation requirements as specified by the Postal Service.

421.642 Carrier Route Bundle rate. The carrier route bundle rate applies to all Outside County subclass mail bundles mailed under section 421.64 which contain pieces presorted to carrier route and meeting preparation requirements as specified by the Postal Service.

421.643 Firm Bundle rate. The firm bundle rate applies to all Outside County subclass mail firm bundles mailed under section 421.64 and meeting preparation requirements as specified by the Postal Service.

421.7 Outside County Sack Rates

421.71 Outside County Mixed ADC Sack Rates

421.711 OSCF Sack Category. The OSCF sack category rate applies to Outside County subclass sacks mailed under section 421.71 and presented at OSCF as specified by the Postal Service.

421.712 OADC Category. The OADC sack category rate applies to Outside County subclass mail sacks mailed under section 421.71 and presented at OADC as specified by the Postal Service.

421.72 Outside County ADC Sack Rates

421.721 OSCF Sack Category. The OSCF sack category rate applies to Outside County subclass sacks mailed under section 421.72 and presented at OSCF as specified by the Postal Service.

421.722 OADC Sack Category. The OADC sack category rate applies to Outside County subclass mail sacks mailed under section 421.72 and presented at OADC as specified by the Postal Service.

421.723 OBMC Sack Category. The OBMC sack category rate applies to Outside County subclass mail sacks mailed under section 421.72 and presented at OBMC as specified by the Postal Service.

421.724 **BMC Sack Category.** The DBMC sack category rate applies to Outside County subclass mail sacks mailed under section 421.72 and presented at DBMC as specified by the Postal Service.

421.725 **DADC Sack Category.** The DADC sack category rate applies to Outside County subclass mail sacks mailed under section 421.72 and presented at DADC as specified by the Postal Service.

421.73 **Outside County Three-Digit/SCF Sack Rates**

421.731 **OSCF Sack Category.** The OSCF sack category rate applies to Outside County subclass sacks mailed under section 421.73 and presented at OSCF as specified by the Postal Service.

421.732 **OADC Sack Category.** The OADC sack category rate applies to Outside County subclass mail sacks mailed under section 421.73 and presented at OADC as specified by the Postal Service.

421.733 **OBMC Sack Category.** The OBMC sack category rate applies to Outside County subclass mail sacks mailed under section 421.73 and presented at OBMC as specified by the Postal Service.

421.734 **DBMC Sack Category.** The DBMC sack category rate applies to Outside County subclass mail sacks mailed under section 421.73 and presented at DBMC as specified by the Postal Service.

421.735 **DADC Sack Category.** The DADC sack category rate applies to Outside County subclass mail sacks mailed under section 421.73 and presented at DADC as specified by the Postal Service.

421.736 **DSCF Sack Category.** The DSF sack category rate applies to Outside County subclass mail sacks mailed under section 421.73 and presented at DSCF as specified by the Postal Service.

421.74 **Outside County 5-Digit Sack Rates**

421.741 **OSCF Sack Category.** The OSCF sack category rate applies to Outside County subclass sacks mailed under section 421.74 and presented at OSCF as specified by the Postal Service.

421.742 **OADC Sack Category.** The OADC sack category rate applies to Outside County subclass mail sacks mailed under section 421.74 and presented at OADC as specified by the Postal Service.

421.743 **OBMC Sack Category.** The OBMC sack category rate applies to Outside County subclass mail sacks mailed under section 421.74 and presented at OBMC as specified by the Postal Service.

421.744 **DBMC Sack Category.** The DBMC sack category rate applies to Outside County subclass mail sacks mailed under section 421.74 and presented at DBMC as specified by the Postal Service.

421.745 **DADC Sack Category.** The DADC sack category rate applies to Outside County subclass mail sacks mailed under section 421.74 and presented at DADC as specified by the Postal Service.

421.746 **DSCF Sack Category.** The DSF sack category rate applies to Outside County subclass mail sacks mailed under section 421.74 and presented at DSCF as specified by the Postal Service.

421.747 **DDU Sack Category.** The DDU sack category rate applies to Outside County subclass mail sacks mailed under section 421.74 and presented at DDU as specified by the Postal Service.

421.8 **Outside County Pallet Rates**

421.81 **Outside County ADC Pallet Rates**

421.811 **OSCF Pallet Category.** The OSCF pallet category rate applies to Outside County subclass Pallets mailed under section 421.81 and presented at OSCF as specified by the Postal Service.

421.812 **OADC Pallet Category.** The OADC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.81 and presented at OADC as specified by the Postal Service.

421.813 **OBMC Pallet Category.** The OBMC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.81 and presented at OBMC as specified by the Postal Service.

421.814 **DBMC Pallet Category.** The DBMC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.81 and presented at DBMC as specified by the Postal Service.

421.815 **DADC Pallet Category.** The DADC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.81 and presented at DADC as specified by the Postal Service.

421.82 Outside County Three-Digit/SCF Pallet Rates

421.821 OSCF Pallet Category. The OSCF pallet category applies to Outside County subclass Pallets mailed under section 421.82 and presented at OSCF as specified by the Postal Service.

421.822 OADC Pallet Category. The OADC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.82 and presented at OADC as specified by the Postal Service.

421.823 OBMC Pallet Category. The OBMC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.82 and presented at OBMC as specified by the Postal Service.

421.824 DBMC Pallet Category. The DBMC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.82 and presented at DBMC as specified by the Postal Service.

421.825 DADC Pallet Cagegory. The DADC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.82 and presented at DADC as specified by the Postal Service.

421.826 DSCF Pallet Category. The DSF pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.82 and presented at DSCF as specified by the Postal Service.

421.83 Outside County Five-Digit Pallet Rates

421.831 OSCF Pallet Category. The OSCF pallet category applies to Outside County subclass Pallets mailed under section 421.83 and presented at OSCF as specified by the Postal Service.

421.832 OADC Pallet Category. The OADC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.83 and presented at OADC as specified by the Postal Service.

421.833 OBMC Pallet Category. The OBMC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.83 and presented at OBMC as specified by the Postal Service.

421.834 DBMC Pallet Category. The DBMC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.83 and presented at DBMC as specified by the Postal Service.

421.835 **DADC Pallet Category.** The DADC pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.83 and presented at DADC as specified by the Postal Service.

421.836 **DSCF Pallet Category.** The DSF pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.83 and presented at DSCF as specified by the Postal Service.

421.837 **DDU Pallet Category.** The DDU pallet category rate applies to Outside County subclass mail Pallets mailed under section 421.83 and presented at DDU as specified by the Postal Service.

422 Preferred Qualification Categories

422.1 **Definition.** Preferred Qualification Outside County Subclass Periodicals consist of Periodicals Mail, other than publications qualifying as Requester Publications, that meets applicable requirements in sections 422.2, 422.3, or 422.4.

422.2 Nonprofit

The Periodicals Outside County Subclass Nonprofit category consists of publications entered by authorized nonprofit organizations or associations of the following types:

a. Religious, as defined in section 1009;

b. Educational, as defined in section 1009;

c. Scientific, as defined in section 1009;

d. Philanthropic, as defined in section 1009;

e. Agricultural, as defined in section 1009;

f. Labor, as defined in section 1009;

g. Veterans', as defined in section 1009;

h. Fraternal, as defined in section 1009; and

i. Associations of rural electric cooperatives, and the publications of the following types:

i. one publication, which contains no advertising (except advertising of the publisher) published by the official highway or development agency of a state,

ii. program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station, or

iii. one conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of such state.

422.3 Classroom

The Periodicals Outside County Subclass Classroom rate category consists of religious, educational, or scientific publications designed specifically for use in school classrooms or religious instruction classes.

422.4 Science of Agriculture

422.41 Definition. Science of Agriculture mail consists of Periodicals class mail devoted to the science of agriculture if the total number of copies of the publication furnished during any 12-month period to subscribers residing in rural areas amounts to at least 70 percent of the total number of copies distributed by any means for any purpose.

422.42 Rates. Science of Agriculture mail is subject to pound rates, piece rates, piece rate discounts (except for the discount set forth in section 421.47), bundle rates, sack rates, and pallet rates, for Outside County [Subclass] Periodicals [M]mail, except for DDU, DSCF, DADC, and Zone 1 & 2 pound rates. Rates for Science of Agriculture are set forth in Rate Schedule 421.

422.43 Nonadvertising Discount. The nonadvertising discount for Outside County Subclass Periodicals Mail applies to Science of Agriculture Periodicals, and is determined by multiplying the proportion of nonadvertising content by the discount factor set forth in Rate Schedule 421 and subtracting that amount from the applicable piece rate.

422.44 Destination Entry Discounts. Destination entry discounts apply to Science of Agriculture Periodicals mail which is prepared as specified by the Postal Service, and addressed for delivery within the service area of the destination area distribution center (ADC), destination sectional center facility (SCF) or the destination delivery unit (DDU) at which it is entered, as

defined by the Postal Service. The DDU discount only applies to Carrier Route rate category mail.

423 Within County Subclass

423.1 ***Reserved***

423.2 General

423.21 **Definition.** Within County mail consists of Periodicals class mail, other than publications qualifying as Requester Publications, mailed in, and addressed for delivery within, the county where published and originally entered, from either the office of original entry or additional entry. In addition, a Within County publication must meet one of the following conditions:

a. The total paid circulation of the issue is less than 10,000 copies; or

b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half the total paid circulation of such issue.

423.22 **Entry in an Incorporated City.** For the purpose of determining eligibility for Within County mail, when a publication has original entry at an independent incorporated city which is situated entirely within a county or which is contiguous to one or more counties in the same state, such incorporated city shall be considered to be within the county with which it is principally contiguous. Where more than one county is involved, the publisher will select the principal county.

423.23 **Pound Rate.** One pound rate applies to Within County pieces presorted to carrier routes to be delivered within the delivery area of the originating post office, and another pound rate applies to all other pieces.

423.3 Within County Piece Rates

423.31 **Basic Rate Category.** The basic rate category applies to Within County Periodicals not mailed under section 423.32, 423.33, or 423.34.

423.32 **Three-Digit Rate Category.** The three-digit rate category applies to Within County Periodicals that are presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

423.33 **Five-Digit Rate Category.** The five-digit rate category applies to Within County Periodicals presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

423.34 **Carrier Route Rate Category.** The carrier route rate category applies to Within County Periodicals presorted to carrier routes as specified by the Postal Service.

423.4 **Within County Discounts**

423.41 **Barcoded Letter Discounts.** Barcoded letter discounts apply to letter size Within County Periodicals mailed under sections 423.31, 423.32, and 423.33 which bear a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

423.42 **Barcoded Flats Discounts.** Barcoded flats discounts apply to flat size Within County Periodicals mailed under sections 423.31, 423.32, and 423.33 which bear a barcode representing not more than 11 digits (not including "correction" digits) as specified by the Postal Service, and meet the flats machinability, addressing, and barcoding specifications and other preparation requirements specified by the Postal Service.

423.43 **High Density Discount.** The high density discount applies to Within County Periodicals mailed under section 423.34, presented in walk sequence order, and meeting the high density and preparation requirements specified by the Postal Service. Alternatively, Within County mail may qualify for such discount also by presenting otherwise eligible mailings containing pieces addressed to a minimum of 25 percent of the addresses per carrier route.

423.44 **Saturation Discount.** The saturation discount applies to Within County Periodicals mailed under section 423.34, presented in walk sequence order, and meeting the saturation and preparation requirements specified by the Postal Service.

423.45 **Destination Entry Discount.** A destination delivery unit discount applies to Within County carrier route category mail which is destined for delivery within the destination delivery unit (DDU) in which it is entered, as defined by the Postal Service.

424 **Repositionable Notes.** Repositionable Notes may be attached to the exterior of letter-size and flat-size Periodicals mail, as specified by the Postal Service. The additional charge for the Repositionable Note is specified in note 8 to Rate Schedule 421 or note 3 to Rate Schedule 423.

This provision for Repositionable Notes expires as provided below.

a. If a request to continue to test or make Repositionable Notes permanent is filed, this provision expires on the implementation date for the replacement service, or if no replacement is implemented, three months after the Commission takes action under section 3624 of title 39, on such request.

b. If the Postal Service determines not to file such request, this provision expires on such date as specified by the Postal Service, but no later than April 3, 2007.

430 **PHYSICAL LIMITATIONS**

Periodicals Mail may not weigh more than 70 pounds or exceed 108 inches in length and girth combined. Additional size limitations apply to individual Periodicals rate categories.

440 **POSTAGE AND PREPARATION**

441 **Postage.** Postage must be paid on Periodicals class mail as set forth in section 3000.

442 **Presortation.** Periodicals class mail must be presorted as specified by the Postal Service.

443 **Attachments and Enclosures**

443.1 **General.** First-Class Mail or Standard Mail may be attached to or enclosed with Periodicals class mail. The piece must be marked as specified by the Postal Service. Except as provided in section 443.2, additional postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the appropriate First-Class Mail, Standard Mail, or Package Services rate for which it qualifies (unless the rate applicable to the host piece is higher), or, if a combined piece with a Standard Mail attachment or enclosure weighs 16 ounces or more, the piece is subject to the Parcel Post rate for which it qualifies.

443.1a **"Ride-Along" Attachments and Enclosures.** A limit of one Standard Mail piece, not exceeding the weight of the host copy and weighing a maximum of 3.3 ounces, from any of the subclasses listed in section 321 (Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route) may be attached to or enclosed with an individual copy of Periodicals Mail for an additional postage payment. Periodicals containing "Ride-Along" attachments or enclosures must maintain uniform thickness as specified by the Postal Service. The Periodicals piece with the "Ride-Along" must maintain the same shape and automation compatibility as it had before addition of the "Ride-Along" attachment or enclosure and meet other preparation requirements as specified by the Postal Service.

443.2 **Incidental First-Class Mail Attachments and Enclosures.** First-Class Mail that meets one or more of the definitions in section 210 b through d may be attached to or enclosed with Periodicals class mail, with postage paid on the combined piece at the applicable Periodicals rate, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

444 **Identification**

Periodicals class mail must be identified as required by the Postal Service. Nonsubscriber and nonrequester copies, including sample and complimentary copies, must be identified as required by the Postal Service.

445 **Filing of Information**

Information relating to Periodicals class mail must be filed with the Postal Service under 39 U.S.C. 3685.

446 **Enclosures and Supplements**

Periodicals class mail may contain enclosures and supplements as specified by the Postal Service. An enclosure or supplement may not contain writing, printing or sign thereof or therein, in addition to the original print, except as authorized by the Postal Service, or as authorized under section 443.2.

450 **DEPOSIT AND DELIVERY**

451 **Deposit**

Periodicals class mail must be deposited at places and times designated by the Postal Service.

452 Service

Periodicals class mail is given expeditious handling insofar as is practicable.

453 Forwarding and Return

Undeliverable-as-addressed Periodicals class mail will be forwarded or returned to the mailer, as specified by the Postal Service. Undeliverable-as-addressed combined First-Class and Periodicals class mail pieces will be forwarded or returned, as specified by the Postal Service. Additional charges when Periodicals class mail is returned will be based on the applicable First-Class Mail rate.

470 RATES AND FEES

The rates and fees for Periodicals class mail are set forth as follows:

	Schedule
a. Outside County	421
b. Within County	423
c. Science of Agriculture	421
d. Fees	1000

480 AUTHORIZATIONS AND LICENSES

481 Entry Authorizations

Prior to mailing at Periodicals rates, a publication must be authorized for entry as Periodicals class mail by the Postal Service. Each authorized publication will be granted one original entry authorization at the post office where the office of publication is maintained. An authorization for the establishment of an account to enter a publication at an additional entry office may be granted by the Postal Service upon application by the publisher. An application for re-entry must be made whenever the publisher proposes to change the publication's title, frequency of issue or office of original entry.

482 Nonprofit, Classroom and Science of Agriculture Authorization

Prior to entering Nonprofit, Classroom, and Science of Agriculture Periodicals Mail, a publication must obtain an additional Postal Service entry authorization to mail at those rates.

483 Mailing by Publishers and News Agents

Periodicals class mail may be mailed only by publishers or registered news agents. A news agent is a person or concern engaged in selling two or more Periodicals publications published by more than one publisher. News agents must register at all post offices at which they mail Periodicals class mail.

484 Fees

Fees for original entry, additional entry, re-entry, and registration of a news agent are set forth in Schedule 1000.

PACKAGE SERVICES CLASSIFICATION SCHEDULE

510 DEFINITION

511 General

Any mailable matter may be mailed as Package Services mail except:

a. Matter required to be mailed as First-Class Mail;

b. Regular and Nonprofit Presort category mail entered as Customized Market Mail under sections 321.22 and 323.22; and

c. Copies of a publication that is entered as Periodicals class mail, except:

i. copies sent by a printer to a publisher;

ii. copies that would have traveled at the former second-class transient rate. (The transient rate applied to individual copies of second-class mail (currently Periodicals class mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.); and

iii. sample copies enclosed or attached with merchandise sent at Parcel Post or Bound Printed Matter rates.

512 Written Additions

Package Services mail may have the following written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article:

a. Marks, numbers, name, or letters descriptive of contents;

b. "Please Do Not Open Until Christmas," or words of similar import;

c. Instructions and directions for the use of an article in the package;

d. Manuscript dedication or inscription not in the nature of personal correspondence;

e. Marks to call attention to any word or passage in text;

f. Corrections of typographical errors in printed matter;

g. Manuscripts accompanying related proof sheets, and corrections in proof sheets to include: corrections of typographical and other errors, alterations of text, insertion of new text, marginal instructions to the printer, and rewrites of parts if necessary for correction;

h. Handstamped imprints, except when the added matter is itself personal or converts the original matter to a personal communication; or

i. An invoice.

520 DESCRIPTION OF SUBCLASSES

521 Parcel Post Subclass

521.1 Definition. The Parcel Post subclass consists of Package Services mail that is not mailed under sections 522, 523, or 524.

521.2 Description of Rate Categories

521.21 Inter-BMC Rate Category. The inter-BMC rate category applies to all Parcel Post subclass mail not mailed under sections 521.22, 521.23, 521.24, 521.25, 521.26, 521.27, or 521.28.

521.22 Intra-BMC Rate Category. The intra-BMC rate category applies to Parcel Post subclass mail originating and destinating within a designated BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico.

521.23 Parcel Select—Destination Bulk Mail Center (DBMC) Rate Category. The Parcel Select—DBMC rate category applies to Parcel Post subclass mail barcoded (unless nonmachinable as defined in section 521.7) and prepared as specified by the Postal Service in a mailing of at least 50 pieces entered at a designated destination BMC, auxiliary service facility, or other equivalent facility, as specified by the Postal Service.

521.24 Parcel Select—Destination Sectional Center Facility (DSCF) Rate Category. The Parcel Select—DSCF rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces sorted to five-digit destination ZIP Codes as specified by the Postal Service (except as described in Section 521.25) and entered at a

designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

521.25 **Surcharge for Parcel Select—Destination Sectional Center Facility (DSCF) Rate Nonmachinable Parcels sorted to 3-digit Zip Codes.** The Parcel Select—DSCF Surcharge applies, in addition to the appropriate DSCF Parcel Select Rate, to mail that does not meet the machinability criteria specified by the Postal Service and is prepared in a mailing of at least 50 pieces sorted to three-digit destination ZIP Codes as specified by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

521.26 **Parcel Select—Destination Delivery Unit (DDU) Rate Category.** The Parcel Select—DDU rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces, and entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

521.27 **Parcel Select Return Service—Return Delivery Unit (RDU) Rate Category.** The Parcel Select Return Service—RDU rate category applies to merchandise returned as Parcel Post subclass mail barcoded and prepared as specified by the Postal Service; entered as specified by the Postal Service; and retrieved in bulk at a designated delivery unit, or other equivalent facility, as specified by the Postal Service.

521.28 **Parcel Select Return Service—Return BMC (RBMC) Rate Category.** The Parcel Select Return Service—RBMC rate category applies to merchandise returned as Parcel Post subclass mail barcoded and prepared as specified by the Postal Service; entered as specified by the Postal Service; and retrieved in bulk at a bulk mail center, or other equivalent facility, as specified by the Postal Service.

521.3 **Bulk Parcel Post.** Bulk Parcel Post mail is Parcel Post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined or pieces measuring over 108 inches in length and girth combined are not mailable as Bulk Parcel Post mail.

521.31 **Barcode Discount.** The barcode discount applies to Bulk Parcel Post mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.

521.4 Bulk Mail Center (BMC) Presort Discounts

521.41 BMC Presort Discount. The BMC presort discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of 50 or more pieces, entered at a facility authorized by the Postal Service, and sorted to destination BMCs, as specified by the Postal Service.

521.42 Origin Bulk Mail Center (OBMC) Discount. The origin bulk mail center discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of at least 50 pieces, entered at the origin BMC, and sorted to destination BMCs, as specified by the Postal Service.

521.5 Barcode Discount. The barcode discount applies to Inter-BMC, Intra-BMC, and Parcel Select—DBMC Parcel Post subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

521.6 Oversize Parcel Post

521.61 Excessive Length and Girth. Parcel Post subclass mail pieces exceeding 108 inches in length and girth combined, but not greater than 130 inches in length and girth combined, are mailable.

521.62 Balloon Rate. Parcel Post subclass mail pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 20 pound parcel for the zone to which the parcel is addressed.

521.7 Nonmachinable Surcharges

a. Inter-BMC, Intra-BMC, and Parcel Select—DBMC Parcel Post mail that does not meet machinability criteria specified by the Postal Service is subject to a nonmachinable surcharge.

b. Parcel Select—DSCF Parcel Post mail that does not meet machinability criteria specified by the Postal Service, and which is sorted to three-digit destination ZIP Codes as specified by the Postal Service, is subject to a nonmachinability surcharge for 3-digit nonmachinable DSCF Parcel Post.

c. Parcel Select Return Service—RBMC Parcel Post mail that does not meet machinability criteria specified by the Postal Service is subject to a nonmachinable surcharge.

521.8 **Pickup Service.** Pickup service is available for Parcel Post subclass mail under terms and conditions specified by the Postal Service.

522 **Bound Printed Matter Subclass**

522.1 **Definition.** The Bound Printed Matter subclass consists of Package Services mail weighing not more than 15 pounds, which:

a. Consists of advertising, promotional, directory, or editorial material, or any combination thereof;

b. Is securely bound by permanent fastenings including, but not limited to, staples, spiral bindings, glue, and stitching; loose leaf binders and similar fastenings are not considered permanent;

c. Consists of sheets of which at least 90 percent are imprinted with letters, characters, figures or images or any combination of these, by any process other than handwriting or typewriting;

d. Does not have the nature of personal correspondence; <u>and</u>

e. Is not stationery, such as pads of blank printed forms.

522.2 **Description of Rate Categories**

522.21 **Single-Piece Nonpresort Rate Category.** The single-piece rate category applies to Bound Printed Matter subclass mail which is not mailed under section<u>s</u> [522.3 or 522.4] <u>522.22, 522.23, 522.24, 522.25, or 522.26</u>.

522.22 **Basic Presort Rate Category.** The basic presort rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces, prepared and presorted as specified by the Postal Service.

522.23 **Carrier Route Presort Rate Category.** The carrier route presort rate category applies to Bound Printed Matter subclass mail prepared in a mailing of at least 300 pieces of carrier route presorted mail, prepared and presorted as specified by the Postal Service.

522.24 **Destination Bulk Mail Center (DBMC) Rate Category.** The destination bulk mail center rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing entered at a designated destination BMC, auxiliary service facility, or other equivalent facility, as specified by the Postal Service.

522.25 **Destination Sectional Center Facility (DSCF) Rate Category.** The destination sectional center facility rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared [as specified by the Postal Service in a mailing sorted to five-digit destination ZIP Codes as specified by the Postal Service] and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

522.26 **Destination Delivery Unit (DDU) Rate Category.** The destination delivery unit rate category applies to Basic Presort Rate or Carrier Route Presort Rate Bound Printed Matter subclass mail prepared as specified by the Postal Service in a mailing entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

522.3 **Barcode Discount.** The parcel barcoded discount or flats barcoded discount apply to single-piece rate and Basic Presort Rate Bound Printed Matter subclass parcel or flat mail, respectively, that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

522.4 **Flats Differential.** Flats-shaped single-piece rate, Basic Presort Rate, and Carrier Route Presort Rate Bound Printed Matter subclass mail that meets the preparation criteria specified by the Postal Service is eligible for a rate reduction in the form of a flats differential.

523 **Media Mail Subclass**

523.1 **Definition.** The Media Mail subclass consists of Package Services mail of the following types:

a. Books, including books issued to supplement other books, of at least eight printed pages, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books. Not more than three of the announcements

may contain as part of their format a single order form, which may also serve as a postcard. These order forms are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision;

b. 16 millimeter or narrower width films which must be positive prints in final form for viewing, and catalogs of such films, of 24 pages or more, at least 22 of which are printed, except when sent to or from commercial theaters;

c. Printed music, whether in bound form or in sheet form;

d. Printed objective test materials and accessories thereto used by or in behalf of educational institutions in the testing of ability, aptitude, achievement, interests and other mental and personal qualities with or without answers, test scores or identifying information recorded thereon in writing or by mark;

e. Sound recordings, including incidental announcements of recordings and guides or scripts prepared solely for use with such recordings. Not more than three of the announcements may contain as part of their format a single order form, which may also serve as a postcard. These order forms are in addition to and not in lieu of order forms which may be enclosed by virtue of any other provision;

f. Playscripts and manuscripts for books, periodicals and music;

g. Printed educational reference charts, permanently processed for preservation;

h. Printed educational reference charts, including but not limited to

   i. Mathematical tables,

   ii. Botanical tables,

   iii. Zoological tables, and

   iv. Maps produced primarily for educational reference purposes;

i. Looseleaf pages and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students; and

j. Computer-readable media containing prerecorded information and guides or scripts prepared solely for use with such media.

523.2 Description of Rate Categories

523.21 Single-Piece Rate Category. The single-piece rate category applies to Media Mail not mailed under section 523.22 or 523.23 prepared as specified by the Postal Service.

523.22 Five-Digit Presort Rate Category. The Five-Digit presort rate category applies to mailings of at least 300 pieces in any Media Mail subclass presorted category, prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

523.23 Basic Presort Rate Category. The Basic Presort rate category applies to mailings of at least 300 pieces in any Media Mail subclass presorted category, prepared and presorted, as specified by the Postal Service, other than to five-digit destination ZIP Codes.

523.3 Barcode Discount. The barcode discount applies to single-piece rate and Basic Presort rate Media Mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

524 Library Mail Subclass

524.1 Definition

524.11 General. The Library Mail subclass consists of Package Services mail of the following types:

a. Matter designated in section 524.13, loaned or exchanged (including cooperative processing by libraries) between:

i. Schools or colleges, or universities;

ii. Public libraries, museums and herbaria, nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations, or between such organizations and their members, readers or borrowers.

b. Matter designated in section 524.14, mailed to or from schools, colleges, universities, public libraries, museums and herbaria and to or from nonprofit religious, educational, scientific, philanthropic, agricultural, labor, veterans' or fraternal organizations or associations; or

c. Matter designated in section 524.15, mailed from a publisher or a distributor to a school, college, university or public library.

524.12 **Definition of Nonprofit Organizations and Associations.** Nonprofit organizations or associations are defined in section 1009.

524.13 **Library Subclass Mail Under Section 524.11.a.** Matter eligible for mailing as Library Mail under subsection a of section 524.11 consists of:

a. Books consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations and containing no advertising other than incidental announcements of books;

b. Printed music, whether in bound form or in sheet form;

c. Bound volumes of academic theses in typewritten or other duplicated form;

d. Periodicals, whether bound or unbound;

e. Sound recordings;

f. Other library materials in printed, duplicated or photographic form or in the form of unpublished manuscripts; and

g. Museum materials, specimens, collections, teaching aids, printed matter and interpretative materials intended to inform and to further the educational work and interest of museums and herbaria.

524.14 **Library Mail Under Section 524.11.b.** Matter eligible for mailing as Library Mail under subsection b of section 524.11 consists of:

a. 16-millimeter or narrower width films; filmstrips; transparencies; slides; microfilms; all of which must be positive prints in final form for viewing;

b. Sound recordings;

c. Museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the educational work and interests of museums and herbaria;

d. Scientific or mathematical kits, instruments or other devices;

e. Catalogs of the materials in subsections a through d of section 524.14 and guides or scripts prepared solely for use with such materials.

524.15 **Library Mail Under Section 524.11.c.** Matter eligible for mailing as Library subclass mail under subsection c of section 524.11 consists of books, including books to supplement other books, consisting wholly of reading matter or scholarly bibliography or reading matter with incidental blank spaces for notations, and containing no advertising matter other than incidental announcements of books.

524.2 **Description of Rate Categories**

524.21 **Single-Piece Rate Category.** The single-piece rate category applies to Library Mail not mailed under section 524.22 or 524.23 prepared as specified by the Postal Service.

524.22 **Five-Digit Presort Rate Category.** The Five-Digit Presort rate category applies to mailings of at least 300 pieces in any Library Mail subclass presorted category, prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

524.23 **Basic Presort Rate Category.** The Basic Presort rate category applies to mailings of at least 300 pieces in any Library Mail subclass presorted category, prepared and presorted as specified by the Postal Service, other than to five-digit destination ZIP Codes.

524.3 **Barcode Discount.** The barcode discount applies to Single-Piece Rate and Basic Presort Rate Library Mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

530 PHYSICAL LIMITATIONS

531 Size

Except as provided in section 521.61, Package Services mail may not exceed 108 inches in length and girth combined. Additional size limitations apply to individual Package Services mail subclasses.

532 Weight

Package Services mail may not weigh more than 70 pounds. Additional weight limitations apply to individual Package Services mail subclasses.

540 POSTAGE AND PREPARATION

541 Postage

Postage must be paid as set forth in section 3000. All mail mailed at a bulk or presort rate must have postage paid in a manner not requiring cancellation.

542 Preparation

All pieces in a Package Services mailing must be separately addressed. All pieces in a Package Services mailing must be identified as specified by the Postal Service, and must contain the ZIP Code of the addressee when specified by the Postal Service. All Package Services mailings must be prepared and presented as specified by the Postal Service. Two or more Package Services mailings may be commingled and mailed only when specific methods approved by the Postal Service for determining and verifying postage are followed.

543 Non-Identical Pieces

Pieces not identical in size and weight may be mailed at a bulk or presort rate as part of the same mailing only when specific methods approved by the Postal Service for determining and verifying postage are followed.

544 Attachments and Enclosures

544.1 General. First-Class Mail or Standard Mail may be attached to or enclosed in Package Services mail. The piece must be marked as specified by the Postal Service. Except as provided in sections 544.2 and 544.3, additional

postage must be paid for the attachment or enclosure as if it had been mailed separately. Otherwise, the entire combined piece is subject to the First-Class, Standard Mail, or Package Services rate for which it qualifies unless the rate applicable to the host piece is higher.

544.2 **Specifically Authorized Attachments and Enclosures.** Package Services mail may contain enclosures and attachments as specified by the Postal Service and as described in subsections a and e of section 523.1, with postage paid on the combined piece at the Package Services rate applicable to the host piece.

544.3 **Incidental First-Class Attachments and Enclosures.** First-Class Mail that meets one or more of the definitions in subsections b through d of section 210, may be attached to or enclosed with Package Services mail, with postage paid on the combined piece at the Package Services rate applicable to the host piece, if the attachment or enclosure is incidental to the piece to which it is attached or with which it is enclosed.

550 DEPOSIT AND DELIVERY

551 Deposit

Package Services mail must be deposited at places and times designated by the Postal Service.

552 Service

Package Services mail may receive deferred service.

553 Forwarding and Return

Undeliverable-as-addressed Package Services mail will be forwarded on request of the addressee, returned on request of the mailer, or forwarded and returned on request of the mailer. Pieces which combine Package Services mail with First-Class Mail or Standard Mail will be forwarded if undeliverable-as-addressed, and returned if undeliverable, as specified by the Postal Service. When Package Services mail is forwarded or returned from one post office to another, additional charges will be based on the applicable single-piece Package Services mail rate.

560 ANCILLARY SERVICES

561 All Subclasses Except Parcel Select Return Service Categories

Package Services mail, except Parcel Select Return Service mail entered under sections 521.27 or 521.28 (which is eligible for Certificates of Mailing only), will receive the following services upon payment of the appropriate fees:

Service	Schedule
a. Address correction	911
b. Certificates of mailing	947
c. COD	944
d. Insurance	943
e. Special handling	952
f. Return receipt (merchandise only)	945
g. Merchandise return	932
h. Delivery Confirmation (limited to parcel-shaped Package Services Mail)	948
i. Shipper Paid Forwarding	936
j. Signature Confirmation limited to parcel-shaped Package Services Mail	949
k. Parcel Airlift	951

Insurance, special handling, and COD services may not be used selectively for individual pieces in a multi-piece Package Services mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.

562 Parcel Select Return Service

Parcel Post subclass mail entered under sections 521.27 or 521.28 will receive Certificate of Mailing service if the customer entering the returned parcel pays the appropriate fees at the time the mail is entered. Certificate of Mailing service may not be purchased by the addressee of the returned parcel.

570 RATES AND FEES

The rates and fees for Package Services Mail are set forth as follows:

	Schedule
a. Parcel Post subclass	
Inter-BMC	521.2A
Intra-BMC	521.2B
Parcel Select	
Destination BMC	521.2C
Destination SCF	521.2D
Destination Delivery Unit	521.2E
Parcel Select Return Services	
Return Delivery Unit	521.2F
Return BMC	521.2G
b. Bound Printed Matter subclass	
Single-Piece	522A
Basic Presort and Carrier Route	522B
Destination Entry Basic Presort	522C
Destination Entry Carrier Route Presort	522D
c. Media Mail subclass	523
d. Library Mail subclass	524
e. Fees	1000

580 AUTHORIZATIONS AND LICENSES

581 Parcel Post Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of any Parcel Select rate category mail in the Parcel Post subclass. Payment of the fee allows the mailer to mail at any Parcel Select rate.

582 Bound Printed Matter Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by

the Postal Service, by or for mailers of Destination BMC, Destination SCF or Destination Delivery Unit rate category mail in the Bound Printed Matter subclass. Payment of the fee allows the mailer to mail at any destination entry Bound Printed Matter rate.

583 Media Mail Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of presorted Media Mail. Payment of the fee allows the mailer to mail at any presorted Media Mail rate.

584 Library Mail Subclass

The mailing fee set forth in Schedule 1000 must be paid once each 12-month period at each office of mailing or office of verification, as specified by the Postal Service, by or for mailers of presorted Library Mail. Payment of the fee allows the mailer to mail at any presorted Library Mail rate.

585 Parcel Return Service

585.1 A permit fee as set forth in Schedule 1000 must be paid once each 12-month period by mailers utilizing Parcel Select Return Service. In addition, the permit holder must pay the accounting fee specified in Fee Schedule 1000 once each 12-month period for each advance deposit account.

585.2 The Parcel Return Service permit may be canceled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned parcels, for distributing labels that do not conform to Postal Service specifications, or for other reasons specified by the Postal Service.

NEGOTIATED SERVICE AGREEMENTS
CLASSIFICATION SCHEDULE

610 CAPITAL ONE NEGOTIATED SERVICE AGREEMENT

610.1 Eligible First-Class Mail

610.11 **Capital One.** Eligible First-Class Mail under this section is defined as Capital One's First-Class Mail customer correspondence with established account holders and First-Class Mail solicitations that bear the endorsement specified by the Postal Service. Eligible First-Class Mail does not include Business Reply Mail, Qualified Business Reply Mail, Cards, or Priority Mail.

610.12 **Other Mailers.** Comparable NSAs, involving adoption of electronic Address Correction Service in lieu of physical returns for First-Class Mail that qualifies for Standard Mail rates and declining block rates for First-Class Mail, may be entered into with other customers, as specified by the Postal Service, and implemented pursuant to proceedings under Chapter 36 of Title 39, of the United States Code.

610.2 Waiver of Address Correction Fees

The fees for address correction in Fee Schedule 911 are waived for those First-Class Mail solicitations on which Capital One uses the endorsement specified by the Postal Service, if:

a. Capital One mails more than 750 million pieces of eligible First-Class Mail within the first year after implementation of this section, and

b. updates its databases within 2 days after receipt of address correction information and uses the information in all future First-Class Mail marketing campaigns.

If, during the first year after implementation, Capital One mails fewer than 750 million pieces of eligible First-Class Mail, Capital One agrees to pay the greater of either (1) all address correction service fees under Fee Schedule 911, as specified by the Postal Service, for pieces receiving address correction service, or (2) $1,000,000.

610.3 First-Class Mail Discounts

610.31 Discount Threshold. The Discount Threshold is defined as the greater of either 1.225 billion pieces of eligible First-Class Mail, or 90 percent of Capital One's average eligible First-Class Mail volume for FY2000, FY2001 and FY2002. The Discount Threshold may be adjusted in accordance with section 610.34.

610.32 Discounts. Capital One's eligible First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221 less the discounts shown in Rate Schedule 610A, for each year in which Capital One meets the Discount Threshold. The discounts apply only to volume above the Discount Threshold. Each incremental discount applies only to the incremental volume within each volume block.

610.33 Additional Discounts (Year 2, Year 3, and Year 4). If eligible First-Class Mail volume for the first year is less than 1.025 billion pieces, the additional discount tiers shown in Rate Schedule 610B shall apply to the incremental volumes in the second, third, and fourth years in addition to the incremental discounts in Rate Schedule 610A.

610.34 Threshold Adjustment. In the event that Capital One merges with or acquires an entity with annual First-Class Mail volume in excess of 10 million pieces in the year preceding the acquisition or merger, or in the event that, in any Postal Service fiscal year, Capital One merges with or acquires multiple entities with combined annual First-Class Mail volume in excess of 25 million pieces, the discount threshold wll be adjusted upward by the volume of First-Class Mail sent by the other entity (or entities) during the 12 months preceding the merger or acquisition. In that event, beginning in the succeeding fiscal quarter following the date of acquisition or merger, Rate Schedule 610C would apply in lieu of Rate Schedule 610A, and, if the conditions in section 610.33 are also met, Rate Schedule 610D would apply in lieu of Rate Schedule 610B.

610.35 Discount Limit. The maximum cumulative discount available to Capital One over the duration of this NSA shall not exceed $40.637 million.

610.4 Rates

The rates applicable to this Agreement are set forth in the following rate schedules:

610A
610B
610C
610D

610.5 Expiration

The provisions of section 610 expire on September 1, 2007 at 12:01 a.m.

610.6 Precedence

To the extent any provision of section 610 is inconsistent with any other provision of the Domestic Mail Classification Schedule, section 610 shall control.

611 DISCOVER FINANCIAL SERVICES NEGOTIATED SERVICE AGREEMENT

611.1 Eligible First-Class Mail

Eligible First-Class Mail under this section is defined as: (1) Discover Financial Services' First-Class Mail customer correspondence related to credit and banking products and services account holders; and (2) First-Class Mail solicitations for credit and banking products that bear the endorsement specified by the Postal Service. Eligible First-Class Mail does not include Business Reply Mail, Qualified Business Reply Mail, Cards, or Priority Mail.

611.2 Waiver of Address Correction Fees

The fees for address correction in Fee Schedule 911 are waived for those First-Class Mail solicitations on which Discover Financial Services uses the endorsement specified by the Postal Service, if:

a. Discover Financial Services mails more than 350 million pieces of eligible First-Class Mail within the first year after implementation of this section, and

b. Discover Financial Services updates any databases it uses for solicitation mail, other than First-Class Mail customer correspondence related to account holders, as specified by the Postal Service.

If, during the first year after implementation, Discover Financial Services mails fewer than 350 million pieces of eligible First-Class Mail, Discover Financial Services agrees to pay the greater of either (1) all address correction service fees under Fee Schedule 911, as specified by the Postal Service, for pieces receiving address correction service, or (2) $250,000.

611.3 First-Class Mail Discounts

611.31 Discount Threshold. The Discount Threshold is set at 405 million pieces of eligible First-Class Mail for the first year of the agreement.

611.32 Discounts. Discover Financial Services' Eligible First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221 less the discounts shown in Rate Schedule 611A, for the first year of the agreement if Discover Financial Services meets the Discount Threshold. The discounts apply only to volume above the Discount Threshold. Each incremental discount applies only to the incremental volume within each volume block.

611.33 Annual Threshold Adjustment. The Postal Service shall annually adjust the Discount Threshold based on the percentage change, from year to year, of Discover Financial Services' domestic gross active accounts, as that figure is reported quarterly in SEC filings. The beginning and ending points for each volume block in Rate Schedule 611A will increase or decrease by the same number as the increase or decrease in the Discount Threshold. Rate Schedule 611B will be applicable in lieu of Rate Schedule 611A if there is such an adjustment.

611.34 Threshold Adjustment for Acquisition or Merger. In the event that Discover Financial Services merges with or acquires an entity with annual First-Class Mail volume in excess of 10 million pieces in the year preceding the acquisition or merger, or in the event that, in any Postal Service fiscal year, Discover Financial Services merges with or acquires multiple entities with combined annual First-Class Mail volume in excess of 25 million pieces, the Discount Threshold will be adjusted upward by the volume of First-Class Mail sent by the other entity (or entities) during the 12 months preceding the merger or acquisition. Rate Schedule 611B will be applicable in lieu of Rate Schedule 611A if there is such an adjustment.

611.35 **Discount Limit.** The maximum cumulative discount available to Discover Financial Services over the duration of this NSA shall not exceed $13 million.

611.4 **Rates**

The rates applicable to this Agreement are set forth in Rate Schedules 611A and 611B.

611.5 **Expiration**

The provisions of section 611 expire at 12:01 a.m. on January 1, 2008.

611.6 **Precedence**

To the extent any provisions of section 611 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

612 **BANK ONE NEGOTIATED SERVICE AGREEMENT**

612.1 **Eligible First-Class Mail**

Eligible First-Class Mail under this section is defined as: (1) all Bank One letter shape First-Class Mail customer account mail (statements and correspondence) related to credit and banking products and services account holders; and (2) First-Class Mail solicitations for credit and banking products that bear the endorsement specified by the Postal Service, except that no more than 35 million flat shape solicitation pieces will be counted annually toward the discount threshold or be eligible for discounts. Eligible First-Class Mail does not include Business Reply Mail, Qualified Business Reply Mail, Cards or Priority Mail.

612.2 **Waiver of Address Correction Fees**

The fees for address correction in Fee Schedule 911 are waived for those First-Class Mail solicitations on which Bank One uses the endorsement specified by the Postal Service.

In exchange for a waiver of ACS fees, Bank One will update any databases it maintains for solicitation mail, other than First-Class Mail customer correspondence related to account holders, and use the information in all future marketing campaigns.

If, during the first year after implementation, Bank One Corporation mails fewer than 25 million pieces of eligible First-Class Mail, Bank One agrees to pay $200,000.

612.3 First-Class Mail Discounts

612.31 Discount Threshold. The Discount Threshold is set at 535 million pieces of eligible First-Class Mail for the first year of the agreement.

612.32 Discounts. Bank One's Eligible First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221 less the discounts shown in Rate Schedule 612A, for the first year of this Agreement if Bank One meets the Discount Threshold. The discounts apply only to volume above the Discount Threshold. Each incremental discount applies only to the incremental volume within each volume block.

612.33 Annual Threshold Adjustment. The Postal Service shall annually adjust the Discount Threshold based on the percentage change from year to year in the sum of the number of Bank One's credit card and checking accounts, as listed in Bank One's annual report. This adjustment shall be determined as follows: if the percentage change is an increase or a decrease of greater than 5%, the threshold shall be adjusted upward or downward by the difference between the percentage change and 3%. No adjustment shall be made for a percentage change of 5% or less. If the percentage change is more than 5%, Rate Schedule 612B would apply in lieu of Rate Schedule 612A.

612.34 Threshold Adjustment for Mergers and Acquisitions; and Portfolio Purchases. In the event that:

a. Bank One merges with and/or acquires an entity and/or purchases a portfolio with annual First-Class Mail volume in excess of 10 million pieces but less than 300 million pieces, the discount threshold will be adjusted to add the volume of First-Class Mail sent by the merged or acquired entity, or on behalf of the purchased portfolio during the 12 months preceding the merger, acquisition, or purchase. In that event, beginning in the succeeding fiscal quarter immediately following the date that mail volumes due to the merger, acquisition, or purchase begin to be mailed through the threshold permit accounts, Rate Schedule 612B would apply in lieu of Rate Schedule 612A.

b. Bank One merges with, or acquires, another banking entity that has an annual First-Class Mail volume of over 300 million pieces, the discount

threshold will be adjusted upward to add the volume of the merged or acquired entity for the 12 months prior to the date the mail of the merged entity is first mailed through the threshold permit accounts. In that event, beginning in the succeeding fiscal quarter immediately following the date the mail of the merged entity is first mailed through the threshold permit accounts, Rate Schedule 612B would apply in lieu of Rate Schedule 612A.

c. Bank One loses or sells a portfolio with annual First-Class Mail volume of at least 10 million pieces, the discount threshold will be adjusted downward by the product of the number of active accounts lost or sold multiplied by 12. In that event, beginning in the succeeding fiscal quarter immediately following the date that the mail volumes due to the loss or sale will no longer be mailed through the threshold permit accounts, Rate Schedule 612B will apply in lieu of Rate Schedule 612A.

612.35 **Third Year Discounts.** In the third year of the agreement, availability of the discounts in Rate Schedules 612A or 612B will be subject to the following provisions:

a. If the cumulative financial impact of section 612 on the Postal Service at the end of the second year after implementation is positive, then the discounts in Rate Schedules 612A or 612B will be available.

b. If the cumulative financial impact of section 612 on the Postal Service at the end of the second year after implementation is negative, and the incremental financial impact for volume entered under any rate discount block under section 612 is also negative, then mail that otherwise qualified for that discount shall instead be eligible for the deepest block discount that produces a positive incremental financial impact.

c. Determination of the cumulative financial impact within the meaning of paragraph (a) shall be based on the financial analysis submitted into the record as Appendix A to USPS-T-1 by the Postal Service in Postal Rate Commission Docket No. MC2004-3, adjusted solely to reflect the return, forwarding and ACS success rates actually experienced by the Postal Service on eligible letter-shaped solicitations (as defined in section 612.1) entered as First-Class Mail under this provision during the first two years after implementation.

d. Determination of the incremental financial impact for volume entered under each rate discount block within the meaning of paragraph (b) shall be based on a financial analysis comparable to that specified in

paragraph (c), except that the analysis shall report separately the net incremental contribution per piece for volume within each rate discount block, rather than the cumulative financial impact of section 612 in the aggregate, and shall be based on inputs from the second year only.

e. The Postal Service shall submit its determination under this section, along with the Postal Service's supporting analysis, within two years and three months from the implementation date of this provision.

f. If the Postal Service fails to submit the analysis described in this subsection within 2 years and 3 months after implementation, this provision (section 612) will expire 2 years and 3 months from the implementation date set by the Board of Governors, rather than at the end of the third year, as otherwise provided by section 612.5.

612.36 **Discount Limit.** The maximum cumulative discount available to Bank One Corporation over the duration of this negotiated service agreement shall not exceed $11.508 million.

612.4 **Rates**

The rates applicable to this Agreement are set forth in Rate Schedules 612A and 612B.

612.5 **Expiration**

The provisions of section 612 expire on April 1, 2008.

612.6 **Precedence**

To the extent any provision of section 612 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

613 **HSBC NORTH AMERICA HOLDINGS INC. NEGOTIATED SERVICE AGREEMENT**

613.1 **Eligible First-Class Mail**

Eligible First-Class Mail under this section is defined as: (1) HSBC's First-Class Mail customer correspondence related to credit and banking products and services account holders; and (2) First-Class Mail solicitations for credit and banking products that bear an endorsement specified by the Postal

Service. Eligible First-Class Mail does not include Business Reply Mail, Qualified Business Reply Mail, Cards, Priority Mail, or pieces that are not letter-shaped.

613.2 Waiver of Address Correction Fees

The fees for address correction in Fee Schedule 911 are waived for those First-Class Mail solicitations on which HSBC uses the endorsement specified by the Postal Service, if:

a. HSBC mails more than 525 million pieces of eligible First-Class Mail within the first year after implementation of this section, and

b. HSBC updates any databases it maintains for solicitation mail, other than First-Class Mail customer correspondence related to account holders, as specified by the Postal Service.

If, during the first year after implementation, HSBC mails fewer than 525 million pieces of eligible First-Class Mail, HSBC agrees to pay the greater of either (1) all address correction service fees under Fee Schedule 911, as specified by the Postal Service, for pieces receiving address correction service, or (2) $200,000.

613.3 First-Class Mail Discounts

613.31 Discount Thresholds. The First-Class Mail Volume Threshold is set at 615 million pieces of eligible First-Class Mail for the first year of the agreement, 725 million pieces for the second year of the agreement, and 810 million pieces for the third year of the agreement.

613.32 Discounts. HSBC's eligible First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221, less the discounts shown in Rate Schedule 613A for the first year of the agreement, in Rate Schedule 613B for the second year of the agreement, and in Rate Schedule 613C for the third year of the agreement, if HSBC meets the applicable Discount Threshold in any of those years. The discounts apply in each year only to volume above the Discount Threshold for that year. Each incremental discount applies only to the incremental volume within each volume block.

613.33 Annual Threshold Adjustments. The discount thresholds specified in section 613.31 for the second and third years of the agreement may be adjusted upward or downward based on the relationship between mail

volumes forecasted by HSBC for the first and second years of the agreement, and the mail volumes actually tendered by HSBC in those years. To determine whether any adjustment is warranted under this provision, at the end of the first and second years of the agreement, percentage deviations will be calculated between the before-rates forecasts of HSBC's First-Class Mail and Standard Mail volumes for the year, and HSBC's actual volume in each category. An upward adjustment will be triggered if the actual volume of First-Class Mail exceeds the forecasted volume by more than 20 percent, and the actual volume of Standard Mail exceeds the forecasted volume by more than 5 percent. For years in which the upward adjustment is triggered, the discount threshold specified in section 613.31 for the next year will be increased by a percentage amount equal to the First-Class Mail volume percentage surplus, less 15 percent. A downward adjustment will be triggered if the forecasted volume of First-Class Mail exceeds the actual volume of First-Class Mail by more than 15 percent. For years in which a downward adjustment is triggered, the discount threshold specified in section 613.31 for the next year will be decreased by a percentage amount equal to the First-Class Mail volume percentage deficit, less 15 percent. Any new annual threshold amounts calculated under this provision will be rounded to the nearest whole million pieces of mail. For any year for which a new annual threshold amount has been derived pursuant to this provision, Rate Schedule 613D will be applicable in lieu of Rate Schedule 613B or 613C.

613.34 Threshold Adjustment for Mergers and Acquisitions; and Portfolio Activity.

In the event that:

a. HSBC merges with and/or acquires an entity and/or purchases a portfolio with annual First-Class Mail volume in excess of 10 million pieces, the discount threshold will be adjusted to add the volume of First-Class Mail sent by the merged or acquired entity, or on behalf of the purchased portfolio, during the 12 months preceding the merger, acquisition, or purchase. In that event, beginning in the succeeding fiscal quarter immediately following the date that mail volumes due to the merger, acquisition, or purchase begin to be mailed through the threshold permit accounts, Rate Schedule 613D would apply in lieu of Rate Schedule 613A, 613B, or 613C.

b. HSBC in the first or second year of the agreement merges with or acquires multiple entities, or purchases multiple portfolios, that have combined annual First-Class Mail volume in excess of 25 million pieces,

the discount thresholds for all succeeding years of the agreement will be adjusted upward to add the First-Class Mail volume sent by the merged or acquired entities, or on behalf of the acquired portfolios, for the 12 months prior to the date the mail of the merged entity is first mailed through the threshold permit accounts. In that event, in all succeeding years of the agreement, Rate Schedule 613D would apply in lieu of Rate Schedule 613B or 613C.

c. HSBC loses or sells a portfolio with annual First-Class Mail volume of at least 10 million pieces, the discount threshold will be adjusted downward by the product of the number of active accounts lost or sold, multiplied by 12. In that event, beginning in the succeeding fiscal quarter immediately following the date that the mail volumes due to the loss or sale will no longer be mailed through the threshold permit accounts, Rate Schedule 613D will apply in lieu of Rate Schedule 613A, 613B, or 613C.

d. In order to avoid double counting, any volumes used to make adjustments pursuant to these merger, acquisition, and portfolio activity provisions shall be excluded from calculation of the corresponding annual threshold adjustment pursuant to section 613.33.

613.35 **Discount Limit.** The maximum cumulative discount available to HSBC over the duration of this NSA shall not exceed $9 million.

613.36 **Implementation Date Threshold Adjustments.**

The discount threshold specified in section 613.31 for the first year of the agreement shall be increased by the difference between the thresholds specified for the first year and the second year, pro-rated on a monthly basis from January 1, 2005, to the first day of the month of the actual date of implementation, and then rounded to the nearest whole million pieces of mail. The discount threshold specified for the second year of the agreement shall be similarly increased, by applying the same proportional factor to the difference between the thresholds specified for the second and third year. The discount threshold specified for the third year shall be increased by the same absolute amount of volume added to the threshold for the second year. Similarly, for purposes of determining any applicable annual threshold adjustments as specified in section 613.33, the before-rates forecasts of HSBC's First-Class Mail for the first and second years of the agreement shall be increased by applying the same proportional factor to the differences between, respectively, the before-rates forecasts for the first and second years, and the before-rates forecasts for the second and third years.

613.4 Rates

The rates applicable to this Agreement are set forth in Rate Schedules 613A, 613B, 613C, and 613D.

613.5 Expiration

The provisions of section 613 expire on January 1, 2009.

613.6 Precedence

To the extent any provision of section 613 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

620 BOOKSPAN NEGOTIATED SERVICE AGREEMENT

620.1 Eligible Standard Mail

620.11 Bookspan. Eligible Standard Mail under this section is defined as Standard Mail letter-shaped pieces sent by Bookspan for the purpose of soliciting book club membership: (1) of persons who are not current subscribers to the book club or clubs Bookspan is promoting in the mailing; or (2) of book club members whose membership is expiring. Such pieces may be sent by Bookspan, by entities in which Bookspan holds controlling shares, or by their vendors on their behalf. Such pieces may include up to two inserts promoting Bookspan's strategic business alliances. Under no circumstances are periodic Current Member club mailings which offer the cycle's Featured Selection, as well as other club selections and offerings, eligible to be counted and receive discounts under the Agreement, even if they contain solicitations to renew membership in that club or to join other clubs.

620.12 Other Mailers. Functionally equivalent NSAs, involving declining block rates for Standard Mail letters for the purpose of acquiring customers for programs involving recurring mailings offering merchandise, may be entered into with other customers demonstrating a similar or greater multiplier effect and implemented pursuant to proceedings under Chapter 36 of Title 39, of the United States Code. For a mailer to have a similar or greater multiplier effect, at least six times per year, that mailer must send a continuing series of marketing mail, send products to a list of people who have agreed to purchase some stipulated minimum number of items on a more or less

regular basis and use at least one other subclass for merchandise fulfillment.

620.2 Standard Mail Declining Block Rates

620.21 Volume Commitments. The following volume commitments for otherwise eligible letter-shaped Standard Mail pieces must be met before any discounts under this section are payable:

a. 94 million for the first year of the Agreement;

b. 95 million for the second year of the Agreement, subject to adjustment as specified below; and,

c. 105 million for the third year of the Agreement, subject to adjustment as specified below.

If Bookspan does not mail at least 73 million pieces during the first year of this Agreement, it will pay the Postal Service a one-time transaction fee of $200,000.

620.22 Volume Commitment Adjustment Mechanism. At the end of each year of the Agreement other than its final year, the volume commitment for the following year will be adjusted, as follows:

a. If, at the end of the year, actual volume is 12 percent or more above that year's volume commitment, the following year's commitment will be revised to be the average of the completed year's actual volume and the original volume commitment for the following year.

b. If, at the end of the year, actual volume is 5 percent or more below that year's volume commitment, the following year's commitment will be decreased by the percentage difference between the completed year's original volume commitment and its actual volume, but in no case to lower than 90 million.

620.23 Incremental Discounts. Bookspan's eligible Standard Mail is subject to the otherwise applicable Standard Mail postage in Rate Schedule 321A, 321B, or 322 less the discounts shown in Rate Schedule 620A for the first year of the Agreement, in Rate Schedule 620B for the second year of the Agreement, and in Rate Schedule 620C for the third year of the Agreement, if Bookspan meets the applicable volume commitments specified in 620.21,

or as adjusted in accordance with 620.22. Each incremental discount applies only to the incremental volume within each volume block.

620.24 **Volume Block Adjustments for Mergers and Acquisitions.** In the event that Bookspan merges with and/or acquires an entity or entities and/or purchases a portfolio with annual Standard Mail volume in excess of 5 million pieces, the volume blocks will be adjusted to add the volume of Standard Mail sent by the merged or acquired entity during the 12 months preceding the merger, acquisition, or purchase. The adjustment becomes effective for the succeeding fiscal quarter immediately following the date that mail volumes due to the merger, acquisition, or purchase begin to be mailed through the threshold permit accounts.

620.25 **Termination.** The Agreement automatically terminates and eligibility for all discounts under this section ceases if Bookspan's Standard Mail letter solicitation volume exceeds 150,000,000, or if the Agreement is terminated by either party with 30 days' written notice to the other party.

620.4 **Rates**

The rates applicable to this Agreement are set forth in Rate Schedules 620A, 620B, and 620C.

620.5 **Expiration**

The provisions of section 620 expire on June 1, 2009.

620.6 **Precedence**

To the extent any provision of section 620 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

SPECIAL SERVICES
CLASSIFICATION SCHEDULE

910 ADDRESSING

911 ADDRESS CORRECTION SERVICE

911.1 Definition

911.11 Address Correction Service provides a mailer both an addressee's former and current address, if the correct address is known to the Postal Service. If the correct address is not known to the Postal Service, Address Correction Service provides the reason why the Postal Service could not deliver the mailpiece as addressed.

911.2 Availability

911.21 Address Correction service is available to mailers of postage prepaid mail of all classes, except for mail addressed for delivery by military personnel at any military installation and Regular and Nonprofit Presort category mail entered as Customized Market Mail under sections 321.22 and 323.22. Address Correction Service is mandatory for Periodicals class mail.

911.22 Automated <u>or Electronic</u> Address Correction Service is available to mailers who can receive computerized address corrections and meet the <u>barcoding and other</u> requirements specified by the Postal Service. <u>Automated Address Correction Service is limited to mailers who meet address hygiene requirements, as specified by the Postal Service.</u>

911.3 Mailer Requirements

911.31 Mail, other than Periodicals class mail, sent under this section must bear a request for Address Correction service.

911.4 Other Services

911.41 Address Correction Service serves as a prerequisite for Shipper Paid Forwarding<u>, and for Standard Mail Forwarding Service for mailpieces defined in Section 353a</u>.

911.5 Fees

911.51 The fees for Address Correction Service are set forth in Fee Schedule 911. These fees do not apply when the correction is provided incidental to the return of the mail piece to the sender. The "Automated" fees are available to customers meeting address hygiene requirements, as specified by the Postal Service.

912 MAILING LIST SERVICES

912.1 Definition

912.11 Mailing List services enable an eligible mailer to obtain the following services:

a. Correction of Mailing Lists;

b. Change-of-Address Information for Election Boards and Registration Commissions;

c. ZIP Coding of Mailing Lists; and

d. Sequencing of Address Cards.

912.2 Description of Services

a. Correction of Mailing Lists. This service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists. New names will not be added to a name and address mailing list, and street address numbers will not be added or changed for an occupant mailing list.

(1) The Postal Service provides the following corrections to name and address lists:

i. deletion of names to which mail cannot be delivered or forwarded;

ii. correction of incorrect house, rural, or post office box numbers; and

iii. furnishing of new addresses, including Zip Codes, when permanent forwarding orders are on file for customers who have moved.

This service does not include the addition of new names.

(2) The Postal Service provides the following corrections to occupant lists:

i. deletion of numbers representing incorrect or non-existent street addresses;

ii. identification of business addresses and rural route addresses, to the extent known; and

iii. grouping of corrected cards or sheets by route.

b. Change-of-Address Information for Election Boards and Registration Commissions. This service provides election boards and voter registration commissions with the current address of a resident addressee, if known to the Postal Service.

c. ZIP Coding of Mailing Lists. This service provides sortation of addresses to the finest possible ZIP Code level.

d. Sequencing of Address Cards. This service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.

912.3 Requirements of Customer

912.31 Correction of Mailing List service is available only to the following owners of name and address or occupant mailing lists:

a. Members of Congress

b. Federal agencies

c. State government departments

d. Municipalities

e. Religious organizations

f. Fraternal organizations

g. Recognized charitable organizations

h. Concerns or persons who solicit business by mail

912.32 A customer desiring correction of a mailing list or arrangement of address cards in sequence of carrier delivery must submit the list or cards as specified by the Postal Service.

912.33 Gummed labels, wrappers, envelopes, Stamped Cards, or postcards indicative of one-time use will not be accepted as mailing lists.

912.4 Fees

912.41 The fees for Mailing List services are set forth in Fee Schedule 912.

913 CHANGE OF ADDRESS SERVICE

913.1 Definition

913.11 Change of Address Service is available to customers who want their mail permanently or temporarily forwarded to a future or current address from a former address.

913.2 Fees

913.21 The fee for Change of Address Service is set forth in Fee Schedule 1000.

920 DELIVERY ALTERNATIVES

921 POST OFFICE BOX AND CALLER SERVICE

921.1 Post Office Box Service

921.11 Definition

921.111 Post Office Box service provides the customer with a private, locked receptacle for the receipt of mail during the hours specified by the Postal Service.

921.12 Limitations

921.121 The Postal Service may limit the number of post office boxes occupied by any one customer.

921.122 Post Office Box service is not available to a customer whose sole purpose for using this service is to obtain free forwarding or transfer of mail by filing change-of-address orders.

921.13 Fees

921.131 Fees for Post Office Box service are set forth in Fee Schedule 921.

921.132 In postal facilities primarily serving academic institutions or the students of such institutions, fees for post office boxes are:

Period of box use	Fee
95 days or less	½ semiannual fee
96 to 140 days	¾ semiannual fee
141 to 190 days	Full semiannual fee
191 to 230 days	1¼ semiannual fee
231 to 270 days	1½ semiannual fee
271 days to full year	Twice semiannual fee

921.133 No refunds will be made for post office box fees paid under section 921.132.

921.134 Two box keys are available upon payment of a refundable deposit, as specified by the Postal Service. Additional keys, including replacement keys, will be provided, as specified by the Postal Service, only upon payment of the key fee set forth in Fee Schedule 921. Changing the lock on a box is available upon request of the primary box customer and payment of the lock replacement fee set forth in Fee Schedule 921.

921.2 Caller Service

921.21 Definition

921.211 Caller service provides a means for receiving mail, and enables an eligible customer to have properly addressed mail delivered through a call window or loading dock.

921.22 Availability

921.221 Caller service is provided to customers at the discretion of the Postal Service, based on mail volume received and capacity and utilization of post office boxes at any one facility.

921.222 Caller service is not available to a customer whose sole purpose for using this service is to obtain free forwarding or transfer of mail by filing change-of-address orders.

921.23 Fees

921.231 Fees for Caller service are set forth in Fee Schedule 921.

930 PAYMENT ALTERNATIVES

931 BUSINESS REPLY MAIL

931.1 Definitions

931.11 Business Reply Mail service enables a Business Reply Mail permit holder, or the permit holder's authorized representative, to distribute Business Reply Mail cards, envelopes, cartons and labels, which can then be used by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. The permit holder guarantees payment on delivery of postage and fees for the Business Reply Mail pieces that are returned to the addressee, including any pieces that the addressee refuses.

931.2 Mailer Requirements

931.21 Business reply cards, envelopes, cartons and labels must meet the addressing and preparation requirements specified by the Postal Service. Qualified Business Reply Mail must in addition meet the requirements presented in sections 221.24 or 222.34 for the First-Class Mail Qualified Business Reply Mail rate categories.

931.22 To qualify for the advance deposit account per-piece fees, the customer must maintain sufficient money in an advance deposit account to cover postage and fees due for returned Business Reply Mail.

931.23 To qualify for the nonletter-size weight-averaging per-piece and monthly fees set forth in Fee Schedule 931, the permit holder must be authorized for weight averaging, and receive Business Reply Mail pieces that meet the

addressing and other preparation requirements specified by the Postal Service, but do not meet the machinability requirements specified by the Postal Service for mechanized or automation letter sortation.

931.3 Other Services

931.31 ***Reserved***

931.4 Fees

931.41 The fees for Business Reply Mail are set forth in Fee Schedule 931.

931.42 To qualify for any service level except regular (no account[ing] maintenance fee) Business Reply Mail, the annual account[ing] maintenance fee set forth in Fee Schedule 1000 must be paid each year for each business reply advance deposit account at each facility where the mail is to be received.

931.43 The nonletter-size weight averaging monthly fee set forth in Fee Schedule 931 must be paid each month during any part of which the permit holder is authorized to use the weight averaging fees.

931.5 Authorizations and [Licenses] Permits

931.51 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a [license] permit or [licenses] permits from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 1000.

931.52 Except as provided in section 931.53, the [license] permit to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.53 If the Business Reply Mail is to be distributed from a central office to be returned to branches or dealers in other cities, one [license] permit obtained from the post office where the central office is located may be used to cover all Business Reply Mail.

931.54 The [license to mail] permit to distribute Business Reply Mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.

931.55 Authorization to pay nonletter-size weight-averaging Business Reply Mail fees as set forth in Fee Schedule 931 may be canceled for failure of a

Business Reply Mail advance deposit trust account holder to meet the standards specified by the Postal Service for the weight averaging accounting method.

932 MERCHANDISE RETURN SERVICE

932.1 Definition

932.11 Merchandise Return service enables a Merchandise Return service permit holder to authorize [its customers to return a] a mailer to send parcels with the postage and fees paid by the permit holder.

932.2 Availability

932.21 Merchandise Return service is available to all Merchandise Return service permit holders who guarantee payment of postage and fees for all [returned] authorized parcels.

932.22 Merchandise Return service is available for the [return] sending of any parcel under the following classification schedules:

a. First-Class Mail; and

b. Package Services, except Parcel Post subclass mail entered under section 521.27 or 521.28.

932.3 Mailer Requirements

932.31 Merchandise return labels must be prepared as specified by the Postal Service, and be made available to the permit holder's customers.

932.4 Other Services

932.41 The following services may be purchased in conjunction with Merchandise Return Service:

Service	Fee Schedule
a. Certificate of Mailing	947
b. Insurance	943
c. Registered Mail	942
d. Special Handling	952

932.5 Fees

932.51 The permit holder must pay the account[ing] maintenance fee specified in Fee Schedule 1000 once each 12-month period for each advance deposit account.

932.6 Authorizations and Licenses

932.61 A permit fee as set forth in Schedule 1000 must be paid once each 12-month period by shippers utilizing Merchandise Return service.

932.62 The merchandise return permit may be canceled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned parcels or for distributing merchandise return labels that do not conform to Postal Service specifications.

933 ***Reserved [On-Site Meter Service]***

[933.1 Definition

933.11 On-Site Meter service enables a mailer or meter manufacturer to obtain the following meter-related services from the Postal Service at the mailer's or meter manufacturer's premises:

a. checking a meter in or out of service; and

b. setting or examining a meter.

933.2 Availability

933.21 On-Site Meter service is available on a scheduled basis, and meter setting may be performed on an emergency basis for those customers enrolled in the scheduled on-site meter setting or examination program.

933.3 Fees

933.31 The fees for On-Site Meter service are set forth in Fee Schedule 933. The basic meter service fee is charged whenever a postal employee is available to provide a meter-related service in section 933.11 at the mailer's or meter manufacturer's premises, even if no particular service is provided.]

934 ***Reserved***

935 BULK PARCEL RETURN SERVICE

935.1 Definition

935.11 Bulk Parcel Return Service provides a method whereby high-volume parcel mailers may have machinable Standard Mail parcels returned to designated postal facilities for pickup by the mailer at a predetermined frequency specified by the Postal Service or delivered by the Postal Service in bulk in a manner and frequency specified by the Postal Service. Such parcels are being returned because they:

a. are undeliverable-as-addressed;

b. have been opened, resealed, and redeposited into the mail for return to the mailer using the return label described in section 935.36 below; or

c. are found in the mailstream, having been opened, resealed, and redeposited by the recipient for return to the mailer, and it is impracticable or inefficient for the Postal Service to return the mailpiece to the recipient for payment of return postage.

935.2 Availability

935.21 Bulk Parcel Return Service is available only for the return of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

935.3 Mailer Requirements

935.31 Mailers must receive authorization from the Postal Service to use Bulk Parcel Return Service.

935.32 To claim eligibility for Bulk Parcel Return Service at each facility through which the mailer requests Bulk Parcel Return Service, the mailer must demonstrate receipt of 10,000 returned machinable parcels at a given delivery point in the previous postal fiscal year or must demonstrate a high likelihood of receiving 10,000 returned parcels in the postal fiscal year for which the service is requested.

935.33 Payment for Bulk Parcel Return Service is made through advance deposit account, or as otherwise specified by the Postal Service.

935.34 Mail for which Bulk Parcel Return Service is requested must bear endorsements specified by the Postal Service.

935.35 Bulk Parcel Return Service mailers must meet the documentation and audit requirements of the Postal Service.

935.36 Mailers of parcels endorsed for Bulk Parcel Return Service may furnish the recipient a return label, prepared at the mailer's expense to specifications set forth by the Postal Service, to authorize return of opened, machinable parcels at the expense of the original mailer. There is no additional fee for use of the label.

935.4 Other Services

935.41 The following services may be purchased in conjunction with Bulk Parcel Return Service:

Service	Fee Schedule
a. Address Correction Service	911
b. Certificate of Mailing	947
c. Shipper-Paid Forwarding	936

935.5 Fees

935.51 The per return fee for Bulk Parcel Return Service is set forth in Fee Schedule 935.

935.52 The permit holder must pay the account[ing] maintenance fee specified in Fee Schedule 1000 once each 12-month period for each advance deposit account.

935.6 Authorizations and Licenses

935.61 A permit fee as set forth in Schedule 1000 must be paid once each 12-month period by mailers utilizing Bulk Parcel Return Service.

935.62 The Bulk Parcel Return Service permit may be canceled for failure to maintain sufficient funds in an advance deposit account to cover postage and fees on returned parcels or for failure to meet the specifications of the Postal Service, including distribution of return labels that do not conform to Postal Service specifications.

936 SHIPPER-PAID FORWARDING

936.1 Definition

936.11 Shipper-Paid Forwarding enables mailers to have undeliverable-as-addressed machinable Standard Mail parcels forwarded at applicable First-Class Mail rates for up to one year from the date that the addressee filed a change-of-address order. If Shipper-Paid Forwarding is elected for a parcel that is returned, the mailer will pay the applicable First-Class Mail rate, or the Bulk Parcel Return Service fee, if that service was elected.

936.2 Availability

936.21 Shipper-Paid Forwarding is available only for the forwarding of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

936.22 Shipper-Paid Forwarding is available only if automated Address Correction Service, as described in section 911, is used.

936.3 Mailer Requirements

936.31 Mail for which Shipper-Paid Forwarding is purchased must meet the preparation requirements of the Postal Service.

936.32 Payment for Shipper-Paid Forwarding is made through advance deposit account, or as otherwise specified by the Postal Service.

936.33 Mail for which Shipper-Paid Forwarding is requested must bear endorsements specified by the Postal Service.

936.4 Other Services

936.41 The following services may be purchased in conjunction with Shipper-Paid Forwarding:

Service	Fee Schedule
a. Certificate of Mailing	947
b. Bulk Parcel Return Service	935

936.5 Applicable Rates and Fees

936.51 Except as provided in section 935, single-piece rates under the Letters and Sealed Parcels subclass or the Priority Mail subclass of First-Class Mail, as set forth in Rate Schedules 221, and 223, apply to pieces forwarded or returned under this section.

936.52 The account[ing] maintenance fee specified in Fee Schedule 1000 must be paid once each 12-month period for each advance deposit account.

937 PREMIUM FORWARDING SERVICE

937.1 Definition

937.11 Premium Forwarding Service provides residential delivery customers, and certain post office box customers, the option to receive substantially all classes of mail addressed to a primary address instead at a temporary address by means of a weekly Priority Mail shipment. Parcels that are too large for the weekly shipment, mail pieces that require a scan upon delivery or arrive postage due at the office serving the customer's primary address, and certain Priority Mail pieces may be re-routed as specified by the Postal Service. Re-routed Express Mail, First-Class Mail, and Priority Mail pieces incur no additional reshipping charges. Re-routed Standard Mail and Package Service pieces may be re-routed postage due, primarily Priority Mail postage due, as specified by the Postal Service. Mail sent to a primary address for which an addressee has activated Premium Forwarding Service is not treated as undeliverable-as-addressed.

937.2 Availability

937.21 Premium Forwarding Service is available for a period of at least two weeks and not more than twelve months, as specified by the Postal Service. Customers may not use Premium Forwarding Service simultaneously with temporary or permanent forwarding orders. Premium Forwarding Service is not available to customers whose primary address consists of a size three, four or five post office box, subject to exceptions allowed by the Postal Service, or a centralized delivery point.

937.3 Customer Requirements

937.31 A customer must complete and submit a Premium Forwarding Service application together with all postage and fees for the full duration of service

to the post office responsible for delivery to that customer's primary address, as specified by the Postal Service.

937.4 Other Services

937.41 Premium Forwarding Service may not be combined with any ancillary or special services beyond those purchased by the original mailer.

937.5 Rates and Fees

937.51 The postage rate for mail reshipped by Premium Forwarding Service consists of the rate specified in Rate Schedule 223 for a three-pound parcel mailed to zone 6 on the enrollment date.

937.52 Fees for Premium Forwarding Service are specified in Fee Schedule 937.

937.6 Duration of the Premium Forwarding Service Experiment

937.61 The provisions of section 937 expire the later of:

a. August 7, 2007, or

b. if, by the expiration date specified above, a request for the establishment of a permanent Premium Forwarding Service is pending before the Postal Rate Commission, the later of:

(1) three months after the Commission takes action on such proposal under section 3624 of title 39, or, if applicable,

(2) the implementation date for a permanent Premium Forwarding Service classification.

940 ACCOUNTABILITY AND RECEIPTS

941 CERTIFIED MAIL

941.1 Definition

941.11 Certified Mail service provides a mailer with evidence of mailing and, upon request, electronic confirmation that an article was delivered or that a delivery attempt was made, and guarantees retention of a record of delivery by the Postal Service for a period specified by the Postal Service.

941.2 Availability

941.21 Certified Mail service is available for matter mailed as First-Class Mail.

941.3 Included Services

941.31 If requested by the mailer, the Postal Service will indicate the time of acceptance on the mailing receipt. A mailer may obtain a copy of the mailing receipt on terms specified by the Postal Service.

941.32 If the initial attempt to deliver the mail is not successful, a notice of attempted delivery is left at the mailing address, and the date and time of the attempted delivery is made available to the mailer.

941.33 The date and time of delivery is made available to the mailer electronically.

941.4 Mailer Requirements

941.41 Certified Mail must be deposited in a manner specified by the Postal Service.

941.42 The mailer must mail the article at a post office, branch, or station, or give the article to a rural carrier, in order to obtain a mailing receipt.

941.5 Other Services

941.51 The following services may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. Restricted Delivery	946
b. Return Receipt	945

941.6 Fees

941.61 The fee for Certified Mail service is set forth in Fee Schedule 941.

942 REGISTERED MAIL

942.1 Definition

942.11 Registered Mail service provides added protection to mail sent under this section and indemnity in case of loss or damage. The amount of indemnity

depends upon the actual value of the article at the time of mailing, up to a maximum of $25,000, and is not available for articles of no value.

942.2 Availability

942.21 Registered Mail service is available for prepaid First-Class Mail of any value, if the mail meets the minimum requirements for length and width specified by the Postal Service.

942.22 Registered Mail service is not available for:

a. All delivery points because of the high security required for Registered Mail; in addition, liability is limited in some geographic areas;

b. Mail of any class sent in combination with First-Class Mail; and

c. Two or more articles tied or fastened together, unless the envelopes are enclosed in the same envelope or container.

942.3 Included Services

942.31 The following services are provided as part of Registered Mail service at no additional cost to the mailer:

a. A mailing receipt;

b. Electronic confirmation, upon request, that an article was delivered or that delivery attempt was made;

c. A record of delivery, retained by the Postal Service for a specified period of time;

d. A notice of attempted delivery, left at the mailing address if the initial delivery attempt is unsuccessful; and

e. A notice of nondelivery, when Registered Mail is undeliverable-as-addressed and cannot be forwarded.

942.32 Registered Mail is forwarded and returned without additional registry charge.

942.4 Mailer Requirements

942.41 Registered Mail must be deposited in a manner specified by the Postal Service.

942.42 Indemnity claims for Registered Mail must be filed within a period of time, specified by the Postal Service, from the date the article was mailed. A claim concerning complete loss of registered articles may be filled by the mailer only. A claim concerning damage to or partial loss of registered articles may be filed by either the mailer or addressee.

942.5 Other Services

942.51 The following services may be obtained in conjunction with mail sent under this section upon payment of applicable fees:

Service	Fee Schedule
a. Collect on Delivery	944
b. Restricted Delivery	946
c. Return Receipt	945
d. Merchandise Return (shippers only)	932

942.6 Fees

942.61 The fees for Registered Mail are set forth in Fee Schedule 942.

942.62 There are no additional Registered Mail fees for forwarding and return of Registered Mail.

943 INSURANCE

943.1 Express Mail Insurance

943.11 Definition

943.111 Express Mail Insurance provides the mailer with indemnity for loss of, rifling of, or damage to items sent by Express Mail.

943.12 Availability

943.121 Express Mail Insurance is available only for Express Mail.

943.13 Limitations and Mailer Requirements

943.131 Insurance coverage is provided, for no additional charge, up to $100 per-piece for document reconstruction, up to $5,000 per occurrence, regardless of the number of claimants. Insurance coverage for merchandise is also provided, for no additional charge, up to $100 per-piece. Additional merchandise insurance coverage may be purchased for a fee. The maximum liability for merchandise is $5,000 per-piece. For negotiable items, currency, or bullion, the maximum liability is $15.

943.132 Indemnity claims for Express Mail must be filed within a specified period of time from the date the article was mailed.

943.133 Indemnity will be paid under terms and conditions specified by the Postal Service.

943.134 Among other limitations specified by the Postal Service, indemnity will not be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;

b. Due to improper packaging;

c. Due to seizure by any agency of government; or

d. Due to war, insurrection or civil disturbances.

943.14 Other Services

943.141 ***Reserved***

943.15 Fees

943.151 The fees for Express Mail Insurance service are set forth in Fee Schedule 943.

943.2 General Insurance

943.21 Definition

943.211 General Insurance provides the mailer with indemnity for loss of, rifling of, or damage to mailed items. General Insurance provides a bulk option for mail

meeting the conditions described below and specified further by the Postal Service.

943.22 Availability

943.221 General Insurance is available for mail sent under the following classification schedules:

a. First-Class Mail, if containing matter that may be mailed as Standard Mail or Package Services;

b. Package Services, except Parcel Post subclass mail entered under section 521.27 or 521.28; and

c. Regular and Nonprofit subclasses of Standard Mail, for Bulk Insurance only, for mail [subject to residual shape surcharge] paying parcel rates.

943.222 General Insurance is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

943.223 The Bulk Insurance option of General Insurance service is available for mail entered in bulk at designated facilities and in a manner specified by the Postal Service, including the use of electronic manifesting.

943.23 Included Services

943.231 For General Insurance, the mailer is issued a receipt for each item mailed. For items insured for more than $[50] 200, a record of delivery is retained by the Postal Service for a specified period.

943.232 For items insured for more than $[50] 200, a notice of attempted delivery is left at the mailing address when the first attempt at delivery is unsuccessful.

943.233 Mail undeliverable as addressed will be returned to the sender as specified by the sender or by the Postal Service.

943.24 Limitations and Mailer Requirements

943.241 Mail insured under section 943.2 must be deposited as specified by the Postal Service.

943.242 Bulk Insurance must bear endorsements and identifiers specified by the Postal Service. Bulk Insurance mailers must meet the documentation requirements of the Postal Service.

943.243 By insuring an item, the mailer guarantees forwarding and return postage.

943.244 General Insurance, other than Bulk Insurance, provides indemnity for the actual value of the article at the time of mailing. Bulk Insurance provides indemnity for the lesser of (1) the actual value of the article at the time of mailing, or (2) the wholesale cost of the contents to the sender.

943.245 For General Insurance, other than Bulk Insurance, a claim for complete loss may be filed by the mailer only, and a claim for damage or for partial loss may be filed by either the mailer or addressee. For Bulk Insurance, all claims must be filed by the mailer.

943.246 Indemnity claims must be filed within a specified period of time from the date the article was mailed.

943.247 For negotiable items, currency, or bullion, the maximum liability is $15.

943.25 Other Services

943.251 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. Parcel Airlift	951
b. Restricted Delivery (for items insured for more than $[50] 200)	946
c. Return Receipt (for items insured for more than $[50] 200)	945
d. Special Handling	952
e. Merchandise Return (shippers only)	932

943.26 Fees

943.261 The fees for General Insurance are set forth in Fee Schedule 943.

944 COLLECT ON DELIVERY

944.1 Definition

944.11 Collect on Delivery (COD) service allows a mailer to mail an article for which full or partial payment has not yet been received and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

944.2 Availability

944.21 COD service is available for collection of $1,000 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

a. Express Mail;

b. First-Class Mail; and

c. Package Services, except Parcel Post subclass mail entered under section 521.27 or 521.28.

944.22 Service under this section is not available for:

a. Collection agency purposes;

b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;

c. Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate COD shipment consists of merchandise or bill of lading, the balance due on a past or anticipated transaction may be included in the charges on a COD article, provided the addressee has consented in advance to such action;

d. Parcels containing moving-picture films mailed by exhibitors to moving-picture manufacturers, distributors, or exchanges; and

e. Goods that have not been ordered by the addressee.

944.3 Included Services

944.31 COD service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee. This provision insures only the receipt of the instrument issued to the mailer after payment of COD charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

944.32 A receipt is issued to the mailer for each piece of COD mail. Additional copies of the original mailing receipt may be obtained by the mailer.

944.33 Delivery of COD mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of attempted delivery will be left at the mailing address.

944.34 The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately and the appropriate fee as set forth in Fee Schedule 944 is paid.

944.35 The mailer may designate a new addressee or alter the COD charges by submitting the appropriate form and by paying the appropriate fee as set forth in Fee Schedule 944.

944.4 Limitations and Mailer Requirements

944.41 The mailer must identify COD mail as COD mail, as specified by the Postal Service.

944.42 COD mail must be deposited in a manner specified by the Postal Service.

944.43 A mailer of COD mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

944.44 For COD mail sent as Package Services mail, postage at the applicable rate will be charged to the addressee:

a. When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of COD mail that was refused when first offered for delivery; and

b. For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

944.45 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

944.46 COD indemnity claims must be filed within a specified period of time from the date the article was mailed, and meet the requirements specified by the Postal Service.

944.5 Other Services

944.51 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fee:

Service	Fee Schedule
a. Registered Mail, if sent as First-Class	942
b. Restricted Delivery	946
c. Special Handling	952

944.6 Fees

944.61 Fees for COD service are set forth in Fee Schedule 944.

945 RETURN RECEIPT

945.1 Regular Return Receipt

945.11 Definition

945.111 Return Receipt service provides evidence to the mailer that an article has been received at the delivery address, including an original or copy of the recipient's signature. Mailers requesting Return Receipt service at the time of mailing will be provided, as appropriate, an original or copy of the signature of the recipient, the date delivered, and the address of delivery, if different from the address on the mailpiece. Mailers requesting Return Receipt service after mailing will be provided a copy of the recipient's signature, the date of delivery, and the name of the person who signed for the article.

945.12 Availability

945.121 Return Receipt service is available for mail sent under the following sections or classification schedules:

Service	Fee Schedule
a. Certified Mail	941
b. COD Mail	944
c. Insurance (if insured for more than $[50] 200)	943
d. Registered Mail	942
e. Express Mail	

945.122 Return Receipt service is available at the time of mailing or, when purchased in conjunction with Certified Mail, COD, Insurance (if for more than $[50] 200), Registered Mail, or Express Mail, after mailing.

945.13 Included Services

945.131 If the mailer does not receive a return receipt within a specified period of time from the date of mailing, the mailer may request evidence of delivery from the delivery record, at no additional fee.

945.14 Other Services

945.141 ***Reserved***

945.2 Return Receipt For Merchandise

945.21 Definition

945.211 Return Receipt for Merchandise service provides evidence to the mailer that an article has been received at the delivery address. A Return Receipt for Merchandise also supplies the recipient's actual delivery address if it is different from the address used by the sender. A Return Receipt for Merchandise may not be requested after mailing.

945.22 Availability

945.221 Return Receipt for Merchandise is available for merchandise sent under the following sections or classification schedules:

a. Priority Mail;

b. Standard Mail pieces [subject to the residual shape surcharge] paying parcel rates, except Regular and Nonprofit Presort category mail entered as Customized Market Mail under sections 321.22 and 323.22; and

c. Package Services, except Parcel Post subclass mail entered under section 521.27 or 521.28.

945.23 Mailer Requirements

945.231 Return Receipt for Merchandise must be deposited in a manner specified by the Postal Service.

945.232 Return Receipt for Merchandise mail may be addressed for delivery only in the United States and its territories and possessions, through Army/Air Force (APO) and Navy (FPO) post offices, or through the United Nations Post Office, New York.

945.24 Other Services

945.241 ***Reserved***

945.3 Fees

945.31 The fees for Return Receipt service are set forth in Fee Schedule 945.

946 RESTRICTED DELIVERY

946.1 Definition

946.11 Restricted Delivery service enables a mailer to direct the Postal Service to limit delivery to the addressee or to someone authorized by the addressee to receive such mail.

946.2 Availability

946.21 This service is available for mail sent under the following sections:

Service	Fee Schedule
a. Certified Mail	941
b. COD Mail	944
c. Insurance (if insured for more than $[50] 200)	943
d. Registered Mail	942

946.22 Restricted Delivery is available to the mailer at the time of mailing or after mailing.

946.23 Restricted Delivery service is available for delivery only to natural persons specified by name.

946.3 Included Services

946.31 A record of delivery will be retained by the Postal Service for a period specified by the Postal Service.

946.4 Other Services

946.41 ***Reserved***

946.5 Fees

946.51 The fee for Restricted Delivery service is set forth in Fee Schedule 946.

946.52 The fee (or communications charges) will not be refunded for failure to provide restricted delivery service when requested after mailing, due to prior delivery.

947 CERTIFICATE OF MAILING

947.1 Definition

947.11 Certificate of Mailing service furnishes evidence that mail has been presented to the Postal Service for mailing.

947.2 Availability

947.21 Certificate of Mailing service is available for matter sent using any class of mail, except Regular and Nonprofit Presort category mail entered as Customized Market Mail under sections 321.22 and 323.22.

947.22 Service under this section for Parcel Post subclass mail entered under section 521.27 or 521.28 is restricted to the mailer that enters the returned parcel. The addressee may not purchase this service.

947.3 Included Service

947.31 The mailer may obtain a copy of a Certificate of Mailing on terms specified by the Postal Service.

947.4 Limitations

947.41 The service does not entail retention of a record of mailing by the Postal Service and does not provide evidence of delivery.

947.5 Other Services

947.51 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Fee Schedule
a. Parcel Airlift	951
b. Special Handling	952

947.6 Fees

947.61 The fees for Certificate of Mailing service are set forth in Fee Schedule 947.

948 DELIVERY CONFIRMATION

948.1 Definition

948.11 Delivery Confirmation service provides, upon request, electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made.

948.2 Availability

948.21 Delivery Confirmation service is available for First-Class Letters and Sealed Parcels subclass mail that is parcel-shaped, as specified by the Postal Service; Priority Mail; Standard Mail, in the Regular and Nonprofit subclasses, that [is subject to the residual shape surcharge] pays parcel or not flat-machinable (NFM) rates, except Regular and Nonprofit Presort category mail entered as Customized Market Mail under sections 321.22 and 323.22; and Package Services mail that is parcel-shaped, as specified by the Postal Service, except Parcel Post subclass mail entered under section 521.27 or 521.28.

948.3 Mailer Requirements

948.31 Delivery Confirmation service may be requested only at the time of mailing.

948.32 Mail for which Delivery Confirmation service is requested must meet preparation requirements specified by the Postal Service, and bear a Delivery Confirmation barcode specified by the Postal Service.

948.33 Matter for which Delivery Confirmation service is requested must be deposited in a manner specified by the Postal Service.

948.4 Other Services

948.41 ***Reserved***

948.5 Fees

948.51 The fees for Delivery Confirmation service are set forth in Fee Schedule 948.

949 SIGNATURE CONFIRMATION

949.1 Definition

949.11 Signature Confirmation service provides, upon request, electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made, and a copy of the signature of the recipient.

949.2 Availability

949.21 Signature Confirmation is available for Letters and Sealed Parcels subclass mail that is parcel-shaped, as specified by the Postal Service; Priority Mail;

and Package Services mail that is parcel-shaped, as specified by the Postal Service, except Parcel Post or Bound Printed Matter subclass mail entered under section 521.27, 521.28, or 522.27.

949.3 Mailer Requirements

949.31 Signature Confirmation service may be requested only at the time of mailing.

949.32 Mail for which Signature Confirmation service is requested must meet preparation requirements specified by the Postal Service, and bear a Delivery Confirmation barcode specified by the Postal Service.

949.33 Matter for which Signature Confirmation is requested must be deposited in a manner specified by the Postal Service.

949.4 Other Services

949.41 ***Reserved***

949.5 Fees

949.51 The fees for Signature Confirmation service are set forth in Fee Schedule 949.

950 PARCEL HANDLING

951 PARCEL AIRLIFT (PAL)

951.1 Definition

951.11 Parcel Airlift service provides for air transportation of parcels on a space available basis to or from military post offices outside the contiguous 48 states.

951.2 Availability

951.21 Parcel Airlift service is available for mail sent under the Package Services Classification Schedule, except Parcel Post subclass mail entered under section 521.27 or 521.28.

951.3 Mailer Requirements

951.31 The minimum physical limitations established for the mail sent under the classification schedule for which postage is paid apply to Parcel Airlift mail. In no instance may the parcel exceed 30 pounds in weight, or 60 inches in length and girth combined.

951.32 Mail sent under this section must be endorsed as specified by the Postal Service.

951.33 Parcel Airlift mail must be deposited in a manner specified by the Postal Service.

951.4 Forwarding and Return

951.41 Parcel Airlift mail sent for delivery outside the contiguous 48 states is forwarded as set forth in section 2030 of the General Definitions, Terms and Conditions. Parcel Airlift mail sent for delivery within the contiguous 48 states is forwarded or returned as set forth in section 353 as appropriate.

951.5 Other Services

951.51 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. Certificate of Mailing	947
b. Insurance	943
c. Restricted Delivery (if insured for more than $[50] 200)	946
d. Return Receipt (if insured for more than $[50] 200)	945
e. Special Handling	952

951.6 Fees

951.61 The fees for Parcel Airlift service are set forth in Fee Schedule 951.

952 SPECIAL HANDLING

952.1 Definition

952.11 Special Handling service provides preferential handling to the extent practicable during dispatch and transportation.

952.2 Availability

952.21 Special Handling service is available for mail sent under the following classification schedules:

a. First-Class Mail; and

b. Package Services, except Parcel Post subclass mail entered under section 521.27 or 521.28.

952.3 Mailer Requirements

952.31 Mail sent under this section must be identified as specified by the Postal Service.

952.32 Mail sent under this section must be deposited in a manner specified by the Postal Service.

952.33 Special Handling service is mandatory for matter that requires special attention in handling, transportation and delivery.

952.4 Forwarding and Return

952.41 If undeliverable as addressed, Special Handling mail that is forwarded to the addressee is given special handling without requiring payment of an additional handling fee. However, additional postage at the applicable Standard Mail rate is collected on delivery.

952.5 Other Services

952.51 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. COD Mail	944
b. Insurance	943
c. Parcel Airlift	951
d. Merchandise Return (shippers only)	932

952.6 Fees

952.61 The fees for Special Handling service are set forth in Fee Schedule 952.

960 STAMPED PAPER

961 STAMPED ENVELOPES

961.1 Definition

961.11 Plain Stamped Envelopes and printed Stamped Envelopes are envelopes with postage thereon offered for sale by the Postal Service.

961.2 Availability

961.21 Stamped Envelopes are available for:

a. First-Class Mail within the first rate increment[.]; <u>and</u>

b. Standard Mail mailed at a minimum per-piece rate as specified by the Postal Service.

961.22 Printed Stamped Envelopes may be obtained by special request.

961.3 Fees

961.31 The fees for Stamped Envelopes are set forth in Fee Schedule 961.

962 STAMPED CARDS

962.1 Definition

962.11 Stamped Cards are cards with postage imprinted or impressed on them, and supplied by the Postal Service for the transmission of messages. Double Stamped Cards consist of two attached cards, one of which may be detached by the receiver and returned by mail as a single Stamped Card.

962.2 Availability

962.21 Stamped Cards are available for First-Class Mail.

962.3 Fees

962.31 The fees for Stamped Cards are set forth in Fee Schedule 962.

970 POSTAL MONEY ORDERS

971 MONEY ORDER SERVICE

971.1 Definition

971.11 Money Order service provides the customer with an instrument for payment of a specified sum of money.

971.2 Limitations

971.21 The maximum value for which a domestic postal money order may be purchased is $1,000. Other restrictions on the number or dollar value of postal money order sales, or both, may be imposed by law or under regulations prescribed by the Postal Service.

971.3 Included Services

971.31 A receipt of purchase is provided at no additional cost.

971.32 The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge if replaced on the date originally issued.

971.33 If a replacement money order is issued after the date of original issue because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer.

971.34 Inquiries or claims may be filed by the purchaser, payee, or endorsee.

971.4 Other Services

971.41 ***Reserved***

971.5 Fees

971.51 The fees for Money Order service are set forth in Fee Schedule 971.

990 MAILPIECE INFORMATION

991 CONFIRM

991.1 Definition

991.11 Confirm service permits subscribing customers to obtain information, electronically in near real time, regarding when and where mailpieces undergo barcode scans in mail processing operations. Scan information is not guaranteed for every piece of qualifying mail. Destination Confirm is for a subscriber's outgoing mail; Origin Confirm is for reply mail incoming to the subscriber.

991.12 Mailers may purchase Confirm service by subscribing to one or more of the following service levels: Silver, Gold, or Platinum.

991.121 Silver Subscription. The Silver subscription has a term of three months and includes the use of one identification (ID) code and up to 15 million scans. Subscribers may license the use of additional ID codes for a term of three months or until expiration of the subscription, whichever occurs first. Subscribers may license the use of additional scans in blocks of 2 million scans at any time prior to expiration of the subscription.

991.122 Gold Subscription. The Gold subscription has a term of twelve months and includes the use of one ID code and up to 50 million scans. Subscribers may license the use of additional ID codes for a term of three months or until expiration of the subscription, whichever occurs first. Subscribers may license the use of additional scans in blocks of 6 million scans at any time prior to expiration of the subscription.

991.123 Platinum Subscription. The Platinum subscription has a term of twelve months and includes the use of three ID codes and unlimited scans. Subscribers may license the use of additional ID codes for a term of three months or until expiration of the subscription, whichever occurs first.

991.2 Availability

991.21 Confirm service is available to subscribers authorized by the Postal Service under schedule 991 for automation compatible mail entered under the following classification schedules:

Classification Schedule	
a. First-Class Mail, including Priority	210
b. Standard Mail	310
c. Periodicals	410
d. Package Services	510

991.3 Mailer Requirements

991.31 Mailers [must become Confirm subscribers by] may subscribe to Confirm after applying to, and being authorized by the Postal Service. Authorization requires that a customer demonstrate the capabilities of producing [mail pieces] mailpieces with Confirm-compatible barcodes as specified by the Postal Service. Destination Confirm mailers may provide electronic notice of entering Confirm mail prior to or contemporaneous with mail entry [all as specified by the Postal Service].

991.32 Qualifying mail must bear [PLANET] a barcode[s] or other coding, as specified by the Postal Service.

991.4 Other Services

991.41 Confirm neither precludes nor requires any other special services.

991.5 Fees

991.51 The fees for Confirm are set forth in Fee Schedule 991.

991.52 A Gold subscription may be upgraded to a Platinum subscription at any time prior to the expiration of the Gold subscription by paying the difference in the respective subscription fees. Upgrading does not extend the term of the underlying subscription.

GENERAL DEFINITIONS, TERMS AND CONDITIONS

1000 GENERAL DEFINITIONS

As used in this Domestic Mail Classification Schedule, the following terms have the meanings set forth below.

1001 Advertising

Advertising includes all material for the publication of which a valuable consideration is paid, accepted, or promised, that calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. If an advertising rate is charged for the publication of reading matter or other material, such material shall be deemed to be advertising. Articles, items, and notices in the form of reading matter inserted in accordance with a custom or understanding that textual matter is to be inserted for the advertiser or his products in the publication in which a display advertisement appears are deemed to be advertising. If a publisher advertises his own services or publications, or any other business of the publisher, whether in the form of display advertising or editorial or reading matter, this is deemed to be advertising.

1002 Aspect Ratio

Aspect ratio is the ratio of width to length.

1003 Bills and Statements of Account

1003.1 A bill is a request for payment of a definite sum of money claimed to be owing by the addressee either to the sender or to a third party. The mere assertion of an indebtedness in a definite sum combined with a demand for payment is sufficient to make the message a bill.

1003.2 A statement of account is the assertion of the existence of a debt in a definite amount but which does not necessarily contain a request or a demand for payment. The amount may be immediately due or may become due after a certain time or upon demand or billing at a later date.

1003.3 A bill or statement of account must present the particulars of an indebtedness with sufficient definiteness to inform the debtor of the amount he is required for acquittal of the debt. However, neither a bill nor a statement of account need state the precise amount if it contains sufficient

information to enable the debtor to determine the exact amount of the claim asserted.

1003.4 A bill or statement of account is not the less a bill or statement of account merely because the amount claimed is not in fact owing or may not be legally collectible.

1004 Girth

Girth is the measurement around a piece of mail at its thickest part.

1005 Invoice

An invoice is a writing showing the nature, quantity, and cost or price of items shipped or sent to a purchaser or consignor.

1006 Permit Imprints

Permit imprints are printed indicia indicating postage has been paid by the sender under the permit number shown.

1007 Preferred Rates

Preferred rates are the reduced rates established pursuant to 39 U.S.C. 3626.

1008 ZIP Code

The ZIP Code is a numeric code that facilitates the sortation, routing, and delivery of mail.

1009 Nonprofit Organizations and Associations

Nonprofit organizations or associations are organizations or associations not organized for profit, none of the net income of which benefits any private stockholder or individual, and which meet the qualifications set forth below for each type of organization or association. The standard of primary purpose applies to each type of organization or association, except veterans' and fraternal. The standard of primary purpose requires that each type of organization or association be both organized and operated for the primary purpose. The following are the types of organizations or associations that may qualify as authorized nonprofit organizations or associations.

a. Religious. A nonprofit organization whose primary purpose is one of the following:

   i. To conduct religious worship;

   ii. To support the religious activities of nonprofit organizations whose primary purpose is to conduct religious worship; or

   iii. To perform instruction in, to disseminate information about, or otherwise to further the teaching of particular religious faiths or tenets.

b. Educational. A nonprofit organization whose primary purpose is one of the following:

   i. The instruction or training of the individual for the purpose of improving or developing his capabilities; or

   ii. The instruction of the public on subjects beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

c. Scientific. A nonprofit organization whose primary purpose is one of the following:

   i. To conduct research in the applied, pure or natural sciences; or

   ii. To disseminate systematized technical information dealing with applied, pure or natural sciences.

d. Philanthropic. A nonprofit organization primarily organized and operated for purposes beneficial to the public. Philanthropic organizations include, but are not limited to, organizations that are organized for:

   i. Relief of the poor and distressed or of the underprivileged;

   ii. Advancement of religion;

iii. Advancement of education or science;

iv. Erection or maintenance of public buildings, monuments, or works;

v. Lessening of the burdens of government;

vi. Promotion of social welfare by organizations designed to accomplish any of the above purposes or:

(A) To lessen neighborhood tensions;

(B) To eliminate prejudice and discrimination;

(C) To defend human and civil rights secured by law; or

(D) To combat community deterioration and juvenile delinquency.

e. Agricultural. A nonprofit organization whose primary purpose is the betterment of the conditions of those engaged in agriculture pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in agriculture. The organization may advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests. The term agricultural nonprofit organization also includes any nonprofit organization whose primary purpose is the collection and dissemination of information or materials relating to agricultural pursuits.

f. Labor. A nonprofit organization whose primary purpose is the betterment of the conditions of workers. Labor organizations include, but are not limited to, organizations in which employees or workmen participate, whose primary purpose is to deal with employers concerning grievances, labor disputes, wages, hours of employment and working conditions.

g. Veterans'. A nonprofit organization of veterans of the armed services of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization.

h. Fraternal. A nonprofit organization that meets all the following criteria:

i. Has as its primary purpose the fostering of brotherhood and mutual benefits among its members;

ii. Is organized under a lodge or chapter system with a representative form of government;

iii. Follows a ritualistic format; and

iv. Is comprised of members who are elected to membership by vote of the members.

2000 DELIVERY OF MAIL

2010 Delivery Services

The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Fee Schedule 921.

b. Carrier delivery service.

c. General delivery.

d. Post office box service. The fees for post office box service are set forth in Fee Schedule 921.

e. Parcel Select Return Service. The rates for Parcel Select Return Service are set forth in Rate Schedules 521.2F and 521.2G.

2020 Conditions of Delivery

2021 **General.** Except as provided in section 2022, 2030, and 3030, mail will be delivered as addressed unless the Postal Service is instructed otherwise by the addressee in writing.

2022 **Refusal of Delivery.** The addressee may control delivery of his mail. The addressee may refuse to accept a piece of mail that does not require a delivery receipt at the time it is offered for delivery or after delivery by returning it unopened to the Postal Service. For mail that requires a delivery receipt, the addressee or his representative may read and copy the name of the sender of registered, insured, certified, COD, return receipt, and Express Mail prior to accepting delivery. Upon signing the delivery receipt the piece

may not be returned to the Postal Service without the applicable postage and fees affixed.

2023 **Receipt.** If a signed receipt is required, mail will be delivered to the addressee (or competent member of his family), to persons who customarily receive his mail or to one authorized in writing to receive the addressee's mail.

2024 **Jointly Addressed Mail.** Mail addressed to several persons may be delivered to any one of them. When two or more persons make conflicting orders for delivery for the same mail, the mail shall be delivered as determined by the Postal Service.

2025 **Commercial Mail Receiving Agents.** Mail may be delivered to a commercial mail receiving agency on behalf of another person. In consideration of delivery of mail to the commercial agent, the addressee and the agent are considered to agree that:

a. No change-of-address order will be filed with the post office when the agency relationship is terminated; and

b. When remailed by the commercial agency, the mail is subject to payment of new postage.

2026 **Mail Addressed to Organizations.** Mail addressed to governmental units, private organizations, corporations, unincorporated firms or partnerships, persons at institutions (including but not limited to hospitals and prisons), or persons in the military is delivered as addressed or to an authorized agent.

2027 **Held Mail.** Mail will be held for a specified period of time at the office of delivery upon request of the addressee, unless the mail:

a. Has contrary retention instructions;

b. Is perishable; or

c. Is registered, COD, insured, return receipt, certified, or Express Mail for which the normal retention period expires before the end of the specified holding period.

2030 Forwarding and Return

2031 **Forwarding.** Forwarding is the transfer of undeliverable-as-addressed mail to an address other than the one originally placed on the mailpiece. All post offices will honor change-of-address orders for a period of time specified by the Postal Service.

2032 **Return.** Return is the delivery of undeliverable-as-addressed mail to the sender. Parcel Select Return Service mail does not constitute returned mail within the meaning of this section.

2033 **Applicable Provisions.** The provisions of sections 150, 250, 350, 450, 550, 935 and 936 apply to forwarding and return.

2034 **Forwarding for Postal Service Adjustments.** When mail is forwarded due to Postal Service adjustments (such as, but not limited to, the discontinuance of the post office of original address, establishment of rural carrier service, conversion to city delivery service from rural, readjustment of delivery districts, or renumbering of houses and renaming of streets), it is forwarded without charge for a period of time specified by the Postal Service.

3000 POSTAGE AND PREPARATION

3010 Packaging

Mail must be packaged so that:

a. The contents will be protected against deterioration or degradation;

b. The contents will not be likely to damage other mail, Postal Service employees or property, or to become loose in transit;

c. The package surface must be able to retain postage indicia and address markings; and

d. It is marked by the mailer with a material that is neither readily water soluble nor easily rubbed off or smeared, and the marking will be sharp and clear.

3020 Envelopes

Paper used in the preparation of envelopes may not be of a brilliant color. Envelopes must be prepared with paper strong enough to withstand normal handling.

3030 Payment of Postage and Fees

3031 **Postage Payment.** Postage must be fully prepaid on all mail at the time of mailing, except as authorized by law or this Schedule. The Forever Stamp, described in section 3032, is intended for the prepayment of postage for the first ounce of First-Class Mail single-piece letter mail, and otherwise may be used for the prepayment of postage. Except as authorized by law or this Schedule, mail deposited without prepayment of sufficient postage shall be delivered to the addressee subject to payment of deficient postage, returned to the sender, or otherwise disposed of as specified by the Postal Service. Mail deposited without any postage affixed will be returned to the sender without any attempt at delivery.

3032 **Forever Stamp.** The Forever Stamp is sold at the prevailing rate for single-piece letters, first ounce, in Rate Schedule 221. The Forever Stamp is an adhesive stamp within the meaning of section 3040. Once purchased, the Forever Stamp may be used for postage equal to the prevailing rate, at the time of use, for single-piece letters, first ounce, in Rate Schedule 221.

3040 Methods for Paying Postage and Fees

Postage for all mail may be prepaid with postage meter indicia, adhesive stamps, permit imprint, or other payment methods specified by the Postal Service. Prior authorization for use of certain payment methods may be required, as specified by the Postal Service. A fee is charged for authorization to use a permit imprint, as set forth in Schedule 1000.

3050 Parcel Select Return Service and Bound Printed Matter Return Service Postage

Parcel Select Return Service mail that is entered under section 521.27 or 521.28 may be retrieved by the permit holder prior to payment of postage. With the exception of fees charged for Certificate of Mailing service, postage on mail in these categories will be determined and paid by the permit holder following receipt, in a manner and within a time specified by the Postal Service.

For Parcel Select Return Service mail that is entered under section 521.27 or 521.28, Certificate of Mailing service may be purchased and fees paid by the mailer entering the returned parcel.

3060 Special Service Fees

Fees for special services may be prepaid in any manner appropriate for the class of mail indicated or as otherwise specified by the Postal Service.

3070 Marking of Unpaid Mail

Matter authorized for mailing without prepayment of postage must bear markings identifying the class of mail service. Matter so marked will be billed at the applicable rate of postage set forth in this Schedule. Matter not so marked will be billed at the applicable First-Class rate of postage.

3080 Refund of Postage

When postage and special service fees have been paid on mail for which no service is rendered for the postage or fees paid, or collected in excess of the lawful rate, a refund may be made. There shall be no refund for registered, COD, general insurance, and Express Mail Insurance fees when the article is withdrawn by the mailer after acceptance. In cases involving returned articles improperly accepted because of excess size or weight, a refund may be made.

3090 Calculation of Postage

When a rate schedule contains per-piece and per-pound rates, the postage shall be the sum of the charges produced by those rates. When a rate schedule contains a minimum per-piece rate and a pound rate, the postage shall be the greater of the two. When the computation of postage yields a fraction of a cent in the charge, the next higher whole cent must be paid.

4000 POSTAL ZONES

4010 Geographic Units of Area

In the determination of postal zones, the earth is considered to be divided into units of area 30 minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. The distance between these units of area is the basis of the postal zones.

4020 Measurement of Zone Distances

The distance upon which zones are based shall be measured from the center of the unit of area containing the dispatching sectional center facility or multi-ZIP coded post office not serviced by a sectional center facility. A post office of mailing and a post office of delivery shall have the same zone relationship as their respective sectional center facilities or multi-ZIP coded post offices, but this shall not cause two post offices to be regarded as within the same local zone.

4030 Definition of Zones

4031 **Local Zone.** The local zone applies to mail mailed at any post office for delivery at that office; at any city letter carrier office or at any point within its delivery limits for delivery by carriers from that office; at any office from which a rural route starts for delivery on the same route; and on a rural route for delivery at the office from which the route starts or on any rural route starting from that office.

4032 **First Zone.** The first zone includes all territory within the quadrangle of entry in conjunction with every contiguous quadrangle, representing an area having a mean radial distance of approximately 50 miles from the center of a given unit of area. The first zone also applies to mail between two post offices in the same sectional center.

4033 **Second Zone.** The second zone includes all units of area outside the first zone lying in whole or in part within a radius of approximately 150 miles from the center of a given unit of area.

4034 **Third Zone.** The third zone includes all units of area outside the second zone lying in whole or in part within a radius of approximately 300 miles from the center of a given unit of area.

4035 **Fourth Zone.** The fourth zone includes all units of area outside the third zone lying in whole or in part within a radius approximately 600 miles from the center of a given unit of area.

4036 **Fifth Zone.** The fifth zone includes all units of area outside the fourth zone lying in whole or in part within a radius of approximately 1,000 miles from the center of a given unit of area.

4037 **Sixth Zone.** The sixth zone includes all units of area outside the fifth zone lying in whole or in part within a radius of approximately 1,400 miles from the center of a given unit of area.

4038 **Seventh Zone.** The seventh zone includes all units of area outside the sixth zone lying in whole or in part within a radius of approximately 1,800 miles from the center of a given unit of area.

4039 **Eighth Zone.** The eighth zone includes all units of area outside the seventh zone.

4040 **Zoned Rates**

Except as provided in section 4050, rates according to zone apply for zone-rated mail sent between Postal Service facilities including armed forces post offices, wherever located.

4050 **APO/FPO Mail**

4051 **General.** Except as provided in section 4052, the rates of postage for zone-rated mail transported between the United States, or the possessions or territories of the United States, on the one hand, and Army, Air Force and Fleet Post Offices on the other, or among the latter, shall be the applicable zone rates for mail between the place of mailing or delivery and the city of the postmaster serving the Army, Air Force or Fleet Post Office concerned.

4052 **Transit Mail.** The rates of postage for zone-rated mail that is mailed at or addressed to an Armed Forces post office and is transported directly to or from Armed Forces post offices at the expense of the Department of Defense, without transiting any of the 48 contiguous states (including the District of Columbia), shall be the applicable local zone rate; provided, however, that if the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery is greater than the local zone for such mail, postage shall be assessed on the basis of the distance from the place of mailing to the embarkation point or the distance from the point of debarkation to the place of delivery of such mail, as the case may be. The word "transiting" does not include enroute transfers at coastal gateway cities which are necessary to transport military mail directly between military post offices.

5000 PRIVACY OF MAIL

5010 First-Class and Express Mail

Matter mailed as First-Class Mail or Express Mail shall be treated as mail which is sealed against postal inspection and shall not be opened except as authorized by law.

5020 All Other Mail

Matter not paid at First-Class Mail or Express Mail rates must be wrapped or secured in the manner specified by the Postal Service so that the contents may be examined. Mailing of sealed items as other than First-Class Mail or Express Mail is considered consent by the sender to the postal inspection of the contents.

6000 MAILABLE MATTER

6010 General

Mailable matter is any matter which:

a. Is not mailed in contravention of 39 U.S.C. Chapter 30, or of 17 U.S.C. 109;

b. While in the custody of the Postal Service is not likely to become damaged itself, to damage other pieces of mail, to cause injury to Postal Service employees or to damage Postal Service property; and

c. Is not mailed contrary to any special conditions or limitations placed on transportation or movement of certain articles, when imposed under law by the U.S. Department of the Treasury; U.S. Department of Agriculture; U.S. Department of Commerce; U.S. Department of Health and Human Services, U.S. Department of Transportation; and any other Federal department or agency having legal jurisdiction.

6020 Minimum Size Standards

Except as provided in sections 321.22 and 323.22, the following minimum size standards apply to all mailable matter:

a. all items must be at least 0.007 inch thick; and

b. all items, other than keys and identification devices, which are 0.25 inch thick or less must be

   i. rectangular in shape;

   ii. at least 3.5 inches in width; and

   iii. at least 5 inches in length.

6030 Maximum Size and Weight Standards

Where applicable, the maximum size and weight standards for each class or subclass of mail are set forth in sections 130, 230, 330, 430, 521.6, and 530. Additional limitations may be applicable to specific subclasses, and rate and discount categories as provided in the eligibility provisions for each subclass or category.

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Federal Register

Monday,
August 6, 2007

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Employee Benefits—Cafeteria Plans; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142695–05]

RIN 1545–BF00

Employee Benefits—Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of prior notices of proposed rulemaking, notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains new proposed regulations providing guidance on cafeteria plans. This document also withdraws the notices of proposed rulemaking relating to cafeteria plans under section 125 that were published on May 7, 1984, December 31, 1984, March 7, 1989, November 7, 1997 and March 23, 2000. In general, these proposed regulations would affect employers that sponsor a cafeteria plan, employees that participate in a cafeteria plan, and third-party cafeteria plan administrators.

DATES: Written or electronic comments must be received by November 5, 2007. Outlines of topics to be discussed at the hearing scheduled for November 15, 2007, at 10 a.m., must be received by October 25, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142695–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–142695–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–142695–05). The public hearing will be held at the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mireille T. Khoury at (202) 622–6080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by October 5, 2007. Comments are specifically requested concerning:

Whether the proposed collections of information are 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;

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 automatic collection techniques or other forms of information technology; and

Estimates of the capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.125–2 (cafeteria plan elections); § 1.125–6(b)–(g) (substantiation of expenses), and § 1.125–7 (cafeteria plan nondiscrimination rules). This information is required to file employment tax returns and Forms W–2. The collection of information is voluntary to obtain a benefit. The likely respondents are Federal, state or local governments, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 34,000,000 hours.

Estimated average annual burden per respondent: 5 hours.

Estimated annual frequency of responses: once.

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

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

Background

This document contains proposed Income Tax Regulations (26 CFR Part 1) under section 125 of the Internal Revenue Code (Code). On May 7, 1984, December 31, 1984, March 7, 1989, November 7, 1997, and March 23, 2000, the IRS and Treasury Department published proposed amendments to 26 CFR Part 1 under section 125 in the **Federal Register** (49 FR 19321, 49 FR 50733, 54 FR 9460, 62 FR 60196 and 65 FR 15587). These 1984, 1989, 1997 and 2000 proposed regulations are hereby withdrawn. Also, the temporary regulations under section 125 that were published on February 4, 1986 in the **Federal Register** (51 FR 4318) are being withdrawn in a separate document. The new proposed regulations that are published in this document replace those proposed regulations.

Explanation of Provisions

Overview

The new proposed regulations are organized as follows: general rules on qualified and nonqualified benefits in cafeteria plans (new proposed § 1.125–1), general rules on elections (new proposed § 1.125–2), general rules on flexible spending arrangements (new proposed § 1.125–5), general rules on substantiation of expenses for qualified benefits (new proposed § 1.125–6) and nondiscrimination rules (new proposed § 1.125–7). The new proposed regulations, new Proposed §§ 1.125–1, 1.125–2, 1.125–5, 1.125–6 and § 1.125–7, consolidate and restate Proposed § 1.125–1 (1984, 1997, 2000), § 1.125–2 (1989, 1997, 2000) and § 1.125–2T (1986). Unless otherwise indicated, references to ''new proposed regulations'' or ''these proposed regulations'' mean the proposed section 125 regulations being published in this document.

The new proposed regulations reflect changes in tax law since the prior regulations were proposed, including: the change in the definition of dependent (section 152) and the addition of the following as qualified benefits: adoption assistance (section 137), additional deferred compensation benefits described in section 125(d)(1)(B), (C) and (D), Health Savings

Accounts (HSAs) (sections 223, 125(d)(2)(D) and 4980G), and qualified HSA distributions from health FSAs (section 106(e)). Other changes include the prohibition against long-term care insurance and long-term care services (section 125(f)) and the addition of the key employee concentration test in section 125(b)(2).

The prior proposed regulations, §§ 1.125–1 and 1.125–2, provide the basic framework and requirements for cafeteria plans and elections under cafeteria plans. The prior proposed regulations also outlined the most significant rules for benefits under a health flexible spending arrangement (health FSA) offered by a cafeteria plan—the requirement that the maximum reimbursement be available at all times during the coverage period (the uniform coverage rule), the requirement of a 12-month period of coverage, the requirement that the health FSA only reimburse medical expenses, the requirement that all medical expenses be substantiated by a third party before reimbursement, the requirement that expenses be incurred during the period of coverage, and the prohibition against deferral of compensation (including the use-or-lose rule). The prior proposed regulations also provided guidelines for dependent care FSAs, and the application of section 125 to paid vacation days offered under a cafeteria plan. These remain substantially unchanged in the new proposed regulations, with certain clarifications. Finally, the prior proposed regulations included a number of Q & As addressing transitional issues relating to the enactment of section 125, as well as the application of the now-repealed section 89 (special nondiscrimination rules with respect to certain employee benefit plans). These provisions are omitted from the new proposed regulations.

I. New Proposed § 1.125–1—Qualified and Nonqualified Benefits in Cafeteria Plans Section 125 Exclusive Noninclusion Rule

Section 125 provides that, except in the case of certain discriminatory benefits, no amount shall be included in the gross income of a participant in a cafeteria plan (as defined in section 125(d)) solely because, under the plan, the participant may choose among the benefits of the plan. The new proposed regulations clarify and amplify the general rule in the prior proposed regulations that section 125 is the exclusive means by which an employer can offer employees a choice between taxable and nontaxable benefits without the choice itself resulting in inclusion in gross income by the employees. When employees may elect between taxable and nontaxable benefits, this election results in gross income to employees, unless a specific Internal Revenue Code (Code) section (such as section 125) intervenes to prevent gross income inclusion. Thus, except for an election made through a cafeteria plan that satisfies section 125 or another specific Code section (such as section 132(f)(4)), any opportunity to elect among taxable and nontaxable benefits results in inclusion of the taxable benefit regardless of what benefit is elected and when the election is made. This interpretation of section 125 is consistent with the legislative history of section 125. The legislative history begins with the interim ERISA rules for cafeteria plans:

> Under * * * ERISA, an employer contribution made before January 1, 1977, to a cafeteria plan in existence on June 27, 1974, is required to be included in an employees' gross income only to the extent that the employee actually elects taxable benefits. In the case of a plan not in existence on June 27, 1974, the employer contribution is required to be included in an employee's gross income to the extent the employee could have elected taxable benefits. S. Rep. No. 1263, 95th Cong., 2d Sess. 74 (1978), reprinted in 1978 U.S.C.C.A.N. 6837; H. R. Rep. No. 1445, 95th Cong., 2d Sess. 63 (1978); H.R. Conf. Rep. No. 1800, 95th Cong., 2d Sess. 206 (1978).

The legislative history also provides:

> [G]enerally, employer contributions under a written cafeteria plan which permits employees to elect between taxable and nontaxable benefits are excluded from the gross income of an employee to the extent that nontaxable benefits are elected. S. Rep. No. 1263, 95th Cong., 2d Sess. 75 (1978), reprinted in 1978 U.S.C.C.A.N. 6838; H. R. Rep. No. 1445, 95th Cong., 2d Sess. 63 (1978). See also H.R. Conf. Rep. No. 1800, 95th Cong., 2d Sess. 206 (1978).

The legislative history to the 1984 amendments to section 125 continues:

> The cafeteria plan rules of the Code provide that a participant in a nondiscriminatory cafeteria plan will not be treated as having received a taxable benefit offered under the plan solely because the participant has the opportunity, before the benefit becomes available, to choose among the taxable and nontaxable benefits under the plan.
>
> H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1173 (1984), reprinted in 1984 U.S.C.C.A.N. 1861. See also H.R. Conf. Rep. No. 736, 104th Cong., 2d Sess. 295, reprinted in 1996 U.S.C.C.A.N. 2108.

The new proposed regulations provide that unless a plan satisfies the requirements of section 125 and the regulations, the plan is not a cafeteria plan. Reasons that a plan would fail to satisfy the section 125 requirements include: Offering nonqualified benefits; not offering an election between at least one permitted taxable benefit and at least one qualified benefit; deferring compensation; failing to comply with the uniform coverage rule or use-or-lose rule; allowing employees to revoke elections or make new elections during a plan year, except as provided in § 1.125–4; failing to comply with substantiation requirements; paying or reimbursing expenses incurred for qualified benefits before the effective date of the cafeteria plan or before a period of coverage; allocating experience gains (forfeitures) other than as expressly allowed in the new proposed regulations; and failing to comply with grace period rules.

Definition of a Cafeteria Plan

The new proposed regulations provide that a cafeteria plan is a separate written plan that complies with the requirements of section 125 and the regulations, that is maintained by an employer for employees and that is operated in compliance with the requirements of section 125 and the regulations. Participants in a cafeteria plan must be permitted to choose among at least one permitted taxable benefit (for example, cash, including salary reduction) and at least one qualified benefit. A plan offering only elections among nontaxable benefits is not a cafeteria plan. Also, a plan offering only elections among taxable benefits is not a cafeteria plan. See Rev. Rul. 2002–27, Situation 2 (2002–1 CB 925), see § 601.601(d)(2)(ii)(*b*). Finally, a cafeteria plan must not provide for deferral of compensation, except as specifically permitted in section 125(d)(2)(B), (C), or (D).

Written Plan

Section 125(d)(1) requires that a cafeteria plan be in writing. The cafeteria plan must be operated in accordance with the written plan terms. The new proposed regulations require that the written plan specifically describe all benefits, set forth the rules for eligibility to participate and the procedure for making elections, provide that all elections are irrevocable (except to the extent that the plan includes the optional change in status rules in § 1.125–4), and state how employer contributions may be made under the plan (for example, salary reduction or nonelective employer contributions), the maximum amount of elective contributions, and the plan year. If the plan includes a flexible spending arrangement (FSA), the written plan must include provisions complying

with the uniform coverage rule and the use-or-lose rule. Because section 125(d)(1)(A) states that a cafeteria plan is a written plan under which ''all participants are employees,'' the new proposed regulations require that the written cafeteria plan specify that only employees may participate in the cafeteria plan. The new proposed regulations also require that all provisions of the written plan apply uniformly to all participants.

Individuals Who May Participate in a Cafeteria Plan

All participants in a cafeteria plan must be employees. See section 125(d)(1)(A). These proposed regulations provide that employees include common law employees, leased employees described in section 414(n), and full-time life insurance salesmen (as defined in section 7701(a)(20)). These proposed regulations further provide that former employees (including laid-off employees and retired employees) may participate in a plan, but a plan may not be maintained predominantly for former employees. See Rev. Rul. 82–196 (1982–2 CB 53); Rev. Rul. 85–121 (1985–2 CB 57), see § 601.601(d)(2)(ii)(*b*). All employees who are treated as employed by a single employer under section 414(b), (c) or (m) are treated as employed by a single employer for purposes of section 125. See section 125(g)(4). A participant's spouse or dependents may receive benefits through a cafeteria plan although they cannot participate in the cafeteria plan.

Self-employed individuals are not treated as employees for purposes of section 125. Accordingly, the new proposed regulations make clear that sole proprietors, partners, and directors of corporations are not employees and may not participate in a cafeteria plan. In addition, the new proposed regulations clarify that 2-percent shareholders of an S corporation are not employees for purposes of section 125. The new proposed regulations provide rules for dual status individuals and individuals moving between employee and non-employee status. A self-employed individual may, however, sponsor a cafeteria plan for his or her employees.

Election Between Taxable and Nontaxable Benefits

The new proposed regulations require that a cafeteria plan offer employees an election among only permitted taxable benefits (including cash) and qualified nontaxable benefits. See section 125(d)(1)(B). For purposes of section 125, cash means cash from current compensation (including salary reduction), payment for annual leave, sick leave, or other paid time off, severance pay, property, and certain after-tax employee contributions. Distributions from qualified retirement plans are not cash or taxable benefits for purposes of section 125. See Rev. Rul. 2003–62 (2003–1 CB 1034) (distributions to former employees from a qualified employees' trust, applied to pay health insurance premiums, are includible in former employees' gross income under section 402), see § 601.601(d)(2)(ii)(*b*).

Qualified Benefits

In general, in order for a benefit to be a qualified benefit for purposes of section 125, the benefit must be excludible from employees' gross income under a specific provision of the Code and must not defer compensation, except as specifically allowed in section 125(d)(2)(B), (C) or (D). Examples of qualified benefits include the following: group-term life insurance on the life of an employee (section 79); employer-provided accident and health plans, including health flexible spending arrangements, and accidental death and dismemberment policies (sections 106 and 105(b)); a dependent care assistance program (section 129); an adoption assistance program (section 137); contributions to a section 401(k) plan; contributions to certain plans maintained by educational organizations, and contributions to HSAs. Section 125(f), (d)(2)(B), (C), (D). See Notice 97–9 (1997–2 CB 35) (adoption assistance), see § 601.601(d)(2)(ii)(*b*); Notice 2004–2, Q & A–33 (2004–1 CB 269) (HSAs), see § 601.601(d)(2)(ii)(*b*). A cafeteria plan may also offer long-term and short-term disability coverage as a qualified benefit (see section 106). However, see paragraph (q) in § 1.125–1 for nonqualified benefits.

Group-Term Life Insurance

An employer may provide group-term life insurance through a combination of methods. Generally, under section 79(a), the cost of $50,000 or less of group-term life insurance on the life of an employee provided under a policy (or policies) carried directly or indirectly by an employer is excludible from the employee's gross income. (Special rules apply to key employees if the group-term life insurance plan does not satisfy the nondiscrimination rules in section 79(d)). However, if the group-term life insurance provided to an employee by an employer or employers exceeds $50,000 (taking into account all coverage provided both through a cafeteria plan and outside a cafeteria plan), the cost of coverage exceeding coverage of $50,000 is includible in the employee's gross income. For this purpose, the cost of group-term life insurance is shown in § 1.79–3(d)(2), Table I (Table I). The Table I cost of the excess group-term life insurance (minus all after-tax contributions by the employee for group-term life insurance coverage) is includible in each covered employee's gross income. The new proposed regulations provide that the cost of group-term life insurance on the life of an employee, that either is less than or equal to the amount excludible from gross income under section 79(a) or provides coverage in excess of that amount, but not combined with any permanent benefit, is a qualified benefit that may be offered in a cafeteria plan. The new proposed regulations also provide that the entire amount of salary reduction and employer flex-credits for group-term life insurance coverage on the life of an employee is excludible from an employee's gross income.

The rule in the new proposed regulations differs from Notice 89–110 (1989–2 CB 447), see § 601.601(d)(2)(ii)(*b*). Notice 89–110 provides that an employee includes in gross income the greater of the Table I cost of group-term life insurance coverage exceeding $50,000 or the employee's salary reduction and employer flex-credits for excess group-term life insurance coverage. The new proposed regulations provide instead that the employee includes in gross income the Table I cost of the excess coverage (minus all after-tax contributions by the employee for group-term life insurance coverage) and that the entire amount of salary reduction and employer flex-credits for group-term life insurance coverage on the life of the employee is excludible from the employee's gross income. As noted in this preamble, taxpayers may rely on the new proposed regulations for guidance pending the issuance of final regulations.

Employer-Provided Accident and Health Plan

Coverage under an employer-provided accident and health plan that satisfies the requirements of section 105(b) may be provided as a qualified benefit through a cafeteria plan and is excludible from employees' gross income. Section 106; § 1.106–1. The nondiscrimination rules under section 105(h) apply to self-insured medical reimbursement arrangements (including health FSAs).

The new proposed regulations specifically permit a cafeteria plan (but

not a health FSA) to pay or reimburse substantiated individual accident and health insurance premiums. See Rev. Rul. 61–146 (1961–2 CB 25), see § 601.601(d)(2)(ii)(*b*). In addition, a cafeteria plan may provide for payment of COBRA premiums for an employee.

For employer-provided accident and health plans and medical reimbursement plans, the definition of dependents is the definition in section 105(b) as amended by the Working Families Tax Relief Act of 2004 (WFTRA), Public Law 108–311, section 207(9) (118 Stat. 1166) (that is, a dependent as defined in section 152, determined without regard to section 152(b)(1), (b)(2), or (d)(1)(B)). See Notice 2004–79 (2004–2 CB 898), see § 601.601(d)(2)(ii)(*b*). For purposes of the exclusion from employees' gross income for accident and health plans and for medical reimbursement under sections 105(b) and 106, the spouse or dependent of a former employee (including a retired employee or a laid-off employee) or of a deceased employee is treated as a spouse or dependent. See Rev. Rul. 82–196 (1982–2 CB 53); Rev. Rul. 85–121 (1985–2 CB 57), see § 601.601(d)(2)(ii)(*b*).

Dependent Care Assistance Programs and Adoption Assistance Programs

If the requirements of section 129 are satisfied, up to $5,000 of employer-provided assistance for amounts paid or incurred by employees for dependent care is excludible from employees' gross income. The new proposed regulations outline the general requirements for providing dependent care assistance programs and adoption assistance programs under section 137 through a cafeteria plan. See Notice 97–9, section II (1997–2 CB 35), see § 601.601(d)(2)(ii)(*b*).

Cafeteria Plan Year

The new proposed regulations require that a cafeteria plan year must be 12 consecutive months and must be set out in the written cafeteria plan. A short plan year (or a change in plan year resulting in a short plan year) is permitted only for a valid business purpose. A change in plan year resulting in a short plan year, for other than a valid business purpose, is disregarded. If a principal purpose of a change in plan year is to circumvent the rules of section 125, the change in plan year is ineffective.

No Deferral of Compensation

Qualified benefits must be current benefits. In general, a cafeteria plan may not offer benefits that defer compensation or operate to defer compensation. Section 125(d)(2)(A). In general, benefits may not be carried over to a later plan year or used in one plan year to purchase benefits to be provided in a later plan year. For example, life insurance with a cash value build-up or group-term life insurance with a permanent benefit (within the meaning of § 1.79–0) defers the receipt of compensation and thus is not a qualified benefit.

The new proposed regulations clarify whether certain benefits and plan administration practices defer compensation. For example, the regulations permit an accident and health insurance policy to provide certain benefit features that apply for more than one plan year, such as reasonable lifetime limits on benefits, level premiums, premium waiver during disability, guaranteed renewability of coverage, coverage for specified accidental injury or specific diseases, and the payment of a fixed amount per day for hospitalization. But these insurance policies must not provide an investment fund or cash value to pay premiums, and no part of the premium may be held in a separate account for any beneficiary. The new proposed regulations also provide that the following benefits and practices do not defer compensation: a long-term disability policy paying benefits over more than one plan year; reasonable premium rebates or policy dividends; certain two-year lock-in vision and dental policies; certain advance payments for orthodontia; salary reduction contributions in the last month of a plan year used to pay accident and health insurance premiums for the first month of the following plan year; reimbursement of section 213(d) expenses for durable medical equipment; and allocation of experience gains (forfeitures) among participants.

Paid Time Off

Under the prior proposed regulations, permitted taxable benefits included various forms of paid leave. Since the prior proposed regulations were issued, many employers have recharacterized and combined vacation days, sick leave and personal days into a single category of ''paid time off.'' The new proposed regulations use the term ''paid time off'' to refer to vacation days and other types of paid leave. The new proposed regulations contain the same ordering rule for elective and nonelective paid time off as set forth in Prop. § 1.125–1, Q & A–7 (1984). A plan offering an election solely between paid time off and taxable benefits is not a cafeteria plan.

Grace Period

The new proposed regulations allow a written cafeteria plan to provide an optional grace period immediately following the end of each plan year, extending the period for incurring expenses for qualified benefits. A grace period may apply to one or more qualified benefits (for example, health FSA or dependent care assistance program) but in no event does it apply to paid time off or contributions to section 401(k) plans. Unused benefits or contributions for one qualified benefit may only be used to reimburse expenses incurred during the grace period for that same qualified benefit. The amount of unused benefits and contributions available during the grace period may be limited by the employer. A grace period may extend to the fifteenth day of the third month after the end of the plan year (but may be for a shorter period). Benefits or contributions not used as of the end of the grace period are forfeited under the use-or-lose rule. The grace period applies to all employees who are participants (including through COBRA), as of the last day of the plan year. Grace period rules must apply uniformly to all participants. The grace period rules in these proposed regulations are based on Notice 2005–42 (2005–1 CB 1204), modified in Notice 2007–22 (2007–10 IRB 670), see § 601.601(d)(2)(ii)(*b*), amplified in Notice 2005–86 (2005–2 CB 1075), amplified in Notice 2007–22 (2007–10 IRB 670), see § 601.601(d)(2)(ii)(*b*). For eligibility to contribute to a Health Savings Account (HSA) during a grace period, see Notice 2005–86 (2005–2 CB 1075), see § 601.601(d)(2)(ii)(*b*). For Form W–2 reporting for unused dependent care assistance used for expenses incurred during a grace period, see Notice 2005–61 (2005–2 CB 607), see § 601.601(d)(2)(ii)(*b*).

Contributions to Section 401(k) Plans Through a Cafeteria Plan

A cafeteria plan may include contributions to a section 401(k) plan. Section 125(d)(2)(B). The new proposed regulations clarify the interactions between section 125 and section 401(k). Contributions to a section 401(k) plan expressed as a percentage of compensation are permitted. Pursuant to § 1.401(k)–1(a)(3)(ii), elective contributions to a section 401(k) plan may be made through automatic enrollment (that is, when the employee does not affirmatively elect cash, the employee's compensation is reduced by a fixed percentage, which is contributed to a section 401(k) plan).

Nonqualified Benefits

A cafeteria plan must not offer any of the following benefits: scholarships (section 117); employer-provided meals and lodging (section 119); educational assistance (section 127); fringe benefits (section 132); long-term care insurance. See section 125(f). Long-term care services are nonqualified benefits, H.R. Conf. Rep. No. 736, 104th Cong., 2d Sess. 29, reprinted in 1996 U.S.C.C.A.N. 2109. (An HSA funded through a cafeteria plan may, however, be used to pay premiums for long-term care insurance or for long-term care services.) The new proposed regulations clarify that contributions to Archer Medical Savings Accounts (sections 220, 106(b)), group term life insurance for an employee's spouse, child or dependent, and elective deferrals to section 403(b) plans are also nonqualified benefits. A plan offering any nonqualified benefit is not a cafeteria plan. A cafeteria plan may not offer a health FSA that provides for the carryover of unused benefits. See Notice 2002–45, Part I (2002–2 CB 93); Rev. Rul. 2002–41 (2002–2 CB 75), see § 601.601(d)(2)(ii)(*b*).

After-Tax Employee Contributions

The new proposed regulations allow a cafeteria plan to offer after-tax employee contributions for qualified benefits or paid time off. A cafeteria plan may only offer the taxable benefits specifically permitted in the new proposed regulations. Nonqualified benefits may not be offered through a cafeteria plan, even if paid with after-tax employee contributions.

Employer Contributions Through Salary Reduction

Employees electing a qualified benefit through salary reduction are electing to forego salary and instead to receive a benefit which is excludible from gross income because it is provided by employer contributions. Section 125 provides that the employee is treated as receiving the qualified benefit from the employer in lieu of the taxable benefit. A cafeteria plan may also impose reasonable fees to administer the cafeteria plan which may be paid through salary reduction. A cafeteria plan is not required to allow employees to pay for any qualified benefit with after-tax employee contributions.

II. New Prop. § 1.125–2—Elections in Cafeteria Plans

Making, Revoking and Changing Elections

Generally, a cafeteria plan must require employees to elect annually between taxable benefits and qualified benefits. Elections must be made before the earlier of the first day of the period of coverage or when benefits are first currently available. The determination of whether a taxable benefit is currently available does not depend on whether it has been constructively received by the employee for purposes of section 451. Annual elections generally must be irrevocable and may not be changed during the plan year. However, § 1.125–4 permits a cafeteria plan to provide for changes in elections based on certain changes in status. An employer that wishes to permit such changes in elections must incorporate the rules in § 1.125–4 in its written cafeteria plan. These proposed regulations omit the rule in Q & A–6(b) in Prop. § 1.125–2 (1989) (cessation of required contributions), because the change in status rules in § 1.125–4 superseded this provision of the 1989 proposed regulations.

If HSA contributions are made through salary reduction under a cafeteria plan, employees may prospectively elect, revoke or change salary reduction elections for HSA contributions at any time during the plan year with respect to salary that has not become currently available at the time of the election.

A cafeteria plan is permitted to include an automatic election for new employees or current employees. Rev. Rul. 2002–27 (2002–1 CB 925), see § 601.601(d)(2)(ii)(*b*). A new rule also permits a cafeteria plan to provide an optional election for new employees between cash and qualified benefits. New employees avoid gross income inclusion if they make an election within 30 days after the date of hire even if benefits provided pursuant to the election relate back to the date of hire. However, salary reduction amounts used to pay for such an election must be from compensation not yet currently available on the date of the election. Also, this special election rule for new employees does not apply to any employee who terminates employment and is rehired within 30 days after terminating employment (or who returns to employment following an unpaid leave of absence of less than 30 days).

New elections and revocations or changes in elections can be made electronically. The safe harbor for electronic elections in § 1.401(a)–21 is available. Only an employee can make an election or revoke or change his or her election. An employee's spouse or dependent may not make an election under a cafeteria plan and may not revoke or change an employee's election.

III. New Prop. § 1.125–5—Flexible Spending Arrangements

Overview

In general, a flexible spending arrangement (FSA) is a benefit designed to reimburse employees for expenses incurred for certain qualified benefits, up to a maximum amount not substantially in excess of the salary reduction and employer flex-credits allocated for the benefit. The maximum amount of reimbursement reasonably available must be less than five times the value of the coverage. Employer flex-credits are non-elective employer contributions that an employer makes available for every employee eligible to participate in the cafeteria plan, to be used at the employee's election only for one or more qualified benefits (but not as cash or other taxable benefits). The three types of FSAs are dependent care assistance, adoption assistance and medical care reimbursements (health FSA).

Uniform Coverage Rule

The new proposed regulations retain the rule that the maximum amount of reimbursement from a health FSA must be available at all times during the period of coverage (properly reduced as of any particular time for prior reimbursements). The uniform coverage rule does not apply to FSAs for dependent care assistance or adoption assistance.

Use-or-Lose Rule

An FSA must satisfy all the requirements of section 125, including the prohibition against deferring compensation. In general, as discussed under ''No deferral of compensation'', in order to satisfy this requirement of section 125, all benefits and contributions must be used by the end of the plan year (or grace period, if applicable), or are forfeited. The new proposed regulations continue the use-or-lose rule.

Period of Coverage

The required period of coverage for all FSAs continues to be twelve months, with an exception for short plan years that satisfy the conditions in the new proposed regulations. The period of coverage and the plan year need not be the same. The beginning and end of a period of coverage is clarified. The new proposed regulations also clarify that FSAs for different qualified benefits need not have the same coverage period. See also ''Grace period'', discussed in this preamble. The new proposed

regulations also continue to provide that expenses are incurred when services are provided. Expenses incurred before or after the period of coverage may not be reimbursed.

Health FSA

A health FSA may only reimburse certain substantiated section 213(d) medical care expenses incurred by the employee, or by the employee's spouse or dependents. A health FSA may be limited to a subset of permitted section 213(d) medical expenses (for example, a health FSA is permitted to exclude reimbursement of over-the-counter drugs described in Rev. Rul. 2003–102 (2003–2 CB 559), see § 601.601(d)(2)(ii)(*b*)). Similarly, a health FSA may be an HSA-compatible limited-purpose health FSA or post-deductible health FSA. Rev. Rul. 2004–45 (2004–1 CB 971), see § 601.601(d)(2)(ii)(*b*), amplified, Notice 2005–86 (2005–2 CB 1075). A health FSA may not reimburse premiums for accident and health insurance or long-term care insurance. See section 125(f).

A health FSA must satisfy all requirements of section 105(b), §§ 1.105–1 and 1.105–2. The section 105(h) nondiscrimination rules apply to health FSAs. All medical expenses must be substantiated before expenses are reimbursed. See *Incurring and reimbursing expenses for qualified* benefits, discussed in this preamble. The new proposed regulations also clarify when medical expenses are incurred.[1] A cafeteria plan may limit enrollment in a health FSA to those employees who participate in the employer's accident and health plan.

Qualified HSA Distributions

Section 106(e), enacted in section 302 of the Health Opportunity Patient Empowerment Act of 2006, Public Law 109–432 (120 Stat. 2922 (2006)) allows ''qualified HSA distributions'' from health FSAs to HSAs. Section 106(e) applies to distributions between December 20, 2006 and December 31, 2011. The proposed regulations incorporate the rules on qualified HSA distributions set forth in Notice 2007–22 (2007–10 IRB 670). See § 601.601(d)(2)(ii)(b).

Dependent Care Assistance After Termination

A new optional rule permits an employer to reimburse a terminated employee's qualified dependent care expenses incurred after termination through a dependent care FSA, if all section 129 requirements are otherwise satisfied.

Experience Gains

If an employee fails to use all contributions and benefits for a plan year before the end of the plan year (and the grace period, if applicable), those unused contributions and benefits are forfeited under the use-or-lose rule. Unused amounts are also known as experience gains. The new proposed regulations retain the forfeiture allocation rules in the 1989 proposed regulations, and clarify that the employer sponsoring the cafeteria plan may retain forfeitures, use forfeitures to defray expenses of administering the plan or allocate forfeitures among employees contributing through salary reduction on a reasonable and uniform basis.

FSA Administrative Rules

Salary reduction contributions may be made at whatever interval the employer selects, including ratably over the plan year based on the employer's payroll periods or in equal installments at other regular intervals (for example, quarterly installments). These rules must apply uniformly to all participants.

IV. New Prop. § 1.125–6—Substantiation of Expenses for All Cafeteria Plans

Incurring and Reimbursing Expenses for Qualified Benefits

The new proposed regulations provide that only expenses for qualified benefits incurred after the later of the effective date or the adoption date of the cafeteria plan are permitted to be reimbursed under the cafeteria plan. Similarly, if a plan amendment adds a new qualified benefit, only expenses incurred after the later of the effective date or the adoption date are eligible for reimbursement.[2] This rule applies to all qualified benefits. Similarly, a cafeteria plan may pay or reimburse only expenses for qualified benefits incurred during a participant's period of coverage.

Substantiation and Reimbursement of Expenses for Qualified Benefits

The new proposed regulations provide, after an employee incurs an expense for a qualified benefit during the coverage period, the expense must first be substantiated before the expense may be paid or reimbursed. All expenses must be substantiated (substantiating only a limited number of total claims, or not substantiating claims below a certain dollar amount does not satisfy the requirements in the new proposed regulations). See § 1.105–2; Rul. 2003–80; Rev. Rul. 2003–43 (2002–1 CB 935), see § 601.601(d)(2)(ii)(*b*); Notice 2006–69 (2006–31 IRB 107), Notice 2007–2 (2007–2 IRB 254). FSAs for dependent care assistance and adoption assistance must follow the substantiation procedures applicable to health FSAs.

Debit Cards

The new proposed regulations incorporate previously issued guidance on substantiating, paying and reimbursing expenses for section 213(d) medical care incurred at a medical care provider when payment is made with a debit card. Rev. Rul. 2003–43 (2003–1 CB 935), amplified, Notice 2006–69 (2006–31 IRB 107), Notice 2007–2 (2007–2 IRB 254); Rev. Proc. 98–25 (1998–1 CB 689), see § 601.601(d)(2)(ii)(*b*). Among the permissible substantiation methods are copayment matches, recurring expenses, and real-time substantiation. The new proposed regulations also allow point-of-sale substantiation through matching inventory information with a list of section 213(d) medical expenses. The employer is responsible for ensuring that the inventory information approval system complies with the new regulations and with the recordkeeping requirements in section 6001. Rev. Rul. 2003–43 (2003–1 CB 935), amplified, Notice 2006–69 (2006–31 IRB 107), Notice 2007–2 (2007–2 IRB 254); Rev. Proc. 98–25 (1998–1 CB 689), see § 601.601(d)(2)(ii)(*b*). The new proposed regulations also provide rules under which an FSA may pay or reimburse dependent care expenses using debit cards.

Pursuant to prior guidance (in Notice 2006–69 (2006–31 IRB 107), amplified, Notice 2007–2 (2007–2 IRB 254)), for plan years beginning after December 31, 2006, the recordkeeping requirements described in paragraph (f) in § 1.125–6 apply (that is, responsibility of employers relying on the inventory information approval system for health

[1] See Rev. Rul. 2005–55 (2005–2 CB 284) and Rev. Rul. 2005–24 (2005–1 CB 892), see § 601.601(d)(2)(ii)(*b*) (section 105(b) exclusion only applicable to reimbursements for medical expenses incurred by employee, or by the employee's spouse or dependents); Rev. Rul. 2002–3 (2002–1 CB 316) (purported reimbursements to employees of health insurance premiums not paid by employees and therefore impermissible); Rev. Rul. 2002–80 (2002–2 CB 925), see § 601.601(d)(2)(ii)(*b*) (so-called advance reimbursements and purported loans are impermissible); Rev. Rul. 2003–43 (2003–1 CB 935), see § 601.601(d)(2)(ii)(*b*); Notice 2006–69 (2006–31 IRB 107) (substantiation requirements for debit cards), amplified in Notice 2007–2 (2007–2 IRB 254), see § 601.601(d)(2)(ii)(*b*).

[2] *See American Family Mut. Ins. Co.* v. *United States,* 815 F. Supp. 1206 (W.D. Wis. 1992); *Wollenberg* v. *United States,* 75 F. Supp.2d 1032 (D. Neb. 1999); Rev. Rul. 2002–58 (2002–2 CB 541), see § 601.601(d)(2)(ii)(*b*); Notice 97–9, section II (adoption assistance).

FSA debit cards to ensure that the system complies with the new proposed recordkeeping requirements, including Rev. Proc. 98–25 (1998–1 CB 689), Notice 2006–69 (2006–31 IRB 107), amplified, Notice 2007–2 (2007–2 IRB 254). For health FSA debit card transactions occurring on or before December 31, 2007, all supermarkets, grocery stores, discount stores and wholesale clubs that do not have a medical care merchant category code (as described in Rev. Rul. 2003–43 (2003–2 CB 935) are nevertheless deemed to be an ''other medical provider'' as described in Rev. Rul. 2003–43. (For a list of merchant category codes, see Rev. Proc. 2004–43 (2004–2 CB 124).) During this time period, mail-order vendors and web-based vendors that sell prescription drugs are also deemed to be an ''other medical provider'' as described in Rev. Rul. 2003–43. After December 31, 2008, health FSA debit cards may not be used at stores with the Drug Stores and Pharmacies merchant category code unless (1) the store participates in the inventory information approval system described in Notice 2006–69, or (2) on a store location by store location basis, 90 percent of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care under section 213(d) (including nonprescription medications described in Rev. Rul. 2003–102 (2003–2 CB 559)). Notice 2006–69 (2006–31 IRB 107), amplified, Notice 2007–2 (2007–2 IRB 254).

V. New Prop. § 1.125–7—Nondiscrimination Rules

Discriminatory benefits provided to highly compensated participants and individuals and key employees are included in these employees' gross income. See section 125(b), (c). The new proposed regulations reflect changes in tax law since Prop. § 1.125–1, Q & A–9 through 13 and 19 were proposed in 1984, including the key employee concentration test, statutory nontaxable benefits (enacted in the Deficit Reduction Act of 1984 (DEFRA), Public Law 98–369, section 531(b), (98 Stat. 881(1984)), and the change in definition of dependent in WFTRA.

The new proposed regulations provide additional guidance on the cafeteria plan nondiscrimination rules, including definitions of key terms, guidance on the eligibility test and the contributions and benefits tests, descriptions of employees allowed to be excluded from testing and a safe harbor nondiscrimination test for premium-only-plans.

Specifically, the new proposed regulations define several key terms, including highly compensated individual or participant (consistent with the section 414(q) definition of highly compensated employee), officer, five percent shareholder, key employee and compensation. The new proposed regulations also provide guidance on the nondiscrimination as to eligibility requirement by incorporating some of the rules under section 410(b) (specifically the rules under § 1.410(b)–4(b) and (c) dealing with reasonable classification, the safe harbor percentage test and the unsafe harbor percentage component of the facts and circumstances test).

The new proposed regulations also provide additional guidance on the contributions and benefits test and, unlike the prior proposed regulations, the new proposed regulations provide an objective test to determine when the actual election of benefits is discriminatory. Specifically, the new proposed regulations provide that a cafeteria plan must give each similarly situated participant a uniform opportunity to elect qualified benefits, and that highly compensated participants must not actually disproportionately elect qualified benefits. Finally, the new rules provide guidance on the safe harbor for cafeteria plans providing health benefits and create a safe harbor for premium-only-plans that satisfy certain requirements.

The example in Prop. § 1.125–1, Q & A–11 (1984) is deleted because it concerns a qualified legal services plan, which is no longer a qualified benefit.

Other Issues

These proposed regulations provide guidance under section 125 (26 U.S.C. 125). Other statutes may impose additional requirements (for example, the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1000), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (sections 9801–9803); and the continuation coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (section 4980B).

Proposed Effective Date

With the exceptions noted in the ''Effect on other documents'' section of this preamble and under the ''Debit cards'' section of the preamble, it is proposed that these regulations apply for plan years beginning on or after January 1, 2009. Taxpayers may rely on these regulations for guidance pending the issuance of final regulations. Prior published guidance on qualified benefits under sections 79, 105, 106, 129, 137 and 223 that is affected by these proposed regulations remains applicable through the effective date of the final regulations (except as modified in ''Effect on other documents'' section of this preamble).

Effect on Other Documents

Notice 89–110 (1989–2 CB 447), see § 601.601(d)(2)(ii)(*b*), states that where group-term life insurance provided to an employee by an employer exceeds $50,000, the employee includes in gross income the greater of the cost of group-term life insurance shown in § 1.79–3(d)(2), Table I (Table I) on the excess coverage or the employee's salary reduction and employer flex-credits for excess coverage. Notice 89–110 is modified, effective as of the date the proposed regulations are published in the **Federal Register**.

Published guidance under § 105(b) states that if any person has the right to receive cash or any other taxable or nontaxable benefit under a health FSA other than the reimbursement of section 213(d) medical expenses of the employee, employee's spouse or employee's dependents, then all distributions made from the arrangement are included in the employee's gross income, even amounts paid to reimburse medical care. See Rev. Rul. 2006–36 (2006–36 IRB 353); Rev. Rul. 2005–24 (2005–1 CB 892); Rev. Rul. 2003–102 (2003–2 CB 559); Notice 2002–45 (2002–2 CB 93); Rev. Rul. 2002–41 (2002–2 CB 75); Rev. Rul. 69–141 (1969–1 CB 48). New section 106(e) provides that a health FSA will not fail to satisfy the requirements of sections 105 or 106 merely because the plan provides for a qualified HSA distribution. Amounts rolled into an HSA may be used for purposes other than reimbursing the section 213(d) medical expenses of the employee, spouse or dependents. Accordingly, Rev. Rul. 2006–36, Rev. Rul. 2005–24, Rev. Rul. 2003–102, Notice 2002–45, Rev. Rul. 2002–41, and Rev. Rul. 69–141 are modified with respect to qualified HSA distributions described in section 106(e). See Notice 2007–22 (2007–10 IRB 670), see § 601.601(d)(2)(ii)(*b*).

Special Analyses

It has been determined that this notice of proposed rulemaking 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 this regulation. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial

number of small entities. This certification is based on the fact that the regulations will only minimally increase the burdens on small entities. The requirements under these regulations relating to maintaining a section 125 cafeteria plan are a minimal additional burden independent of the burdens encompassed under existing rules for underlying employee benefit plans, which exist whether or not the benefits are provided through a cafeteria plan. In addition, most small entities that will maintain cafeteria plans already use a third-party plan administrator to administer the cafeteria plan. The collection of information required in these regulations, which is required to comply with the existing substantiation requirements of sections 105, 106, 129 and 125, and the recordkeeping requirements of section 6001, will only minimally increase the third-party administrator's burden with respect to the cafeteria plan. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. In addition, comments are requested on the following issues:

1. Whether, consistent with section 125 of the Internal Revenue Code, multiple employers (other than members of a controlled group described in section 125(g)(4)) may sponsor a single cafeteria plan;

2. Whether salary reduction contributions may be based on employees' tips and how that would work;

3. For cafeteria plans adopting the change in status rules in § 1.125–4, when a participant has a change in status and changes his or her salary reduction amount, how should the participant's uniform coverage amount be computed after the change in status.

All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 15, 2007, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by October 25, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Mireille T. Khoury, Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (EE–16–79) that was published in the **Federal Register** on Monday, May 7, 1984 (49 FR 19321), and Monday, December 31, 1984 (49 FR 50733), the notice of proposed rulemaking (EE–130–86) that was published in the **Federal Register** on Tuesday, March 7, 1989 (54 FR 9460), and Friday, November 7, 1997 (62 FR 60196) and the notice of proposed rulemaking (REG–117162–99) that was published in the **Federal Register** on Thursday, March 23, 2000 (65 FR 15587) are withdrawn.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.125–0, 1.125–1 and 1.125–2 are added to read as follows:

§ 1.125–0 Table of contents.

This section lists captions contained in §§ 1.125–1, 1.125–2, 1.125–5, 1.125–6 and § 1.125–7.

§ 1.125–1 Cafeteria plans; general rules.

(a) Definitions.
(b) General rules.
(c) Written plan requirements.
(d) Plan year requirements.
(e) Grace period.
(f) Run-out period.
(g) Employee for purpose of Section 125.
(h) After-tax employee contributions.
(i) Prohibited taxable benefits.
(j) Coordination with other rules.
(k) Group-term life insurance.
(l) COBRA premiums.
(m) Payment or reimbursement of employees' individual accident and health insurance premiums.
(n) Section 105 rules for accident and health plan offered through a cafeteria plan.
(o) Prohibition against deferred compensation.
(p) Benefits relating to more than one year.
(q) Nonqualified benefits.
(r) Employer contributions to a cafeteria plan.
(s) Effective/applicability date.

§ 1.125–2 Cafeteria plans; elections.

(a) Rules relating to making elections and revoking elections.
(b) Automatic elections.
(c) Election rules for salary reduction contributions to HSAs.
(d) Optional election for new employees.
(e) Effective/applicability date.

§ 1.125–5 Flexible spending arrangements.

(a) Definition of flexible spending arrangement.
(b) Flex-credits allowed.
(c) Use-or-lose rule.
(d) Uniform coverage rules applicable to health FSAs.
(e) Required period of coverage for a health FSA, dependent care FSA and adoption assistance FSA.
(f) Coverage on a month-by-month or expense-by-expense basis prohibited.
(g) FSA administrative practices.
(h) Qualified benefits permitted to be offered through a FSA.
(i) Section 129 rules for dependent care assistance program offered through a cafeteria plan.
(j) Section 137 rules for adoption assistance program offered through a cafeteria plan.
(k) FSAs and the rules governing the tax-favored treatment of employer-provided health benefits.
(l) Section 105(h) requirements.
(m) HSA-compatible FSAs-limited-purpose health FSAs and post-deductible health FSAs.

(n) Qualified HSA distributions.
(o) FSA experience gains or forfeitures.
(p) Effective/applicability date.

§ 1.125–6 Substantiation of expenses for all cafeteria plans.

(a) Cafeteria plan payments and reimbursements.
(b) Rules for claims substantiation for cafeteria plans.
(c) Debit cards—overview.
(d) Mandatory rules for all debit cards usable to pay or reimburse medical expenses.
(e) Substantiation of expenses incurred at medical care providers and certain other stores with Drug Stores and Pharmacies merchant category code.
(f) Inventory information approval system.
(g) Debit cards used to pay or reimburse dependent care assistance.
(h) Effective/applicability date.

§ 1.125–7 Cafeteria plan nondiscrimination rules.

(a) Definitions.
(b) Nondiscrimination as to eligibility.
(c) Nondiscrimination as to contributions and benefits.
(d) Key employees.
(e) Section 125(g)(2) safe harbor for cafeteria plans providing health benefits.
(f) Safe harbor test for premium-only-plans.
(g) Permissive disaggregation for nondiscrimination testing.
(h) Optional aggregation of plans for nondiscrimination testing.
(i) Employees of certain controlled groups.
(j) Time to perform nondiscrimination testing.
(k) Discrimination in actual operation prohibited.
(l) Anti-abuse rule.
(m) Tax treatment of benefits in a cafeteria plan.
(n) Employer contributions to employees' Health Savings Accounts.
(o) Effective/applicability date.

§ 1.125–1 Cafeteria plans; general rules.

(a) *Definitions.* The definitions set forth in this paragraph (a) apply for purposes of section 125 and the regulations.

(1) The term *cafeteria plan* means a separate written plan that complies with the requirements of section 125 and the regulations, that is maintained by an employer for the benefit of its employees and that is operated in compliance with the requirements of section 125 and the regulations. All participants in a cafeteria plan must be employees. A cafeteria plan must offer at least one permitted taxable benefit (as defined in paragraph (a)(2) of this section) and at least one qualified benefit (as defined in paragraph (a)(3) of this section). A cafeteria plan must not provide for deferral of compensation (except as specifically permitted in paragraph (o) of this section).

(2) The term *permitted taxable benefit* means cash and certain other taxable benefits treated as cash for purposes of section 125. For purposes of section 125, *cash* means cash compensation (including salary reduction), payments for annual leave, sick leave, or other paid time off and severance pay. A distribution from a trust described in section 401(a) is not cash for purposes of section 125. *Other taxable benefits treated as cash* for purposes of section 125 are:

(i) Property;

(ii) Benefits attributable to employer contributions that are currently taxable to the employee upon receipt by the employee; and

(iii) Benefits purchased with after-tax employee contributions, as described in paragraph (h) of this section.

(3) *Qualified benefit.* Except as otherwise provided in section 125(f) and paragraph (q) of this section, the term *qualified benefit* means any benefit attributable to employer contributions to the extent that such benefit is not currently taxable to the employee by reason of an express provision of the Internal Revenue Code (Code) and which does not defer compensation (except as provided in paragraph (o) of this section). The following benefits are qualified benefits that may be offered under a cafeteria plan and are excludible from employees' gross income when provided in accordance with the applicable provisions of the Code—

(A) Group-term life insurance on the life of an employee in an amount that is less than or equal to the $50,000 excludible from gross income under section 79(a), but not combined with any permanent benefit within the meaning of § 1.79–0;

(B) An accident and health plan excludible from gross income under section 105 or 106, including self-insured medical reimbursement plans (such as health FSAs described in § 1.125–5);

(C) Premiums for COBRA continuation coverage (if excludible under section 106) under the accident and health plan of the employer sponsoring the cafeteria plan or premiums for COBRA continuation coverage of an employee of the employer sponsoring the cafeteria plan under an accident and health plan sponsored by a different employer;

(D) An accidental death and dismemberment insurance policy (section 106);

(E) Long-term or short-term disability coverage (section 106);

(F) Dependent care assistance program (section 129);

(G) Adoption assistance (section 137);

(H) A qualified cash or deferred arrangement that is part of a profit-sharing plan or stock bonus plan, as described in paragraph (o)(3) of this section (section 401(k));

(I) Certain plans maintained by educational organizations (section 125(d)(2)(C) and paragraph (o)(3)(iii) of this section); and

(J) Contributions to Health Savings Accounts (HSAs) (sections 223 and 125(d)(2)(D)).

(4) *Dependent.* The term *dependent* generally means a dependent as defined in section 152. However, the definition of dependent is modified to conform with the underlying Code section for the qualified benefit. For example, for purposes of a benefit under section 105, the term dependent means a dependent as defined in section 152, determined without regard to section 152(b)(1), (b)(2) or (d)(1)(B).

(5) *Premium-only-plan.* A *premium-only-plan* is a cafeteria plan that offers as its sole benefit an election between cash (for example, salary) and payment of the employee share of the employer-provided accident and health insurance premium (excludible from the employee's gross income under section 106).

(b) *General rules*—(1) *Cafeteria plans.* Section 125 is the exclusive means by which an employer can offer employees an election between taxable and nontaxable benefits without the election itself resulting in inclusion in gross income by the employees. Section 125 provides that cash (including certain taxable benefits) offered to an employee through a nondiscriminatory cafeteria plan is not includible in the employee's gross income merely because the employee has the opportunity to choose among cash and qualified benefits (within the meaning of section 125(e)) through the cafeteria plan. Section 125(a), (d)(1). However, if a plan offering an employee an election between taxable benefits (including cash) and nontaxable qualified benefits does not meet the section 125 requirements, the election between taxable and nontaxable benefits results in gross income to the employee, regardless of what benefit is elected and when the election is made. An employee who has an election among nontaxable benefits and taxable benefits (including cash) that is not through a cafeteria plan that satisfies section 125 must include in gross income the value of the taxable benefit with the greatest value that the employee could have elected to receive, even if the employee elects to receive only the nontaxable benefits offered. The amount of the taxable benefit is includible in the

employee's income in the year in which the employee would have actually received the taxable benefit if the employee had elected such benefit. This is the result even if the employee's election between the nontaxable benefits and taxable benefits is made prior to the year in which the employee would actually have received the taxable benefits. See paragraph (q) in § 1.125–1 for nonqualified benefits.

(2) *Nondiscrimination rules for qualified benefits.* Accident and health plan coverage, group-term life insurance coverage, and benefits under a dependent care assistance program or adoption assistance program do not fail to be qualified benefits under a cafeteria plan merely because they are includible in gross income because of applicable nondiscrimination requirements (for example, sections 79(d), 105(h),129(d), 137(c)(2)). See also §§ 1.105–11(k) and 1.125–7.

(3) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section.

Example 1. Distributions from qualified pension plan used for health insurance premiums. (i) Employer A maintains a qualified section 401(a) retirement plan for employees. Employer A also provides accident and health insurance (as described in section 106) for employees and former employees, their spouses and dependents. The health insurance premiums are partially paid through a cafeteria plan. None of Employer A's employees are public safety officers. Employer A's health plan allows former employees to elect to have distributions from the qualified retirement plan applied to pay for the health insurance premiums through the cafeteria plan.

(ii) Amounts distributed from the qualified retirement plan which the former employees elect to have applied to pay health insurance premiums through the cafeteria plan are includible in their gross income. The same result occurs if distributions from the qualified retirement plan are applied directly to reimburse section 213(d) medical care expenses incurred by a former employee or his or her spouse or dependents. These distributions are includible in their income, and are not cash for purposes of section 125. The plan is not a cafeteria plan with respect to former employees.

Example 2. Severance pay used to pay COBRA premiums. Employer B maintains a cafeteria plan, which offers employees an election between cash and employer-provided accident and health insurance (excludible from employees' gross income under section 106). Employer B pays terminating employees severance pay. The cafeteria plan also allows a terminating employee to elect between receiving severance pay and using the severance pay to pay the COBRA premiums for the accident and health insurance. These provisions in the cafeteria plan are consistent with the requirements in section 125.

(4) *Election by participants*—(i) *In general.* A cafeteria plan must offer participants the opportunity to elect between at least one permitted taxable benefit and at least one qualified benefit. For example, if employees are given the opportunity to elect only among two or more nontaxable benefits, the plan is not a cafeteria plan. Similarly, a plan that only offers the election among salary, permitted taxable benefits, paid time off or other taxable benefits is not a cafeteria plan. See section 125(a), (d). See § 1.125–2 for rules on elections.

(ii) *Premium-only-plan.* A cafeteria plan may be a premium-only-plan.

(iii) *Examples.* The following examples illustrate the rules of paragraph (b)(4)(i) of this section.

Example 1. No election. Employer C covers all its employees under its accident and health plan (excludible from employees' gross income under section 106). Coverage is mandatory (that is, employees have no election between cash and the Employer C's accident and health plan). This plan is not a cafeteria plan, because the plan offers employees no election between taxable and nontaxable benefits. The accident and health coverage is excludible from employees' gross income.

Example 2. Election between cash and at least one qualified benefit. Employer D offers its employees a plan with an election between cash and an employer-provided accident and health plan (excludible from employees' gross income under section 106). If the plan also satisfies all the other requirements of section 125, the plan is a cafeteria plan because it offers an election between at least one taxable benefit and at least one nontaxable qualified benefit.

Example 3. Election between employer flex-credits and qualified benefits. Employer E offers its employees an election between an employer flex-credit (as defined in paragraph (b) in § 1.125–5) and qualified benefits. If an employee does not elect to apply the entire employer flex-credit to qualified benefits, the employee will receive no cash or other taxable benefit for the unused employer flex-credit. The plan is not a cafeteria plan because it does not offer an election between at least one taxable benefit and at least one nontaxable qualified benefit.

Example 4. No election between cash and qualified benefits for certain employees. (i) Employer F maintains a calendar year plan offering employer-provided accident and health insurance coverage which includes employee-only and family coverage options.

(ii) The plan provides for an automatic enrollment process when a new employee is hired, or during the annual election period under the plan: only employees who certify that they have other health coverage are permitted to elect to receive cash. Employees who cannot certify are covered by the accident and health insurance on a mandatory basis. Employer F does not otherwise request or collect information from employees regarding other health coverage as part of the enrollment process. If the employee has a spouse or child, the employee can elect between cash and family coverage.

(iii) When an employee is hired, the employee receives a notice explaining the plan's automatic enrollment process. The notice includes the salary reduction amounts for employee-only coverage and family coverage, procedures for certifying whether the employee has other health coverage, elections for family coverage, information on the time by which a certification or election must be made, and the period for which a certification or election will be effective. The notice is also given to each current employee before the beginning of each plan year, (except that the notice for a current employee includes a description of the employee's existing coverage, if any).

(iv) For a new employee, an election to receive cash or to have family coverage is effective if made when the employee is hired. For a current employee, an election is effective if made prior to the start of each calendar year or under any other circumstances permitted under § 1.125–4. An election for any prior year carries over to the next succeeding plan year unless changed. Certification that the employee has other health coverage must be made annually.

(v) Contributions used to purchase employer-provided accident and health coverage under section 125 are not includible in an employee's gross income if the employee can elect cash. Section 125 does not apply to the employee-only coverage of an employee who cannot certify that he or she has other health coverage and, therefore, does not have the ability to elect cash in lieu of health coverage.

(5) *No deferred compensation.* Except as provided in paragraph (o) of this section, in order for a plan to be a cafeteria plan, the qualified benefits and the permitted taxable benefits offered through the cafeteria plan must not defer compensation. For example, a cafeteria plan may not provide for retirement health benefits for current employees beyond the current plan year or group-term life insurance with a permanent benefit, as defined under § 1.79–0.

(c) *Written plan requirements*—(1) *General rule.* A cafeteria plan must contain in writing the information described in this paragraph (c), and depending on the qualified benefits offered in the plan, may also be required to contain additional information described in paragraphs (c)(2) and (c)(3) of this section. The cafeteria plan must be adopted and effective on or before the first day of the cafeteria plan year to which it relates. The terms of the plan must apply uniformly to all participants. The cafeteria plan document may be comprised of multiple documents. The written cafeteria plan must contain all of the following information—

(i) A specific description of each of the benefits available through the plan, including the periods during which the benefits are provided (the periods of coverage);

(ii) The plan's rules governing participation, and specifically requiring that all participants in the plan be employees;

(iii) The procedures governing employees' elections under the plan, including the period when elections may be made, the periods with respect to which elections are effective, and providing that elections are irrevocable, except to the extent that the optional change in status rules in § 1.125–4 are included in the cafeteria plan;

(iv) The manner in which employer contributions may be made under the plan, (for example, through an employee's salary reduction election or by nonelective employer contributions (that is, flex-credits, as defined in paragraph (b) in § 1.125–5) or both);

(v) The maximum amount of employer contributions available to any employee through the plan, by stating:

(A) The maximum amount of elective contributions (*i.e.*, salary reduction) available to any employee through the plan, expressed as a maximum dollar amount or a maximum percentage of compensation or the method for determining the maximum dollar amount; and

(B) For contributions to section 401(k) plans, the maximum amount of elective contributions available to any employee through the plan, expressed as a maximum dollar amount or maximum percentage of compensation that may be contributed as elective contributions through the plan by employees.

(vi) The plan year of the cafeteria plan;

(vii) If the plan offers paid time off, the required ordering rule for use of nonelective and elective paid time off in paragraph (o)(4) of this section;

(viii) If the plan includes flexible spending arrangements (as defined in § 1.125–5(a)), the plan's provisions complying with any additional requirements for those FSAs (for example, the uniform coverage rule and the use-or-lose rules in paragraphs (d) and (c) in § 1.125–5);

(ix) If the plan includes a grace period, the plan's provisions complying with paragraph (e) of this section; and

(x) If the plan includes distributions from a health FSA to employees' HSAs, the plan's provisions complying with paragraph (n) in § 1.125–5.

(2) *Additional requirements under sections 105(h), 129, and 137.* A written plan is required for self-insured medical reimbursement plans (§ 1.105–11(b)(1)(i)), dependent care assistance programs (section 129(d)(1)), and adoption assistance (section 137(c)). Any of these plans or programs offered through a cafeteria plan that satisfies the written plan requirement in this paragraph (c) for the benefits under these plans and programs also satisfies the written plan requirements in § 1.105–11(b)(1)(i), section 129(d)(1), and section 137(c) (whichever is applicable). Alternatively, a self-insured medical reimbursement plan, a dependent care assistance program, or an adoption assistance program is permitted to satisfy the requirements in § 1.105–11(b)(1)(i), section 129(d)(1), or section 137(c) (whichever is applicable) through a separate written plan, and not as part of the written cafeteria plan.

(3) *Additional requirements under section 401(k).* See § 1.401(k)–1(e)(7) for additional requirements that must be satisfied in the written plan if the plan offers deferrals into a section 401(k) plan.

(4) *Cross-reference allowed.* In describing the benefits available through the cafeteria plan, the written cafeteria plan need not be self-contained. For example, the written cafeteria plan may incorporate by reference benefits offered through other *separate written plans,* such as a section 401(k) plan, or coverage under a dependent care assistance program (section 129), without describing in full the benefits established through these other plans. But, for example, if the cafeteria plan offers different maximum levels of coverage for dependent care assistance programs, the descriptions in the separate written plan must specify the available maximums.

(5) *Amendments to cafeteria plan.* Any amendment to the cafeteria plan must be in writing. A cafeteria plan is permitted to be amended at any time during a plan year. However, the amendment is only permitted to be effective for periods after the later of the adoption date or effective date of the amendment. For an amendment adding a new benefit, the cafeteria plan must pay or reimburse only those expenses for new benefits incurred after the later of the amendment's adoption date or effective date.

(6) *Failure to satisfy written plan requirements.* If there is no written cafeteria plan, or if the written plan fails to satisfy any of the requirements in this paragraph (c) (including cross-referenced requirements), the plan is not a cafeteria plan and an employee's election between taxable and nontaxable benefits results in gross income to the employee.

(7) *Operational failure—(i)* In general. If the cafeteria plan fails to operate according to its written plan or otherwise fails to operate in compliance with section 125 and the regulations, the plan is not a cafeteria plan and employees' elections between taxable and nontaxable benefits result in gross income to the employees.

(ii) *Failure to operate according to written cafeteria plan or section 125.* Examples of failures resulting in section 125 not applying to a plan include the following—

(A) Paying or reimbursing expenses for qualified benefits incurred before the later of the adoption date or effective date of the cafeteria plan, before the beginning of a period of coverage or before the later of the date of adoption or effective date of a plan amendment adding a new benefit;

(B) Offering benefits other than permitted taxable benefits and qualified benefits;

(C) Operating to defer compensation (except as permitted in paragraph (o) of this section);

(D) Failing to comply with the uniform coverage rule in paragraph (d) in § 1.125–5;

(E) Failing to comply with the use-or-lose rule in paragraph (c) in § 1.125–5;

(F) Allowing employees to revoke elections or make new elections, except as provided in § 1.125–4 and paragraph (a) in § 1.125–2;

(G) Failing to comply with the substantiation requirements of § 1.125–6;

(H) Paying or reimbursing expenses in an FSA other than expenses expressly permitted in paragraph (h) in § 1.125–5;

(I) Allocating experience gains other than as expressly permitted in paragraph (o) in § 1.125–5;

(J) Failing to comply with the grace period rules in paragraph (e) of this section; or

(K) Failing to comply with the qualified HSA distribution rules in paragraph (n) in § 1.125–5.

(d) *Plan year requirements*—(1) *Twelve consecutive months.* The plan year must be specified in the cafeteria plan. The plan year of a cafeteria plan must be twelve consecutive months, unless a short plan year is allowed under this paragraph (d). A plan year is permitted to begin on any day of any calendar month and must end on the preceding day in the immediately following year (for example, a plan year that begins on October 15, 2007, must end on October 14, 2008). A calendar year plan year is a period of twelve consecutive months beginning on January 1 and ending on December 31 of the same calendar year. A plan year

specified in the cafeteria plan is effective for the first plan year of a cafeteria plan and for all subsequent plan years, unless changed as provided in paragraph (d)(2) of this section.

(2) *Changing plan year.* The plan year is permitted to be changed only for a valid business purpose. A change in the plan year is not permitted if a principal purpose of the change in plan year is to circumvent the rules of section 125 or these regulations. If a change in plan year does not satisfy this subparagraph, the attempt to change the plan year is ineffective and the plan year of the cafeteria plan remains the same.

(3) *Short plan year.* A short plan year of less than twelve consecutive months is permitted for a valid business purpose.

(4) *Examples.* The following examples illustrate the rules in paragraph (d) of this section:

Example 1. Employer with calendar year. Employer G, with a calendar taxable year, first establishes a cafeteria plan effective July 1, 2009. The cafeteria plan specifies a calendar plan year. The first cafeteria plan year is the period beginning on July 1, 2009, and ending on December 31, 2009. Employer G has a business purpose for a short first cafeteria plan year.

Example 2. Employer changes insurance carrier. Employer H establishes a cafeteria plan effective January 1, 2009, with a calendar year plan year. The cafeteria plan offers an accident and health plan through Insurer X. In March 2010, Employer H contracts to provide accident and health insurance through another insurance company, Y. Y's accident and health insurance is offered on a July 1–June 30 benefit year. Effective July 1, 2010, Employer H amends the plan to change to a July 1–June 30 plan year. Employer H has a business purpose for changing the cafeteria plan year and for the short plan year ending June 30, 2010.

(5) *Significance of plan year.* The plan year generally is the coverage period for benefits provided through the cafeteria plan to which annual elections for these benefits apply. Benefits elected pursuant to the employee's election for a plan year generally may not be carried forward to subsequent plan years. However, see the grace period rule in paragraph (e) of this section.

(e) *Grace period*—(1) *In general.* A cafeteria plan may, at the employer's option, include a grace period of up to the fifteenth day of the third month immediately following the end of each plan year. If a cafeteria plan provides for a grace period, an employee who has unused benefits or contributions relating to a qualified benefit (for example, health flexible spending arrangement (health FSA) or dependent care assistance) from the immediately preceding plan year, and who incurs expenses for that same qualified benefit during the grace period, may be paid or reimbursed for those expenses from the unused benefits or contributions as if the expenses had been incurred in the immediately preceding plan year. A grace period is available for all qualified benefits described in paragraph (a)(3) of this section, except that the grace period does not apply to paid time off and elective contributions under a section 401(k) plan. The effect of the grace period is that the employee may have as long as 14 months and 15 days (that is, the 12 months in the current cafeteria plan year plus the grace period) to use the benefits or contributions for a plan year before those amounts are *forfeited* under the *use-or-lose* rule in paragraph (c) in § 1.125–5. If the grace period is added to a cafeteria plan through an amendment, all requirements in paragraph (c) of this section must be satisfied.

(2) *Grace period optional features.* A grace period provision may contain any or all of the following—

(i) The grace period may apply to some qualified benefits described in paragraph (a)(3) of this section, but not to others;

(ii) The grace period provision may limit the amount of unused benefits or contributions available during the grace period. The limit must be uniform and apply to all participants. However, the limit must not be based on a percentage of the amount of the unused benefits or contributions remaining at the end of the immediately prior plan year;

(iii) The last day of the grace period may be sooner than the fifteenth day of the third month immediately following the end of the plan year (that is, the grace period may be shorter than two and one half months);

(iv) The grace period provision is permitted to treat expenses for qualified benefits incurred during the grace period either as expenses incurred during the immediately preceding plan year or as expenses incurred during the current plan year (for example, the plan may first apply the unused contributions or benefits from the immediately preceding year to pay or reimburse grace period expenses and then, when the unused contributions and benefits from the prior year are exhausted, the grace period expenses may be paid from current year contributions and benefits.); and

(v) The grace period provision may permit the employer to defer the allocation of expenses described in paragraph (e)(2)(iv) of this section until after the end of the grace period.

(3) *Grace period requirements.* A grace period must satisfy the requirements in paragraph (c) of this section and all of the following requirements:

(i) The grace period provisions in the cafeteria plan (including optional provisions in paragraph (e)(2) of this section) must apply uniformly to all participants in the cafeteria plan, determined as of the last day of the plan year. Participants in the cafeteria plan through COBRA and participants who were participants as of the last day of the plan year but terminate during the grace period are participants for purposes of the grace period. See § 54.4980B–2, Q & A–8 of this chapter;

(ii) The grace period provision in the cafeteria plan must state that unused benefits or contributions relating to a particular qualified benefit may only be used to pay or reimburse expenses incurred with respect to the same qualified benefit. For example, unused amounts elected to pay or reimburse medical expenses in a health FSA may not be used to pay or reimburse dependent care expenses incurred during the grace period; and

(iii) The grace period provision in the cafeteria plan must state that to the extent any unused benefits or contributions from the immediately preceding plan year exceed the expenses for the qualified benefit incurred during the grace period, those remaining unused benefits or contributions may not be carried forward to any subsequent period (including any subsequent plan year), cannot be cashed-out and must be forfeited under the use-or-lose rule. See paragraph (c) in § 1.125–5

(4) *Examples.* The following examples illustrate the rules in this paragraph (e).

Example 1. Expenses incurred during grace period and immediately following plan year. (i) Employer I's calendar year cafeteria plan includes a grace period allowing all participants to apply unused benefits or contributions remaining at the end of the plan year to qualified benefits incurred during the grace period immediately following that plan year. The grace period for the plan year ending December 31, 2009, ends on March 15, 2010.

(ii) Employee X timely elected salary reduction of $1,000 for a health FSA for the plan year ending December 31, 2009. As of December 31, 2009, X has $200 remaining unused in his health FSA. X timely elected salary reduction for a health FSA of $1,500 for the plan year ending December 31, 2010.

(iii) During the grace period from January 1 through March 15, 2010, X incurs $300 of unreimbursed medical expenses (as defined in section 213(d)). The unused $200 from the plan year ending December 31, 2009, is applied to pay or reimburse $200 of X's $300 of medical expenses incurred during the grace period. Therefore, as of March 16, 2010, X has no unused benefits or contributions

remaining for the plan year ending December 31, 2009.

(iv) The remaining $100 of medical expenses incurred between January 1 and March 15, 2010, is paid or reimbursed from X's health FSA for the plan year ending December 31, 2010. As of March 16, 2010, X has $1,400 remaining in the health FSA for the plan year ending December 31, 2010.

Example 2. Unused benefits exceed expenses incurred during grace period. Same facts as *Example 1,* except that X incurs $150 of section 213(d) medical expenses during the grace period (January 1 through March 15, 2010). As of March 16, 2010, X has $50 of unused benefits or contributions remaining for the plan year ending December 31, 2009. The unused $50 cannot be cashed-out, converted to any other taxable or nontaxable benefit, or used in any other plan year (including the plan year ending December 31, 2009). The unused $50 is subject to the use-or-lose rule in paragraph (c) in § 1.125–5 and is forfeited. As of March 16, 2010, X has the entire $1,500 elected in the health FSA for the plan year ending December 31, 2010.

Example 3. Terminated participants. (i) Employer J's cafeteria plan includes a grace period allowing all participants to apply unused benefits or contributions remaining at the end of the plan year to qualified benefits incurred during the grace period immediately following that plan year. For the plan year ending on December 31, 2009, the grace period ends March 15, 2010.

(ii) Employees A, B, C, and D each timely elected $1,200 salary reduction for a health FSA for the plan year ending December 31, 2009. Employees A and B terminated employment on September 15, 2009. Each has $500 of unused benefits or contributions in the health FSA.

(iii) Employee A elected COBRA for the health FSA. Employee A is a participant in the cafeteria plan as of December 31, 2009, the last day of the 2009 plan year. Employee A has $500 of unused benefits or contributions available during the grace period for the 2009 plan year (ending March 15, 2010).

(iv) Employee B did not elect COBRA for the health FSA. Employee B is not a participant in the cafeteria plan as of December 31, 2009. The grace period does not apply to Employee B.

(v) Employee C has $500 of unused benefits in his health FSA as of December 31, 2009, and terminated employment on January 15, 2010. Employee C is a participant in the cafeteria plan as of December 31, 2009 and has $500 of unused benefits or contributions available during the grace period ending March 15, 2010, even though he terminated employment on January 15, 2010.

(vi) Employee D continues to work for Employer H throughout 2009 and 2010, also has $500 of unused benefits or contributions in his health FSA as of December 31, 2009, but made no health FSA election for 2010. Employee D is a participant in the cafeteria plan as of December 31, 2009 and has $500 of unused benefits or contributions available during the grace period ending March 15, 2010, even though he is not a participant in a health FSA for the 2010 plan year.

(f) *Run-out period.* A cafeteria plan is permitted to contain a run-out period as designated by the employer. A run-out period is a period after the end of the plan year (or grace period) during which a participant can submit a claim for reimbursement for a qualified benefit incurred during the plan year (or grace period). Thus, a plan is also permitted to provide a deadline on or after the end of the plan year (or grace period) for submitting a claim for reimbursement for the plan year. Any run-out period must be provided on a uniform and consistent basis with respect to all participants.

(g) *Employee for purposes of section 125*—(1) *Current employees, former employees.* The term employee includes any current or former employee (including any laid-off employee or retired employee) of the employer. See paragraph (g)(3) of this section concerning limits on participation by former employees. Specifically, the term *employee* includes the following—

(i) Common law employee;

(ii) Leased employee described in section 414(n);

(iii) Full-time life insurance salesman (as defined in section 7701(a)(20)); and

(iv) A current employee or former employee described in paragraphs (g)(1)(i) through (iii) of this section.

(2) *Self-employed individual not an employee*—(i) *In general.* The term *employee* does not include a self-employed individual or a 2-percent shareholder of an S corporation, as defined in paragraph (g)(2)(ii) of this subsection. For example, a sole proprietor, a partner in a partnership, or a director solely serving on a corporation's board of directors (and not otherwise providing services to the corporation as an employee) is not an employee for purposes of section 125, and thus is not permitted to participate in a cafeteria plan. However, a sole proprietor may sponsor a cafeteria plan covering the sole proprietor's employees (but not the sole proprietor). Similarly, a partnership or S corporation may sponsor a cafeteria plan covering employees (but not a partner or 2-percent shareholder of an S corporation).

(ii) *Two percent shareholder of an S corporation.* A 2-percent shareholder of an S corporation has the meaning set forth in section 1372(b).

(iii) *Certain dual status individuals.* If an individual is an employee of an employer and also provides services to that employer as an independent contractor or director (for example, an individual is both a director and an employee of a C corp), the individual is eligible to participate in that employer's cafeteria plan solely in his or her capacity as an employee. This rule does not apply to partners or to 2-percent shareholders of an S corporation.

(iv) *Examples.* The following examples illustrate the rules in paragraphs (g)(2)(ii) and (g)(2)(iii) of this section:

Example 1. Two-percent shareholders of an S corporation. (i) Employer K, an S corporation, maintains a cafeteria plan for its employees (other than 2-percent shareholders of an S corporation). Employer K's taxable year and the plan year are the calendar year. On January 1, 2009, individual Z owns 5 percent of the outstanding stock in Employer K. Y, who owns no stock in Employer K, is married to Z. Y and Z are employees of Employer K. Z is a 2-percent shareholder in Employer K (as defined in section 1372(b)). Y is also a 2-percent shareholder in Employer K by operation of the attribution rules in section 318(a)(1)(A)(i).

(ii) On July 15, 2009, Z sells all his stock in Employer K to an unrelated third party, and ceases to be a 2-percent shareholder. Y and Z continue to work as employees of Employer K during the entire 2009 calendar year. Y and Z are ineligible to participate in Employer K's cafeteria plan for the 2009 plan year.

Example 2. Director and employee. T is an employee and also a director of Employer L, a C corp that sponsors a cafeteria plan. The cafeteria plan allows only employees of Employer L to participate in the cafeteria plan. T's annual compensation as an employee is $50,000; T is also paid $3,000 annually in director's fees. T makes a timely election to salary reduce $5,000 from his employee compensation for dependent care benefits. T makes no election with respect to his compensation as a director. T may participate in the cafeteria plan in his capacity as an employee of Employer L.

(3) *Limits on participation by former employees.* Although former employees are treated as employees, a cafeteria plan may not be established or maintained predominantly for the benefit of former employees of the employer. Such a plan is not a cafeteria plan.

(4) *No participation by the spouse or dependent of an employee*—(i) *Benefits allowed to participant's spouse or dependents but not participation.* The spouse or dependents of employees may not be participants in a cafeteria plan unless they are also employees. However, a cafeteria plan may provide benefits to spouses and dependents of participants. For example, although an employee's spouse may benefit from the employee's election of accident and health insurance coverage or of coverage through a dependent care assistance program, the spouse may not participate in a cafeteria plan (that is, the spouse may not be given the opportunity to elect or purchase benefits offered by the plan).

(ii) *Certain elections after employee's death.* An employee's spouse is not a participant in a cafeteria plan merely because the spouse has the right, upon the death of the employee, to elect among various settlement options or to elect among permissible distribution options with respect to the deceased employee's benefits through a section 401(k) plan, Health Savings Account, or certain group-term life insurance offered through the cafeteria plan. See § 54.4980B–2, Q & A 8 and § 54.4980B–4, Q & A–1 of this chapter on COBRA rights of a participant's spouse or dependents.

(5) *Employees of certain controlled groups.* All employees who are treated as employed by a single employer under section 414(b), (c), (m), or (o) are treated as employed by a single employer for purposes of section 125. Section 125(g)(4); section 414(t).

(h) *After-tax employee contributions*—(1) *Certain after-tax employee contributions treated as cash.* In addition to the cash benefits described in paragraph (a)(2) of this section, in general, a benefit is treated as cash for purposes of section 125 if the benefit does not defer compensation (except as provided in paragraph (o) of this section) and an employee who receives the benefit purchases such benefit with after-tax employee contributions or is treated, for all purposes under the Code (including, for example, reporting and withholding purposes), as receiving, at the time that the benefit is received, cash compensation equal to the full value of the benefit at that time and then purchasing the benefit with after-tax employee contributions. Thus, for example, long-term disability coverage is treated as cash for purposes of section 125 if the cafeteria plan provides that an employee may purchase the coverage through the cafeteria plan with after-tax employee contributions or provides that the employee receiving such coverage is treated as having received cash compensation equal to the value of the coverage and then as having purchased the coverage with after-tax employee contributions. Also, for example, a cafeteria plan may offer employees the opportunity to purchase, with after-tax employee contributions, group-term life insurance on the life of an employee (providing no permanent benefits), an accident and health plan, or a dependent care assistance program.

(2) *Accident and health coverage purchased for someone other than the employee's spouse or dependents with after-tax employee contributions.* If the requirements of section 106 are satisfied, employer-provided accident and health coverage for an employee and his or her spouse or dependents is excludible from the employee's gross income. The fair market value of coverage for any other individual, provided with respect to the employee, is includible in the employee's gross income. § 1.106–1; § 1.61–21(a)(4), and § 1.61–21(b)(1). A cafeteria plan is permitted to allow employees to elect accident and health coverage for an individual who is not the spouse or dependent of the employee as a taxable benefit.

(3) *Example.* The following example illustrates the rules of this paragraph (h):

Example. Accident and health plan coverage for individuals who are not a spouse or dependent of an employee. (i) Employee C participates in Employer M's cafeteria plan. Employee C timely elects salary reduction for employer-provided accident and health coverage for himself and for accident and health coverage for his former spouse. C's former spouse is not C's dependent. A former spouse is not a spouse as defined in section 152.

(ii) The fair market value of the coverage for the former spouse is $1,000. Employee C has $1,000 includible in gross income for the accident and health coverage of his former spouse, because the section 106 exclusion applies only to employer-provided accident and health coverage for the employee or the employee's spouse or dependents.

(iii) No payments or reimbursements received under the accident and health coverage result in gross income to Employee C or to the former spouse. The result is the same if the $1,000 for coverage of C's former spouse is paid from C's after-tax income outside the cafeteria plan.

(i) *Prohibited taxable benefits.* Any taxable benefit not described in paragraph (a)(2) of this section and not treated as cash for purposes of section 125 in paragraph (h) of this section is not permitted to be included in a cafeteria plan. A plan that offers taxable benefits other than the taxable benefits described in paragraph (a)(2) and (h) of this section is not a cafeteria plan.

(j) *Coordination with other rules*—(1) *In general.* If a benefit is excludible from an employee's gross income when provided separately, the benefit is excludible from gross income when provided through a cafeteria plan. Thus, a qualified benefit is excludible from gross income if both the rules under section 125 and the specific rules providing for the exclusion of the benefit from gross income are satisfied. For example, if the nondiscrimination rules for specific qualified benefits (for example, sections 79(d), 105(h), 129(d)(2), 137(c)(2)) are not satisfied, those qualified benefits are includible in gross income. Thus, if $50,000 in group-term life insurance is offered through a cafeteria plan, the nondiscrimination rules in section 79(d) must be satisfied in order to exclude the coverage from gross income.

(2) *Section 125 nondiscrimination rules.* Qualified benefits are includible in the gross income of highly compensated participants or key employees if the nondiscrimination rules of section 125 are not satisfied. See § 1.125–7.

(3) *Taxable benefits.* If a benefit that is includible in gross income when offered separately is offered through a cafeteria plan, the benefit continues to be includible in gross income.

(k) *Group-term life insurance*—(1) *In general.* In addition to offering up to $50,000 in group-term life insurance coverage excludible under section 79(a), a cafeteria plan may offer coverage in excess of that amount. The cost of coverage in excess of $50,000 in group-term life insurance coverage provided under a policy or policies carried directly or indirectly by one or more employers (taking into account all coverage provided both through a cafeteria plan and outside a cafeteria plan) is includible in an employee's gross income. Group-term life insurance combined with permanent benefits, within the meaning of § 1.79–0, is a prohibited benefit in a cafeteria plan.

(2) *Determining cost of insurance includible in employee's gross income*—(i) *In general.* If the aggregate group-term life insurance coverage on the life of the employee (under policies carried directly or indirectly by the employer) exceeds $50,000, all or a portion of the insurance is provided through a cafeteria plan, and the group-term life insurance is provided through a plan that meets the nondiscrimination rules of section 79(d), the amount includible in an employee's gross income is determined under paragraphs (k)(2)(i)(A) through (C) of this section. For each employee—

(A) The entire amount of salary reduction and employer flex-credits through a cafeteria plan for group-term life insurance coverage on the life of the employee is excludible from the employee's gross income, regardless of the amount of employer-provided group-term life insurance on the employee's life (that is, whether or not the coverage provided to the employee both through the cafeteria plan and outside the cafeteria plan exceeds $50,000);

(B) The cost of the group-term life insurance in excess of $50,000 of coverage is includible in the employee's gross income. The amount includible in the employee's income is determined

using the rules of § 1.79–3 and Table I (*Uniform Premiums for $1,000 of Group-Term Life Insurance Protection*). See subparagraph (C) of this paragraph (k)(2)(i) for determining the amount paid by the employee for purposes of reducing the Table I amount includible in income under § 1.79–3.

(C) In determining the amount paid by the employee toward the purchase of the group-term life insurance for purposes of § 1.79–3, only an employee's after-tax contributions are treated as an amount paid by the employee.

(ii) *Examples.* The rules in this paragraph (k) are illustrated by the following examples, in which the group-term life insurance coverage satisfies the nondiscrimination rules in section 79(d), provides no permanent benefits, is for a 12-month period, is the only group-term life insurance coverage provided under a policy carried directly or indirectly by the employer, and applies Table I (*Uniform Premiums for $1,000 of Group-Term Life Insurance Protection*) effective July 1, 1999:

Example 1. Excess group-term life insurance coverage provided through salary reduction in a cafeteria plan. (i) Employer N provides group-term life insurance coverage to its employees only through its cafeteria plan. Employer N's cafeteria plan allows employees to elect salary reduction for group-term life insurance. Employee B, age 42, elected salary reduction of $200 for $150,000 of group-term life insurance. None of the group-term life insurance is paid through after-tax employee contributions.

(ii) B's $200 of salary reduction for group-term life insurance is excludible from B's gross income under paragraph (k)(2)(i)(A).

(iii) B has a total of $150,000 of group-term life insurance. The group-term life insurance in excess of the dollar limitation of section 79 is $100,000 (150,000–50,000).

(iv) The Table I cost is $120 for $100,000 of group-term life insurance for an individual between ages 40 to 44. The Table I cost of $120 is reduced by zero (because B paid no portion of the group-term life insurance with after-tax employee contributions), under paragraphs (k)(2)(i)(A)–(B) of this section.

(v) The amount includible in B's gross income for the $100,000 of excess group-term life insurance is $120.

Example 2. Excess group-term life insurance coverage provided through salary reduction in a cafeteria plan where employee purchases a portion of group-term life insurance coverage with after-tax contributions. (i) Same facts as *Example 1,* except that B elected salary reduction of $100 and makes an after-tax contribution of $100 toward the purchase of group-term life insurance coverage.

(ii) B's $100 of salary reduction for group-term life insurance is excludible from B's gross income, under paragraph (k)(2)(i)(A) of this section.

(iii) B has a total of $150,000 of group-term life insurance. The group-term life insurance in excess of the dollar limitation of section 79 is $100,000 (150,000–50,000).

(iv) The Table I cost is $120 for $100,000 of group-term life insurance for an individual between ages 40 to 44, under (k)(2)(i)(B). The Table I cost of $120 is reduced by $100 (because B paid $100 for the group-term life insurance with after-tax employee contributions), under paragraphs (k)(2)(i)(B) and (k)(2)(i)(C) of this section.

(v) The amount includible in B's gross income for the $100,000 of excess group-term life insurance coverage is $20.

Example 3. Excess group-term life insurance coverage provided through salary reduction in a cafeteria plan and outside a cafeteria plan. (i) Same facts as *Example 1* except that Employer N also provides (at no cost to employees) group-term life insurance coverage equal to each employee's annual salary. Employee B's annual salary is $150,000. B has $150,000 of group-term life insurance directly from Employer N, and also $150,000 coverage through Employer N's cafeteria plan.

(ii) B's $200 of salary reduction for group-term life insurance is excludible from B's gross income, under paragraph (k)(2)(i)(A) of this section.

(iii) B has a total of $300,000 of group-term life insurance. The group-term life insurance in excess of the dollar limitation of section 79 is $250,000 (300,000–50,000).

(iv) The Table I cost is $300 for $250,000 of group-term life insurance for an individual between ages 40 to 44. The Table I cost of $300 is reduced by zero (because B paid no portion of the group-term life insurance with after-tax employee contributions), under paragraphs (k)(2)(i)(B) and (k)(2)(i)(C) of this section.

(v) The amount includible in B's gross income for the $250,000 of excess group-term life insurance is $300.

Example 4. Excess group-term life insurance coverage provided through salary reduction in a cafeteria plan and outside a cafeteria plan. (i) Same facts as *Example 3* except that Employee C's annual salary is $30,000. C has $30,000 of group-term life insurance coverage provided directly from Employer N, and elects an additional $30,000 of coverage for $40 through Employer N's cafeteria plan. C is 42 years old.

(ii) C's $40 of salary reduction for group-term life insurance is excludible from C's gross income, under paragraph (k)(2)(i)(A) of this section.

(iii) C has a total of $60,000 of group-term life insurance. The group-term life insurance in excess of the dollar limitation of section 79 is $10,000 (60,000–50,000).

(iv) The Table I cost is $12 for $10,000 of group-term life insurance for an individual between ages 40 to 44. The Table I cost of $12 is reduced by zero (because C paid no portion of the group-term life insurance with after-tax employee contributions), under paragraphs (k)(2)(i)(B) and (k)(2)(i)(C) of this section.

(v) The amount includible in C's gross income for the $10,000 of excess group-term life insurance coverage is $12.

(l) *COBRA premiums*—(1) *Paying COBRA premiums through a cafeteria plan.* Under § 1.125–4(c)(3)(iv), COBRA premiums for an employer-provided group health plan are qualified benefits if:

(i) The premiums are excludible from an employee's income under section 106; or

(ii) The premiums are for the accident and health plan of the employer sponsoring the cafeteria plan, even if the fair market value of the premiums is includible in an employee's gross income. See also paragraph (e)(2) in § 1.125–5 and § 54.4980B–2, Q & A–8 of this chapter for COBRA rules for health FSAs.

(2) *Example.* The following example illustrates the rules of this paragraph (l):

Example. COBRA premiums. (i) Employer O maintains a cafeteria plan for full-time employees, offering an election between cash and employer-provided accident and health insurance and other qualified benefits. Employees A, B, and C participate in the cafeteria plan. On July 1, 2009, Employee A has a qualifying event (as defined in § 54.4980B–4 of this chapter).

(ii) Employee A was a full-time employee and became a part-time employee and for that reason, is no longer covered by Employer O's accident and health plan. Under § 1.125–4(f)(3)(ii), Employee A changes her election to salary reduce to pay her COBRA premiums.

(iii) Employee B previously worked for another employer, quit and elected COBRA. Employee B begins work for Employer O on July 1, 2009, and becomes eligible to participate in Employer O's cafeteria plan on July 1, 2009, but will not be eligible to participate in Employer O's accident and health plan until October 1, 2009. Employee B elects to salary reduce to pay COBRA premiums for coverage under the accident and health plan sponsored by B's former employer.

(iv) Employee C and C's spouse are covered by Employer O's accident and health plan until July 1, 2009, when C's divorce from her spouse became final. C continues to be covered by the accident and health plan. On July 1, 2009, C requests to pay COBRA premiums for her former spouse (who is not C's dependent (as defined in section 152)) with after-tax employee contributions.

(v) Salary reduction elections for COBRA premiums for Employees A and B are qualified benefits for purposes of section 125 and are excludible from the gross income of Employees A and B. Employer O allows A and B to salary reduce for these COBRA premiums.

(vi) Employer O allows C to pay for COBRA premiums for C's former spouse, with after-tax employee contributions because although accident and health coverage for C's former spouse is permitted in a cafeteria plan, the premiums are includible in C's gross income.

(vii) The operation of Employer O's cafeteria plan satisfies the requirements of this paragraph (l).

(m) *Payment or reimbursement of employees' individual accident and*

health insurance premiums—(1) *In general.* The payment or reimbursement of employees' substantiated individual health insurance premiums is excludible from employees' gross income under section 106 and is a qualified benefit for purposes of section 125.

(2) *Example.* The following example illustrates the rule of this paragraph (m):

Example. Payment or reimbursement of premiums. (i) Employer P's cafeteria plan offers the following benefits for employees who are covered by an individual health insurance policy. The employee substantiates the expenses for the premiums for the policy (as required in paragraph (b)(2) in § 1.125–6) before any payments or reimbursements to the employee for premiums are made. The payments or reimbursements are made in the following ways:

(ii) The cafeteria plan reimburses each employee directly for the amount of the employee's substantiated health insurance premium;

(iii) The cafeteria plan issues the employee a check payable to the health insurance company for the amount of the employee's health insurance premium, which the employee is obligated to tender to the insurance company;

(iv) The cafeteria plan issues a check in the same manner as (iii), except that the check is payable jointly to the employee and the insurance company; or

(v) Under these circumstances, the individual health insurance policies are accident and health plans as defined in § 1.106–1. This benefit is a qualified benefit under section 125.

(n) *Section 105 rules for accident and health plan offered through a cafeteria plan*—(1) *General rule.* In order for an accident and health plan to be a qualified benefit that is excludible from gross income if elected through a cafeteria plan, the cafeteria plan must satisfy section 125 and the accident and health plan must satisfy section 105(b) and (h).

(2) *Section 105(b) requirements in general.* Section 105(b) provides an exclusion from gross income for amounts paid to an employee from an employer-funded accident and health plan specifically to reimburse the employee for certain expenses for medical care (as defined in section 213(d)) incurred by the employee or the employee's spouse or dependents during the period for which the benefit is provided to the employee (that is, when the employee is covered by the accident and health plan).

(o) *Prohibition against deferred compensation*—(1) *In general.* Any plan that offers a benefit that defers compensation (except as provided in this paragraph (o)) is not a cafeteria plan. See section 125(d)(2)(A). A plan that permits employees to carry over unused elective contributions, after-tax contributions, or plan benefits from one plan year to another (except as provided in paragraphs (e), (o)(3) and (4) and (p) of this section) defers compensation. This is the case regardless of how the contributions or benefits are used by the employee in the subsequent plan year (for example, whether they are automatically or electively converted into another taxable or nontaxable benefit in the subsequent plan year or used to provide additional benefits of the same type). Similarly, a cafeteria plan also defers compensation if the plan permits employees to use contributions for one plan year to purchase a benefit that will be provided in a subsequent plan year (for example, life, health or disability if these benefits have a savings or investment feature, such as whole life insurance). See also Q & A–5 in § 1.125–3, prohibiting deferring compensation from one cafeteria plan year to a subsequent cafeteria plan year. See paragraph (e) of this section for grace period rules. A plan does not defer compensation merely because it allocates experience gains (or forfeitures) among participants in compliance with paragraph (o) in § 1.125–5.

(2) *Effect if a plan includes a benefit that defers the receipt of compensation or a plan operates to defer compensation.* If a plan violates paragraph (o)(1) of this section, the availability of an election between taxable and nontaxable benefits under such a plan results in gross income to the employees.

(3) *Cash or deferred arrangements that may be offered in a cafeteria plan.* (i) *In general.* A cafeteria plan may offer the benefits set forth in this paragraph (o)(3), even though these benefits defer compensation.

(ii) *Elective contributions to a section 401(k) plan.* A cafeteria plan may permit a covered employee to elect to have the employer, on behalf of the employee, pay amounts as contributions to a trust that is part of a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)), which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)). In addition, after-tax employee contributions under a qualified plan subject to section 401(m) are permitted through a cafeteria plan. The right to make such contributions does not cause a plan to fail to be a cafeteria plan merely because, under the qualified plan, employer matching contributions (as defined in section 401(m)(4)(A)) are made with respect to elective or after-tax employee contributions.

(iii) *Additional permitted deferred compensation arrangements.* A plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance is permitted through a cafeteria plan, if—

(A) All contributions for such insurance must be made before retirement; and

(B) Such life insurance does not have a cash surrender value at any time.

(iv) *Contributions to HSAs.* Contributions to covered employees' HSAs as defined in section 223 (but not contributions to Archer MSAs).

(4) *Paid time off*—(i) *In general.* A cafeteria plan is permitted to include elective paid time off (that is, vacation days, sick days or personal days) as a permitted taxable benefit through the plan by permitting employees to receive more paid time off than the employer otherwise provides to the employees on a nonelective basis, but only if the inclusion of elective paid time off through the plan does not operate to permit the deferral of compensation. In addition, a plan that only offers the choice of cash or paid time off is not a cafeteria plan and is not subject to the rules of section 125. In order to avoid deferral of compensation, the cafeteria plan must preclude any employee from using the paid time off or receiving cash, in a subsequent plan year, for any portion of such paid time off remaining unused as of the end of the plan year. (See paragraph (o)(4)(iii) of this section for the deadline to cash out unused elective paid time off.) For example, a plan that offers employees the opportunity to purchase paid time off (or to receive cash or other benefits through the plan in lieu of paid time off) is not a cafeteria plan if employees who purchase the paid time off for a plan year are allowed to use any unused paid time off in a subsequent plan year. This is the case even though the plan does not permit the employee to convert, in any subsequent plan year, the unused paid time off into any other benefit.

(ii) *Ordering of elective and nonelective paid time off.* In determining whether a plan providing paid time off operates to permit the deferral of compensation, a cafeteria plan must provide that employees are deemed to use paid time off in the following order:

(A) *Nonelective paid time off.* Nonelective paid time off (that is, paid time off with respect to which the employee has no election) is used first;

(B) *Elective paid time off.* Elective paid time off is used after all nonelective paid time off is used.

(iii) *Cashing out or forfeiture of unused elective paid time off, in general.* The cafeteria plan must provide that all unused elective paid time off (determined as of the last day of the plan year) must either be paid in cash (within the time specified in this paragraph (o)(4)) or be forfeited. This provision must apply uniformly to all participants in the cafeteria plan.

(A) *Cash out of unused elective paid time off.* A plan does not operate to permit the deferral of compensation merely because the plan provides that an employee who has not used all elective paid time off for a plan year receives in cash the value of such unused paid time off. The employee must receive the cash on or before the last day of the cafeteria plan's plan year to which the elective contributions used to purchase the unused elective paid time off relate.

(B) *Forfeiture of unused elective paid time off.* If the cafeteria plan provides for forfeiture of unused elective paid time off, the forfeiture must be effective on the last day of the plan year to which the elective contributions relate.

(iv) *No grace period for paid time off.* The grace period described in paragraph (e) of this section does not apply to paid time off.

(v) *Examples.* The following examples illustrate the rules of this paragraph (o)(4):

Example 1. Plan cashes out unused elective paid time off on or before the last day of the plan year. (i) Employer Q provides employees with two weeks of paid time off for each calendar year. Employer Q's human resources policy (that is, outside the cafeteria plan), permits employees to carry over one nonelective week of paid time off to the next year. Employer Q maintains a calendar year cafeteria plan that permits the employee to purchase, with elective contributions, an additional week of paid time off.

(ii) For the 2009 plan year, Employee A (with a calendar tax year), timely elects to purchase one additional week of paid time off. During 2009, Employee A uses only two weeks of paid time off. Employee A is deemed to have used two weeks of nonelective paid time off and zero weeks of elective paid time off.

(iii) Pursuant to the cafeteria plan, the plan pays Employee A the value of the unused elective paid time off week in cash on December 31, 2009. Employer Q includes this amount on the 2009 Form W–2 for Employee A. This amount is included in Employee A's gross income in 2009. The cafeteria plan's terms and operations do not violate the prohibition against deferring compensation.

Example 2. Unused nonelective paid time off carried over to next plan year. (i) Same facts as *Example 1*, except that Employee A uses only one week of paid time off during the year. Pursuant to the cafeteria plan, Employee A is deemed to have used one nonelective week, and having retained one nonelective week and one elective week of paid time off. Employee A receives in cash the value of the unused elective paid time off on December 31, 2009. Employer Q includes this amount on the 2009 Form W–2 for Employee A. Employee A must report this amount as gross income in 2009.

(ii) Pursuant to Employer Q's human resources policy, Employee A is permitted to carry over the one nonelective week of paid time off to the next year. Nonelective paid time off is not part of the cafeteria plan (that is, neither Employer Q nor the cafeteria plan permit employees to exchange nonelective paid time off for other benefits).

(iii) The cafeteria plan's terms and operations do not violate the prohibition against deferring compensation.

Example 3. Forfeiture of unused elective paid time off. Same facts as *Example 2*, except that pursuant to the cafeteria plan, Employee A forfeits the remaining one week of elective paid time off. The cafeteria plan's terms and operations do not violate the prohibition against deferring compensation.

Example 4. Unused elective paid time off carried over to next plan year. Same facts as *Example 1*, except that Employee A uses only two weeks of paid time off during the 2009 plan year, and, under the terms of the cafeteria plan, Employee A is treated as having used the two nonelective weeks and as having retained the one elective week. The one remaining week (that is, the elective week) is carried over to the next plan year (or the value thereof used for any other purpose in the next plan year). The plan operates to permit deferring compensation and is not a cafeteria plan.

Example 5. Paid time off exchanged for accident and health insurance premiums. Employer R provides employees with four weeks of paid time off for a year. Employer R's calendar year cafeteria plan permits employees to exchange up to one week of paid time off to pay the employee's share of accident and health insurance premiums. For the 2009 plan year, Employee B (with a calendar tax year), timely elects to exchange one week of paid time off (valued at $769) to pay accident and health insurance premiums for 2009. The $769 is excludible from Employee B's gross income under section 106. The cafeteria plan's terms and operations do not violate the prohibition against deferring compensation.

(p) *Benefits relating to more than one year*—(1) *Benefits in an accident and health insurance policy relating to more than one year.* Consistent with section 125(d), an accident and health insurance policy may include certain benefits, as set forth in this paragraph (p)(1), without violating the prohibition against deferred compensation.

(i) *Permitted benefits.* The following features or benefits of insurance policies do not defer compensation—

(A) Credit toward the deductible for unreimbursed covered expenses incurred in prior periods;

(B) Reasonable lifetime maximum limit on benefits;

(C) Level premiums;

(D) Premium waiver during disability;

(E) Guaranteed policy renewability of coverage, without further evidence of insurability (but not guaranty of the amount of premium upon renewal);

(F) Coverage for a specified accidental injury;

(G) Coverage for a specified disease or illness, including payments at initial diagnosis of the specified disease or illness, and progressive payments of a set amount per month following the initial diagnosis (sometimes referred to as progressive diagnosis payments); and

(H) Payment of a fixed amount per day (or other period) of hospitalization.

(ii) *Requirements of permitted benefits.* All benefits described in paragraph (p)(1)(i) of this section must in addition satisfy all of the following requirements—

(A) No part of any benefit is used in one plan year to purchase a benefit in a subsequent plan year;

(B) The policies remain in force only so long as premiums are timely paid on a current basis, and, irrespective of the amount of premiums paid in prior plan years, if the current premiums are not paid, all coverage for new diseases or illnesses lapses. See paragraph (p)(1)(i)(D), allowing premium waiver during disability;

(C) There is no investment fund or cash value to rely upon for payment of premiums; and

(D) No part of any premium is held in a separate account for any participant or beneficiary, or otherwise segregated from the assets of the insurance company.

(2) *Benefits under a long-term disability policy relating to more than one year.* A long-term disability policy paying disability benefits over more than one year does not violate the prohibition against deferring compensation.

(3) *Reasonable premium rebates or policy dividends.* Reasonable premium rebates or policy dividends paid with respect to benefits provided through a cafeteria plan do not constitute impermissible deferred compensation if such rebates or dividends are paid before the close of the 12-month period immediately following the cafeteria plan year to which such rebates and dividends relate.

(4) *Mandatory two-year election for vision or dental insurance.* When a cafeteria plan offers vision or dental insurance that requires a mandatory two-year coverage period, but not longer (sometimes referred to as a ''two-year lock-in''), the mandatory two-year

coverage period does not result in deferred compensation in violation of section 125(d)(2), provided both of the following requirements are satisfied—

(i) The premiums for each plan year are paid no less frequently than annually; and

(ii) In no event does a cafeteria plan use salary reduction or flex-credits relating to the first year of a two-year election to apply to vision or dental insurance for the second year of the two-year election.

(5) *Using salary reduction amounts from one plan year to pay accident and health insurance premiums for the first month of the immediately following plan year.*

(i) *In general.* Salary reduction amounts from the last month of one plan year of a cafeteria plan may be applied to pay accident and health insurance premiums for insurance during the first month of the immediately following plan year, if done on a uniform and consistent basis with respect to all participants (based on the usual payroll interval for each group of participants).

(ii) *Example.* The following example illustrates the rules in this paragraph (p)(5):

Example. Salary reduction payments in December of calendar plan year to pay accident and health insurance premiums for January. Employer S maintains a calendar year cafeteria plan. The cafeteria plan offers employees a salary reduction election for accident and health insurance. The plan provides that employees' salary reduction amounts for the last pay period in December are applied to pay accident and health insurance premiums for the immediately following January. All employees are paid bi-weekly. For the plan year ending December 31, 2009, Employee C elects salary reduction of $3,250 for accident and health coverage. For the last pay period in December 2009, $125 (3,250/26) is applied to the accident and health insurance premium for January 2010. This plan provision does not violate the prohibition against deferring compensation.

(q) *Nonqualified benefits*—(1) *In general.* The following benefits are nonqualified benefits that are not permitted to be offered in a cafeteria plan—

(i) Scholarships described in section 117;

(ii) Employer-provided meals and lodging described in section 119;

(iii) Educational assistance described in section 127;

(iv) Fringe benefits described in section 132;

(v) Long-term care insurance, or any product which is advertised, marketed or offered as long-term care insurance;

(vi) Long-term care services (but see paragraph (q)(3) of this section);

(vii) Group-term life insurance on the life of any individual other than an employee (whether includible or excludible from the employee's gross income);

(viii) Health reimbursement arrangements (HRAs) that provide reimbursements up to a maximum dollar amount for a coverage period and that all or any unused amount at the end of a coverage period is carried forward to increase the maximum reimbursement amount in subsequent coverage periods;

(ix) Contributions to Archer MSAs (section 220); and

(x) Elective deferrals to a section 403(b) plan.

(2) *Nonqualified benefits not permitted in a cafeteria plan.* The benefits described in this paragraph (q) are not qualified benefits or taxable benefits or cash for purposes of section 125 and thus may not be offered in a cafeteria plan regardless of whether any such benefit is purchased with after-tax employee contributions or on any other basis. A plan that offers a nonqualified benefit is not a cafeteria plan. Employees' elections between taxable and nontaxable benefits through such plan result in gross income to the participants for any benefit elected. See section 125(f). See paragraph (q)(3) of this section for special rule on long-term care insurance purchased through an HSA.

(3) *Long-term care insurance or services purchased through an HSA.* Although long-term care insurance is not a qualified benefit and may not be offered in a cafeteria plan, a cafeteria plan is permitted to offer an HSA as a qualified benefit, and funds from the HSA may be used to pay eligible long-term care premiums on a qualified long-term care insurance contract or for qualified long-term care services.

(r) *Employer contributions to a cafeteria plan*—(1) *Salary reduction-in general.* The term *employer contributions* means amounts that are not currently available (after taking section 125 into account) to the employee but are specified in the cafeteria plan as amounts that an employee may use for the purpose of electing benefits through the plan. A plan may provide that employer contributions may be made, in whole or in part, pursuant to employees' elections to reduce their compensation or to forgo increases in compensation and to have such amounts contributed, as employer contributions, by the employer on their behalf. See also § 1.125–5 (flexible spending arrangements). Also, a cafeteria plan is permitted to require employees to elect to pay the employees' share of any qualified benefit through salary reduction and not with after-tax employee contributions. A cafeteria plan is also permitted to pay reasonable cafeteria plan administrative fees through salary reduction amounts, and these salary reduction amounts are excludible from an employee's gross income.

(2) *Salary reduction as employer contribution.* Salary reduction contributions are employer contributions. An employee's salary reduction election is an election to receive a contribution by the employer in lieu of salary or other compensation that is not currently available to the employee as of the effective date of the election and that does not subsequently become currently available to the employee.

(3) *Employer flex-credits.* A cafeteria plan may also provide that the employer contributions will or may be made on behalf of employees equal to (or up to) specified amounts (or specified percentages of compensation) and that such nonelective contributions are available to employees for the election of benefits through the plan.

(4) *Elective contributions to a section 401(k) plan.* See § 1.401(k)–1 for general rules relating to contributions to section 401(k) plans.

(s) *Effective/applicability date.* It is proposed that these regulations apply on and after plan years beginning on or after January 1, 2009, except that the rule in paragraph (k)(2)(i)(B) of this section is effective as of the date the proposed regulations are published in the **Federal Register**.

§ 1.125–2 Cafeteria plans; elections.

(a) *Rules relating to making and revoking elections*—(1) *Elections in general.* A plan is not a cafeteria plan unless the plan provides in writing that employees are permitted to make elections among the permitted taxable benefits and qualified benefits offered through the plan for the plan year (and grace period, if applicable). All elections must be irrevocable by the date described in paragraph (a)(2) of this section except as provided in paragraph (a)(4) of this section. An election is not irrevocable if, after the earlier of the dates specified in paragraph (a)(2) of this section, employees have the right to revoke their elections of qualified benefits and instead receive the taxable benefits for such period, without regard to whether the employees actually revoke their elections.

(2) *Timing of elections.* In order for employees to exclude qualified benefits from employees' gross income, benefit

elections in a cafeteria plan must be made before the earlier of—

(i) The date when taxable benefits are currently available; or

(ii) The first day of the plan year (or other coverage period).

(3) *Benefit currently available to an employee-in general.* Cash or another taxable benefit is currently available to the employee if it has been paid to the employee or if the employee is able currently to receive the cash or other taxable benefit at the employee's discretion. However, cash or another taxable benefit is not currently available to an employee if there is a significant limitation or restriction on the employee's right to receive the benefit currently. Similarly, a benefit is not currently available as of a date if the employee may under no circumstances receive the benefit before a particular time in the future. The determination of whether a benefit is currently available to an employee does not depend on whether it has been constructively received by the employee for purposes of section 451.

(4) *Exceptions to rule on making and revoking elections.* If a cafeteria plan incorporates the change in status rules in § 1.125–4, to the extent provided in those rules, an employee who experiences a change in status (as defined in § 1.125–4) is permitted to revoke an existing election and to make a new election with respect to the remaining portion of the period of coverage, but only with respect to cash or other taxable benefits that are not yet currently available. See paragraph (c)(1) of this section for a special rule for changing elections prospectively for HSA contributions and paragraph (r)(4) in § 1.125–1 for section 401(k) elections. Also, only an employee of the employer sponsoring a cafeteria plan is allowed to make, revoke or change elections in the employer's cafeteria plan. The employee's spouse, dependent or any other individual other than the employee may not make, revoke or change elections under the plan.

(5) *Elections not required on written paper documents.* A cafeteria plan does not fail to meet the requirements of section 125 merely because it permits employees to use electronic media for such transactions. The safe harbor in § 1.401(a)–21 applies to electronic elections, revocations and changes in elections under section 125.

(6) *Examples.* The following examples illustrate the rules in this paragraph (a):

Example 1. Election not revocable during plan year. Employer A's cafeteria plan offers each employee the opportunity to elect, for a plan year, between $5,000 cash for the plan year and a dependent care assistance program of up to $5,000 of dependent care expenses incurred by the employee during the plan year. The cafeteria plan requires employees to elect between these benefits before the beginning of the plan year. After the year has commenced, employees are prohibited from revoking their elections. The cafeteria plan allows revocation of elections based on changes in status (as described in § 1.125–4). Employees who elected the dependent care assistance program do not include the $5,000 cash in gross income. The cafeteria plan satisfies the requirements in this paragraph (a).

Example 2. Election revocable during plan year. Same facts as *Example 1* except that Employer A's cafeteria plan allows employees to revoke their elections for dependent care assistance at any time during the plan year and receive the unused amount of dependent care assistance as cash. The cafeteria plan fails to satisfy the requirements in this paragraph (a), and is not a cafeteria plan. All employees are treated as having received the $5,000 in cash even if they do not revoke their elections. The same result occurs even though the cash is not payable until the end of the plan year.

(b) *Automatic elections*—(1) *In general.* For new employees or current employees who fail to timely elect between permitted taxable benefits and qualified benefits, a cafeteria plan is permitted, but is not required, to provide default elections for one or more qualified benefits (for example, an election made for any prior year is deemed to be continued for every succeeding plan year, unless changed).

(2) *Example.* The following example illustrates the rules in this paragraph (b):

Example. Automatic elections for accident and health insurance. (i) Employer B maintains a calendar year cafeteria plan. The cafeteria plan offers accident and health insurance with an option for employee-only or family coverage. All employees are eligible to participate in the cafeteria plan immediately upon hire.

(ii) The cafeteria plan provides for an automatic enrollment process: Each new employee and each current employee is automatically enrolled in employee-only coverage under the accident and health insurance plan, and the employee's salary is reduced to pay the employee's share of the accident and health insurance premium, unless the employee affirmatively elects cash. Alternatively, if the employee has a spouse or child, the employee can elect family coverage.

(iii) When an employee is hired, the employee receives a notice explaining the automatic enrollment process and the employee's right to decline coverage and have no salary reduction. The notice includes the salary reduction amounts for employee-only coverage and family coverage, procedures for exercising the right to decline coverage, information on the time by which an election must be made, and the period for which an election is effective. The notice is also given to each current employee before the beginning of each subsequent plan year, except that the notice for a current employee includes a description of the employee's existing coverage, if any.

(iv) For a new employee, an election to receive cash or to have family coverage rather than employee-only coverage is effective if made when the employee is hired. For a current employee, an election is effective if made prior to the start of each calendar year or under any other circumstances permitted under § 1.125–4. An election made for any prior year is deemed to be continued for every succeeding plan year, unless changed.

(v) Contributions used to purchase accident and health insurance through a cafeteria plan are not includible in the gross income of the employee solely because the plan provides for automatic enrollment as a default election whereby the employee's salary is reduced each year to pay for a portion of the accident and health insurance through the plan (unless the employee affirmatively elects cash).

(c) *Election rules for salary reduction contributions to HSAs*—(1) *Prospective elections and changes in salary reduction elections allowed.* Contributions may be made to an HSA through a cafeteria plan. A cafeteria plan offering HSA contributions through salary reduction may permit employees to make prospective salary reduction elections or change or revoke salary reduction elections for HSA contributions (for example, to increase or decrease salary reduction elections for HSA contributions) at any time during the plan year, effective before salary becomes currently available. If a cafeteria plan offers HSA contributions as a qualified benefit, the plan must—

(i) Specifically describe the HSA contribution benefit;

(ii) Allow a participant to prospectively change his or her salary reduction election for HSA contributions on a monthly basis (or more frequently); and

(iii) Allow a participant who becomes ineligible to make HSA contributions to prospectively revoke his or her salary reduction election for HSA contributions.

(2) *Example.* The following example illustrates the rules in this paragraph (c):

Example. Prospective HSA salary reduction elections. (i) A cafeteria plan with a calendar plan year allows employees to make salary reduction elections for HSA contributions through the plan. The cafeteria plan permits employees to prospectively make, change or revoke salary contribution elections for HSA contributions, limited to one election, change or revocation per month.

(ii) Employee M participates in the cafeteria plan. Before salary becomes currently available to M, M makes the following elections. On January 2, 2009, M elects to contribute $100 for each pay period to an HSA, effective January 3, 2009. On

March 15, 2009, M elects to reduce the HSA contribution to $35 per pay period, effective April 1, 2009. On May 1, 2009, M elects to discontinue all HSA contributions, effective May 15, 2009. The cafeteria plan implements all of Employee M's elections,

(iii) The cafeteria plan's operation is consistent with the section 125 election, change and revocation rules for HSA contributions.

(d) *Optional election for new employees.* A cafeteria plan may provide new employees 30 days after their hire date to make elections between cash and qualified benefits. The election is effective as of the employee's hire date. However, salary reduction amounts used to pay for such an election must be from compensation not yet currently available on the date of the election. The written cafeteria plan must provide that any employee who terminates employment and is rehired within 30 days after terminating employment (or who returns to employment following an unpaid leave of absence of less than 30 days) is not a new employee eligible for the election in this paragraph (d).

(e) *Effective/applicability date.* It is proposed that these regulations apply on and after plan years beginning on or after January 1, 2009.

Par. 3. Sections 1.125–5, 1.125–6 and 1.125–7 are added to read as follows:

§ 1.125–5 Flexible spending arrangements.

(a) *Definition of flexible spending arrangement*—(1) *In general.* An FSA generally is a benefit program that provides employees with coverage which reimburses specified, incurred expenses (subject to reimbursement maximums and any other reasonable conditions). An expense for qualified benefits must not be reimbursed from the FSA unless it is incurred during a period of coverage. See paragraph (e) of this section. After an expense for a qualified benefit has been incurred, the expense must first be substantiated before the expense is reimbursed. See paragraphs (a) through (f) in § 1.125–6.

(2) *Maximum amount of reimbursement.* The maximum amount of reimbursement that is reasonably available to an employee for a period of coverage must not be substantially in excess of the total salary reduction and employer flex-credit for such participant's coverage. A maximum amount of reimbursement is not substantially in excess of the total salary reduction and employer flex-credit if such maximum amount is less than 500 percent of the combined salary reduction and employer flex-credit. A single FSA may provide participants with different levels of coverage and maximum amounts of reimbursement. See paragraph (r) in § 1.125–1 and paragraphs (b) and (d) in this section for the definition of salary reduction, employer flex-credit, and uniform coverage rule.

(b) *Flex-credits allowed*—(1) *In general.* An FSA in a cafeteria plan must include an election between cash or taxable benefits (including salary reduction) and one or more qualified benefits, and may include, in addition, ''employer flex-credits.'' For this purpose, flex-credits are non-elective employer contributions that the employer makes for every employee eligible to participate in the employer's cafeteria plan, to be used at the employee's election only for one or more qualified benefits (but not as cash or a taxable benefit). See § 1.125–1 for definitions of qualified benefits, cash and taxable benefits.

(2) *Example.* The following example illustrates the rules in this paragraph (b):

Example. Flex-credit. Contribution to health FSA for employees electing employer-provided accident and health plan. Employer A maintains a cafeteria plan offering employees an election between cash or taxable benefits and premiums for employer-provided accident and health insurance or coverage through an HMO. The plan also provides an employer contribution of $200 to the health FSA of every employee who elects accident and health insurance or HMO coverage. In addition, these employees may elect to reduce their salary to make additional contributions to their health FSAs. The benefits offered in this cafeteria plan are consistent with the requirements of section 125 and this paragraph (b).

(c) *Use-or-lose rule*—(1) *In general.* An FSA may not defer compensation. No contribution or benefit from an FSA may be carried over to any subsequent plan year or period of coverage. See paragraph (k)(3) in this section for specific exceptions. Unused benefits or contributions remaining at the end of the plan year (or at the end of a grace period, if applicable) are forfeited.

(2) *Example.* The following example illustrates the rules in this paragraph (c):

Example. Use-or-lose rule. (i) Employer B maintains a calendar year cafeteria plan, offering an election between cash and a health FSA. The cafeteria plan has no grace period.

(ii) Employee A plans to have eye surgery in 2009. For the 2009 plan year, Employee A timely elects salary reduction of $3,000 for a health FSA. During the 2009 plan year, Employee A learns that she cannot have eye surgery performed, but incurs other section 213(d) medical expenses totaling $1,200. As of December 31, 2009, she has $1,800 of unused benefits and contributions in the health FSA. Consistent with the rules in this paragraph (c), she forfeits $1,800.

(d) *Uniform coverage rules applicable to health FSAs*—(1) *Uniform coverage throughout coverage period—in general.* The maximum amount of reimbursement from a health FSA must be available at all times during the period of coverage (properly reduced as of any particular time for prior reimbursements for the same period of coverage). Thus, the maximum amount of reimbursement at any particular time during the period of coverage cannot relate to the amount that has been contributed to the FSA at any particular time prior to the end of the plan year. Similarly, the payment schedule for the required amount for coverage under a health FSA may not be based on the rate or amount of covered claims incurred during the coverage period. Employees' salary reduction payments must not be accelerated based on employees' incurred claims and reimbursements.

(2) *Reimbursement available at all times.* Reimbursement is deemed to be available at all times if it is paid at least monthly or when the total amount of the claims to be submitted is at least a specified, reasonable minimum amount (for example, $50).

(3) *Terminated participants.* When an employee ceases to be a participant, the cafeteria plan must pay the former participant any amount the former participant previously paid for coverage or benefits to the extent the previously paid amount relates to the period from the date the employee ceases to be a participant through the end of that plan year. See paragraph (e)(2) in this section for COBRA elections for health FSAs.

(4) *Example.* The following example illustrates the rules in this paragraph (d):

Example. Uniform coverage. (i) Employer C maintains a calendar year cafeteria plan, offering an election between cash and a health FSA. The cafeteria plan prohibits accelerating employees' salary reduction payments based on employees' incurred claims and reimbursements.

(ii) For the 2009 plan year, Employee N timely elects salary reduction of $3,000 for a health FSA. Employee N pays the $3,000 salary reduction amount through salary reduction of $250 per month throughout the coverage period. Employee N is eligible to receive the maximum amount of reimbursement of $3,000 at all times throughout the coverage period (reduced by prior reimbursements).

(iii) N incurs $2,500 of section 213(d) medical expenses in January, 2009. The full $2,500 is reimbursed although Employee N has made only one salary reduction payment of $250. N incurs $500 in medical expenses in February, 2009. The remaining $500 of the $3,000 is reimbursed. After Employee N submits a claim for reimbursement and substantiates the medical expenses, the cafeteria plan reimburses N for the $2,500

and $500 medical expenses. Employer C's cafeteria plan satisfies the uniform coverage rule.

(5) *No uniform coverage rule for FSAs for dependent care assistance or adoption assistance.* The uniform coverage rule applies only to health FSAs and does not apply to FSAs for dependent care assistance or adoption assistance. See paragraphs (i) and (j) of this section for the rules for FSAs for dependent care assistance and adoption assistance.

(e) *Required period of coverage for a health FSA, dependent care FSA and adoption assistance FSA*—(1) *Twelve-month period of coverage—in general.* An FSA's period of coverage must be 12 months. However, in the case of a short plan year, the period of coverage is the entire short plan year. See paragraph (d) in § 1.125–1 for rules on plan years and changing plan years.

(2) *COBRA elections for health FSAs.* For the application of the health care continuation rules of section 4980B of the Code to health FSAs, see Q & A–2 in § 54.4980B–2 of this chapter.

(3) *Separate period of coverage permitted for each qualified benefit offered through FSA.* Dependent care assistance, adoption assistance, and a health FSA are each permitted to have a separate period of coverage, which may be different from the plan year of the cafeteria plan.

(f) *Coverage on a month-by-month or expense-by-expense basis prohibited.* In order for reimbursements from an accident and health plan to qualify for the section 105(b) exclusion, an employer-funded accident and health plan offered through a cafeteria plan may not operate in a manner that enables employees to purchase the accident and health plan coverage only for periods when employees expect to incur medical care expenses. Thus, for example, if a cafeteria plan permits employees to receive accident and health plan coverage on a month-by-month or an expense-by-expense basis, reimbursements from the accident and health plan fail to qualify for the section 105(b) exclusion. If, however, the period of coverage under an accident and health plan offered through a cafeteria plan is twelve months and the cafeteria plan does not permit an employee to elect specific amounts of coverage, reimbursement, or salary reduction for less than twelve months, the cafeteria plan does not operate to enable participants to purchase coverage only for periods during which medical care will be incurred. See § 1.125–4 and paragraph (a) in § 1.125–2 regarding the revocation of elections during a period of coverage on account of changes in family status.

(g) *FSA administrative practices*—(1) *Limiting health FSA enrollment to employees who participate in the employer's accident and health plan.* At the employer's option, a cafeteria plan is permitted to provide that only those employees who participate in one or more specified employer-provided accident and health plans may participate in a health FSA. See § 1.125–7 for nondiscrimination rules.

(2) *Interval for employees' salary reduction contributions.* The cafeteria plan is permitted to specify any interval for employees' salary reduction contributions. The interval specified in the plan must be uniform for all participants.

(h) *Qualified benefits permitted to be offered through an FSA.* Dependent care assistance (section 129), adoption assistance (section 137) and a medical reimbursement arrangement (section 105(b)) are permitted to be offered through an FSA in a cafeteria plan.

(i) *Section 129 rules for dependent care assistance program offered through a cafeteria plan*—(1) *General rule.* In order for dependent care assistance to be a qualified benefit that is excludible from gross income if elected through a cafeteria plan, the cafeteria plan must satisfy section 125 and the dependent care assistance must satisfy section 129.

(2) *Dependent care assistance in general.* Section 129(a) provides an employee with an exclusion from gross income both for an employer-funded dependent care assistance program and for amounts paid or incurred by the employer for dependent care assistance provided to the employee, if the amounts are paid or incurred through a dependent care assistance program. See paragraph (a)(4) in § 1.125–6 on when dependent care expenses are incurred.

(3) *Reimbursement exclusively for dependent care assistance.* A dependent care assistance program may not provide reimbursements other than for dependent care expenses; in particular, if an employee has dependent care expenses less than the amount specified by salary reduction, the plan may not provide other taxable or nontaxable benefits for any portion of the specified amount not used for the reimbursement of dependent care expenses. Thus, if an employee has elected coverage under the dependent care assistance program and the period of coverage has commenced, the employee must not have the right to receive amounts from the program other than as reimbursements for dependent care expenses. This is the case regardless of whether coverage under the program is purchased with contributions made at the employer's discretion, at the employee's discretion, or pursuant to a collective bargaining agreement. Arrangements formally outside of the cafeteria plan providing for the adjustment of an employee's compensation or an employee's receipt of any other benefits on the basis of the assistance or reimbursements received by the employee are considered in determining whether a dependent care benefit is a dependent care assistance program under section 129.

(j) *Section 137 rules for adoption assistance program offered through a cafeteria plan*—(1) *General rule.* In order for adoption assistance to be a qualified benefit that is excludible from gross income if elected through a cafeteria plan, the cafeteria plan must satisfy section 125 and the adoption assistance must satisfy section 137.

(2) *Adoption assistance in general.* Section 137(a) provides an employee with an exclusion from gross income for amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with an employee's adoption of a child, if the amounts are paid or incurred through an adoption assistance program. Certain limits on amount of expenses and employee's income apply.

(3) *Reimbursement exclusively for adoption assistance.* Rules and requirements similar to the rules and requirements in paragraph (i)(3) of this section for dependent care assistance apply to adoption assistance.

(k) *FSAs and the rules governing the tax-favored treatment of employer-provided health benefits*—(1) *Medical expenses.* Health plans that are flexible spending arrangements, as defined in paragraph (a)(1) of this section, must conform to the generally applicable rules under sections 105 and 106 in order for the coverage and reimbursements under such plans to qualify for tax-favored treatment under such sections. Thus, health FSAs must qualify as accident and health plans. See paragraph (n) in § 1.125–1. A health FSA is only permitted to reimburse medical expenses as defined in section 213(d). Thus, for example, a health FSA is not permitted to reimburse dependent care expenses.

(2) *Limiting payment or reimbursement to certain section 213(d) medical expenses.* A health FSA is permitted to limit payment or reimbursement to only certain section 213(d) medical expenses (except health insurance, long-term care services or insurance). See paragraph (q) in § 1.125–1. For example, a health FSA in a cafeteria plan is permitted to provide in

the written plan that the plan reimburses all section 213(d) medical expenses allowed to be paid or reimbursed under a cafeteria plan except over-the-counter drugs.

(3) *Application of prohibition against deferred compensation to medical expenses*—(i) *Certain advance payments for orthodontia permitted.* A cafeteria plan is permitted, but is not required to, reimburse employees for orthodontia services before the services are provided but only to the extent that the employee has actually made the payments in advance of the orthodontia services in order to receive the services. These orthodontia services are deemed to be incurred when the employee makes the advance payment. Reimbursing advance payments does not violate the prohibition against deferring compensation.

(ii) *Example.* The following example illustrates the rules in paragraph (k)(3):

Example. Advance payment to orthodontist. Employer D sponsors a calendar year cafeteria plan which offers a health FSA. Employee K elects to salary reduce $3,000 for a health FSA for the 2009 plan year. Employee K's dependent requires orthodontic treatment. K's accident and health insurance does not cover orthodontia. The orthodontist, following the normal practice, charges $3,000, all due in 2009, for treatment, to begin in 2009 and end in 2010. K pays the $3,000 in 2009. In 2009, Employer D's cafeteria plan may reimburse $3,000 to K, without violating the prohibition against deferring compensation in section 125(d)(2).

(iii) *Reimbursements for durable medical equipment.* A health FSA in a cafeteria plan that reimburses employees for equipment (described in section 213(d)) with a useful life extending beyond the period of coverage during which the expense is incurred does not provide deferred compensation. For example, a health FSA is permitted to reimburse the cost of a wheelchair for an employee.

(4) *No reimbursement of premiums for accident and health insurance or long-term care insurance or services.* A health FSA is not permitted to treat employees' premium payments for other health coverage as reimbursable expenses. Thus, for example, a health FSA is not permitted to reimburse employees for payments for other health plan coverage, including premiums for COBRA coverage, accidental death and dismemberment insurance, long-term disability or short-term disability insurance or for health coverage under a plan maintained by the employer of the employee or the employer of the employee's spouse or dependent. Also, a health FSA is not permitted to reimburse expenses for long-term care insurance premiums or for long-term care services for the employee or employee's spouse or dependent. See paragraph (q) in § 1.125–1 for nonqualified benefits

(l) *Section 105(h) requirements.* Section 105(h) applies to health FSAs. Section 105(h) provides that the exclusion provided by section 105(b) is not available with respect to certain amounts received by a highly compensated individual (as defined in section 105(h)(5)) from a discriminatory self-insured medical reimbursement plan, which includes health FSAs. See § 1.105–11. For purposes of section 105(h), coverage by a self-insured accident and health plan offered through a cafeteria plan is an optional benefit (even if only one level and type of coverage is offered) and, for purposes of the optional benefit rule in § 1.105–11(c)(3)(i), employer contributions are treated as employee contributions to the extent that taxable benefits are offered by the plan.

(m) *HSA-compatible FSAs-limited-purpose health FSAs and post-deductible health FSAs*—(1) *In general. Limited-purpose health FSAs* and *post-deductible health FSAs* which satisfy all the requirements of section 125 are permitted to be offered through a cafeteria plan.

(2) *HSA-compatible FSAs.* Section 223(a) allows a deduction for certain contributions to a ''Health Savings Account'' (HSA) (as defined in section 223(d)). An *eligible individual* (as defined in section 223(c)(1)) may contribute to an HSA. An eligible individual must be covered under a ''high deductible health plan'' (HDHP) and not, while covered under an HDHP, under any health plan which is not an HDHP. A general purpose health FSA is not an HDHP and an individual covered by a general purpose health FSA is not eligible to contribute to an HSA. However, an individual covered by an HDHP (and who otherwise satisfies section 223(c)(1)) does not fail to be an eligible individual merely because the individual is also covered by a limited-purpose health FSA or post-deductible health FSA (as defined in this paragraph (m)) or a combination of a limited-purpose health FSA and a post-deductible health FSA.

(3) *Limited-purpose health FSA.* A limited-purpose health FSA is a health FSA described in the cafeteria plan that only pays or reimburses permitted coverage benefits (as defined in section 223(c)(2)(C)), such as vision care, dental care or preventive care (as defined for purposes of section 223(c)(2)(C)). See paragraph (k) in this section.

(4) *Post-deductible health FSA*—(i) *In general.* A post-deductible health FSA is a health FSA described in the cafeteria plan that only pays or reimburses medical expenses (as defined in section 213(d)) for preventive care or medical expenses incurred after the minimum annual HDHP deductible under section 223(c)(2)(A)(i) is satisfied. See paragraph (k) in this section. No medical expenses incurred before the annual HDHP deductible is satisfied may be reimbursed by a post-deductible FSA, regardless of whether the HDHP covers the expense or whether the deductible is later satisfied. For example, even if chiropractic care is not covered under the HDHP, expenses for chiropractic care incurred before the HDHP deductible is satisfied are not reimbursable at any time by a post-deductible health FSA.

(ii) *HDHP and health FSA deductibles.* The deductible for a post-deductible health FSA need not be the same amount as the deductible for the HDHP, but in no event may the post-deductible health FSA or other coverage provide benefits before the minimum annual HDHP deductible under section 223(c)(2)(A)(i) is satisfied (other than benefits permitted under a limited-purpose health FSA). In addition, although the deductibles of the HDHP and the other coverage may be satisfied independently by separate expenses, no benefits may be paid before the minimum annual deductible under section 223(c)(2)(A)(i) has been satisfied. An individual covered by a post-deductible health FSA (if otherwise an eligible individual) is an eligible individual for the purpose of contributing to the HSA.

(5) *Combination of limited-purpose health FSA and post-deductible health FSA.* An FSA is a combination of a limited-purpose health FSA and post-deductible health FSA if each of the benefits and reimbursements provided under the FSA are permitted under either a limited-purpose health FSA or post-deductible health FSA. For example, before the HDHP deductible is satisfied, a combination limited-purpose and post-deductible health FSA may reimburse only preventive, vision or dental expenses. A combination limited-purpose and post-deductible health FSA may also reimburse any medical expense that may otherwise be paid by an FSA (that is, no insurance premiums or long-term care benefits) that is incurred after the HDHP deductible is satisfied.

(6) *Substantiation.* The substantiation rules in this section apply to limited-purpose health FSAs and to post-deductible health FSAs. In addition to

providing third-party substantiation of medical expenses, a participant in a post-deductible health FSA must provide information from an independent third party that the HDHP deductible has been satisfied. A participant in a limited-purpose health FSA must provide information from an independent third-party that the medical expenses are for vision care, dental care or preventive care.

(7) *Plan amendments.* See paragraph (c) in § 1.125–1 on the required effective date for amendments adopting or changing limited-purpose, post-deductible or combination limited-purpose and post-deductible health FSAs.

(n) *Qualified HSA distributions*—(1) *In general.* A health FSA in a cafeteria plan is permitted to offer employees the right to elect qualified HSA distributions described in section 106(e). No qualified HSA distribution may be made in a plan year unless the employer amends the health FSA written plan with respect to all employees, effective by the last day of the plan year, to allow a qualified HSA distribution satisfying all the requirements in this paragraph (n). See also section 106(e)(5)(B). In addition, a distribution with respect to an employee is not a qualified HSA distribution unless all of the following requirements are satisfied—

(i) No qualified HSA distribution has been previously made on behalf of the employee from this health FSA;

(ii) The employee elects to have the employer make a qualified HSA distribution from the health FSA to the HSA of the employee;

(iii) The distribution does not exceed the lesser of the balance of the health FSA on—

(A) September 21, 2006; or

(B) The date of the distribution;

(iv) For purposes of this paragraph (n)(1), balances as of any date are determined on a cash basis, without taking into account expenses incurred but not reimbursed as of a date, and applying the uniform coverage rule in paragraph (d) in this section;

(v) The distribution is made no later than December 31, 2011; and

(vi) The employer makes the distribution directly to the trustee of the employee's HSA.

(2) *Taxation of qualified HSA distributions.* A qualified HSA distribution from the health FSA covering the participant to his or her HSA is a rollover to the HSA (as defined in section 223(f)(5)) and thus is generally not includible in gross income. However, if the participant is not an eligible individual (as defined in section 223(c)(1)) at any time during a testing period following the qualified HSA distribution, the amount of the distribution is includible in the participant's gross income and he or she is also subject to an additional 10 percent tax (with certain exceptions). Section 106(e)(3).

(3) *No effect on health FSA elections, coverage, use-or-lose rule.* A qualified HSA distribution does not alter an employee's irrevocable election under paragraph (a) of § 1.125–2, or constitute a change in status under § 1.125–4(a). If a qualified HSA distribution is made to an employee's HSA, even if the balance in a health FSA is reduced to zero, the employee's health FSA coverage continues to the end of the plan year. Unused benefits and contributions remaining at the end of a plan year (or at the end of a grace period, if applicable) must be forfeited.

(o) *FSA experience gains or forfeitures*—(1) *Experience gains in general.* An FSA experience gain (sometimes referred to as forfeitures in the use-or-lose rule in paragraph (c) in this section) with respect to a plan year (plus any grace period following the end of a plan year described in paragraph (e) in § 1.125–1), equals the amount of the employer contributions, including salary reduction contributions, and after-tax employee contributions to the FSA minus the FSA's total claims reimbursements for the year. Experience gains (or forfeitures) may be—

(i) Retained by the employer maintaining the cafeteria plan; or

(ii) If not retained by the employer, may be used only in one or more of the following ways—

(A) To reduce required salary reduction amounts for the immediately following plan year, on a reasonable and uniform basis, as described in paragraph (o)(2) of this section;

(B) Returned to the employees on a reasonable and uniform basis, as described in paragraph (o)(2) of this section; or

(C) To defray expenses to administer the cafeteria plan.

(2) *Allocating experience gains among employees on reasonable and uniform basis.* If not retained by the employer or used to defray expenses of administering the plan, the experience gains must be allocated among employees on a reasonable and uniform basis. It is permissible to allocate these amounts based on the different coverage levels of employees under the FSA. Experience gains allocated in compliance with this paragraph (o) are not a deferral of the receipt of compensation. However, in no case may the experience gains be allocated among employees based (directly or indirectly) on their individual claims experience. Experience gains may not be used as contributions directly or indirectly to any deferred compensation benefit plan.

(3) *Example.* The following example illustrates the rules in this paragraph (o):

Example. Allocating experience gains. (i) Employer L maintains a cafeteria plan for its 1,200 employees, who may elect one of several different annual coverage levels under a health FSA in $100 increments from $500 to $2,000.

(ii) For the 2009 plan year, 1,000 employees elect levels of coverage under the health FSA. For the 2009 plan year, the health FSA has an experience gain of $5,000.

(iii) The $5,000 may be allocated to all participants for the plan year on a per capita basis weighted to reflect the participants' elected levels of coverage.

(iv) Alternatively, the $5,000 may be used to reduce the required salary reduction amount under the health FSA for all 2009 participants (for example, a $500 health FSA for the next year is priced at $480) or to reimburse claims incurred above the elective limit in 2010 as long as such reimbursements are made on a reasonable and uniform level.

(p) *Effective/applicability date.* It is proposed that these regulations apply on and after plan years beginning on or after January 1, 2009.

§ 1.125–6 Substantiation of expenses for all cafeteria plans.

(a) *Cafeteria plan payments and reimbursements*—(1) *In general.* A cafeteria plan may pay or reimburse only those substantiated expenses for qualified benefits incurred on or after the later of the effective date of the cafeteria plan and the date the employee is enrolled in the plan. This requirement applies to all qualified benefits offered through the cafeteria plan. See paragraph (b) of this section for substantiation rules.

(2) *Expenses incurred*—(i) *Employees' medical expenses must be incurred during the period of coverage.* In order for reimbursements to be excludible from gross income under section 105(b), the medical expenses reimbursed by an accident and health plan elected through a cafeteria plan must be incurred during the period when the participant is covered by the accident and health plan. A participant's period of coverage includes COBRA coverage. See § 54.4980B–2 of this chapter. Medical expenses incurred before the later of the effective date of the plan and the date the employee is enrolled in the plan are not incurred during the period for which the employee is covered by the plan. However, the actual reimbursement of covered medical care expenses may be made after the applicable period of coverage.

(ii) *When medical expenses are incurred.* For purposes of this rule, medical expenses are incurred when the employee (or the employee's spouse or dependents) is provided with the medical care that gives rise to the medical expenses, and not when the employee is formally billed, charged for, or pays for the medical care.

(iii) *Example.* The following example illustrates the rules in this paragraph (a)(2):

Example. Medical expenses incurred after termination. (i) Employer E maintains a cafeteria plan with a calendar year plan year. The cafeteria plan provides that participation terminates when an individual ceases to be an employee of Employer E, unless the former employee elects to continue to participate in the health FSA under the COBRA rules in § 54.4980B-2 of this chapter. Employee G timely elects to salary reduce $1,200 to participate in a health FSA for the 2009 plan year. As of June 30, 2009, Employee G has contributed $600 toward the health FSA, but incurred no medical expenses. On June 30, 2009, Employee G terminates employment and does not continue participation under COBRA. On July 15, 2009, G incurs a section 213(d) medical expense of $500.

(ii) Under the rules in paragraph (a)(2) of this section, the cafeteria plan is prohibited from reimbursing any portion of the $500 medical expense because, at the time the medical expense is incurred, G is not a participant in the cafeteria plan.

(3) *Section 105(b) requirements for reimbursement of medical expenses through a cafeteria plan*—(i) *In general.* In order for medical care reimbursements paid to an employee through a cafeteria plan to be excludible under section 105(b), the reimbursements must be paid pursuant to an employer-funded *accident and health plan,* as defined in section 105(e) and §§ 1.105–2 and 1.105–5.

(ii) *Reimbursement exclusively for section 213(d) medical expenses.* A cafeteria plan benefit through which an employee receives reimbursements of medical expenses is excludable under section 105(b) only if reimbursements from the plan are made specifically to reimburse the employee for medical expenses (as defined in section 213(d)) incurred by the employee or the employee's spouse or dependents during the period of coverage. Amounts paid to an employee as reimbursement are not paid specifically to reimburse the employee for medical expenses if the plan provides that the employee is entitled, or operates in a manner that entitles the employee, to receive the amounts, in the form of cash (for example, routine payment of salary) or any other taxable or nontaxable benefit irrespective of whether the employee (or the employee's spouse or dependents) incurs medical expenses during the period of coverage. This rule applies even if the employee will not receive such amounts until the end or after the end of the period. A plan under which employees (or their spouses and dependents) will receive reimbursement for medical expenses up to a specified amount and, if they incur no medical expenses, will receive cash or any other benefit in lieu of the reimbursements is not a benefit qualifying for the exclusion under sections 106 and 105(b). See § 1.105–2. This is the case without regard to whether the benefit was purchased with contributions made at the employer's discretion, at the employee's discretion (for example, by salary reduction election), or pursuant to a collective bargaining agreement.

(iii) *Other arrangements.* Arrangements formally outside of the cafeteria plan that adjust an employee's compensation or an employee's receipt of any other benefits on the basis of the expenses incurred or reimbursements the employee receives are considered in determining whether the reimbursements are through a plan eligible for the exclusions under sections 106 and 105(b).

(4) *Reimbursements of dependent care expenses*—(i) *Dependent care expenses must be incurred.* In order to satisfy section 129, dependent care expenses may not be reimbursed before the expenses are incurred. For purposes of this rule, dependent care expenses are incurred when the care is provided and not when the employee is formally billed, charged for, or pays for the dependent care.

(ii) *Dependent care provided during the period of coverage.* In order for dependent care assistance to be provided through a dependent care assistance program eligible for the section 129 exclusion, the care must be provided to or on behalf of the employee during the period for which the employee is covered by the program. For example, if for a plan year, an employee elects a dependent care assistance program providing for reimbursement of dependent care expenses, only reimbursements for dependent care expenses incurred during that plan year are provided from a dependent care assistance program within the scope of section 129. Also, for purposes of this rule, expenses incurred before the later of the program's effective date and the date the employee is enrolled in the program are not incurred during the period when the employee is covered by the program. Similarly, if the dependent care assistance program furnishes the dependent care in-kind (for example, through an employer-maintained child care facility), only dependent care provided during the plan year of coverage is provided through a dependent care assistance program within the meaning of section 129. See also § 1.125–5 for FSA rules.

(iii) *Period of coverage.* In order for dependent care assistance through a cafeteria plan to be provided through a dependent care assistance program eligible for the section 129 exclusion, the plan may not operate in a manner that enables employees to purchase dependent care assistance only for periods during which the employees expect to receive dependent care assistance. If the period of coverage for a dependent care assistance program offered through a cafeteria plan is twelve months (or, in the case of a short plan year, at least equal to the short plan year) and the plan does not permit an employee to elect specific amounts of coverage, reimbursement, or salary reduction for less than twelve months, the plan is deemed not to operate to enable employees to purchase coverage only for periods when dependent care assistance will be received. See paragraph (a) in § 1.125–2 and § 1.125–4 regarding the revocation of elections during the period of coverage on account of changes in family status. See paragraph (e) in this section for required period of coverage for dependent care assistance.

(iv) *Examples.* The following examples illustrate the rules in paragraphs (a)(4)(i)–(iii) of this section:

Example 1. Initial non-refundable fee for child care. (i) Employer F maintains a calendar year cafeteria plan, offering employees an election between cash and qualified benefits, including dependent care assistance. Employee M has a one-year old dependent child. Employee M timely elected $5,000 of dependent care assistance for 2009. During the entire 2009 plan year, Employee M satisfies all the requirements in section 129 for dependent care assistance.

(ii) On February 1, 2009, Employee M pays an initial non-refundable fee of $500 to a licensed child care center (unrelated to Employer F or to Employee M), to reserve a space at the child care center for M's child. The child care center's monthly charges for child care are $1,200. When the child care center first begins to care for M's child, the $500 non-refundable fee is applied toward the first month's charges for child care.

(iii) On March 1, 2009, the child care center begins caring for Employee M's child, and continues to care for the child through December 31, 2009. On March 1, 2009, M pays the child care center $700 (the balance of the $1,200 in charges for child care to be provided in March 2009). On April 1, 2009, M pays the child care center $1,200 for the child care to be provided in April 2009.

(iv) Dependent care expenses are incurred when the services are provided. For dependent care services provided in March 2009, the $500 nonrefundable fee paid on February 1, 2009, and the $700 paid on March 1, 2009 may be reimbursed on or after the later of the date when substantiated or April 1, 2009. For dependent care services provided in April 2009, the $1,200 paid on April 1, 2009 may be reimbursed on or after the later of the date when substantiated or May 1, 2009.

Example 2. Non-refundable fee forfeited. Same facts as *Example 1,* except that the child care center never cared for M's child (who was instead cared for at Employer F's onsite child care facility). Because the child care center never provided child care services to Employee M's child, the $500 non-refundable fee is not reimbursable.

(v) *Optional spend-down provision.* At the employer's option, the written cafeteria plan may provide that dependent care expenses incurred after the date an employee ceases participation in the cafeteria plan (for example, after termination) and through the last day of that plan year (or grace period immediately after that plan year) may be reimbursed from unused benefits, if all of the requirements of section 129 are satisfied.

(vi) *Example.* The following example illustrates the rules in paragraph (a)(4)(v) of this section:

Example. Terminated employee's post-termination dependent care expenses. (i) For calendar year 2009, Employee X elects $5,000 salary reduction for dependent care assistance through Employer G's cafeteria plan. X works for Employer G from January 1 through June 30, 2009, when X terminates employment. As of June 30, 2009, X had paid $2,500 in salary reduction and had incurred and was reimbursed for $2,000 of dependent care expenses.

(ii) X does not work again until October 1, 2009, when X begins work for Employer H. X was employed by Employer H from October 1, 2009 through December 31, 2009. During this period, X also incurred $500 of dependent care expenses. During all the periods of employment in 2009, X satisfied all requirements in section 129 for excluding payments for dependent care assistance from gross income.

(iii) Employer G's cafeteria plan allows terminated employees to ''spend down'' unused salary reduction amounts for dependent care assistance, if all requirements of section 129 are satisfied. After X's claim for $500 of dependent care expenses is substantiated, Employer G's cafeteria plan reimburses X for $500 (the remaining balance) of dependent care expenses incurred during X's employment for Employer H between October 1, 2009 and December 31, 2009. Employer G's cafeteria plan and operation are consistent with section 125.

(b) *Rules for claims substantiation for cafeteria plans*—(1) *Substantiation required before reimbursing expenses for qualified benefits.* This paragraph (b) sets forth the substantiation requirements that a cafeteria plan must satisfy before paying or reimbursing any expense for a qualified benefit.

(2) *All claims must be substantiated.* As a precondition of payment or reimbursement of expenses for qualified benefits, a cafeteria plan must require substantiation in accordance with this section. Substantiating only a percentage of claims, or substantiating only claims above a certain dollar amount, fails to comply with the substantiation requirements in § 1.125–1 and this section.

(3) *Substantiation by independent third-party*—(i) *In general.* All expenses must be substantiated by information from a third-party that is independent of the employee and the employee's spouse and dependents. The independent third-party must provide information describing the service or product, the date of the service or sale, and the amount. Self-substantiation or self-certification of an expense by an employee does not satisfy the substantiation requirements of this paragraph (b). The specific requirements in sections 105(b), 129, and 137 must also be satisfied as a condition of reimbursing expenses for qualified benefits. For example, a health FSA does not satisfy the requirements of section 105(b) if it reimburses employees for expenses where the employees only submit information describing medical expenses, the amount of the expenses and the date of the expenses but fail to provide a statement from an independent third-party (either automatically or subsequent to the transaction) verifying the expenses. Under § 1.105–2, all amounts paid under a plan that permits self-substantiation or self-certification are includible in gross income, including amounts reimbursed for medical expenses, whether or not substantiated. See paragraph (m) in § 1.125–5 for additional substantiation rules for limited-purpose and post-deductible health FSAs.

(ii) *Rules for substantiation of health FSA claims using an explanation of benefits provided by an insurance company*—(A) *Written statement from an independent third-party.* If the employer is provided with information from an independent third-party (such as an ''*explanation of benefits*'' (*EOB*) from an insurance company) indicating the date of the section 213(d) medical care and the employee's responsibility for payment for that medical care (that is, coinsurance payments and amounts below the plan's deductible), and the employee certifies that any expense paid through the health FSA has not been reimbursed and that the employee will not seek reimbursement from any other plan covering health benefits, the claim is fully substantiated without the need for submission of a receipt by the employee or further review.

(B) *Example.* The following example illustrates the rules in this paragraph (b)(3):

Example. Explanation of benefits. (i) During the plan year ending December 31, 2009, Employee Q is a participant in the health FSA sponsored by Employer J and is enrolled in Employer J's accident and health plan.

(ii) On March 1, 2009, Q visits a physician's office for medical care as defined in section 213(d). The charge for the physician's services is $150. Under the plan, Q is responsible for 20 percent of the charge for the physician's services (that is, $30). Q has sufficient FSA coverage for the $30 claim.

(iii) Employer J has coordinated with the accident and health plan so that Employer J or its agent automatically receives an EOB from the plan indicating that Q is responsible for payment of 20 percent of the $150 charged by the physician. Because Employer J has received a statement from an independent third-party that Q has incurred a medical expense, the date the expense was incurred, and the amount of the expense, the claim is substantiated without the need for J to submit additional information regarding the expense. Employer J's FSA reimburses Q the $30 medical expense without requiring Q to submit a receipt or a statement from the physician. The substantiation rules in paragraph (b) in this section are satisfied.

(4) *Advance reimbursement of expenses for qualified benefits prohibited.* Reimbursing expenses before the expense has been incurred or before the expense is substantiated fails to satisfy the substantiation requirements in § 1.105–2, § 1.125–1 and this section.

(5) *Purported loan from employer to employee.* In determining whether, under all the facts and circumstances, employees are being reimbursed for unsubstantiated claims, special scrutiny will be given to other arrangements such as employer-to-employee loans based on actual or projected employee claims.

(6) *Debit cards.* For purposes of this section, a *debit card* is a debit card, credit card, or stored value card. See also paragraphs (c) through (g) of this section for additional rules on payments or reimbursements made through debit cards.

(c) *Debit cards–overview*—(1) *Mandatory rules for all debit cards usable to pay or reimburse medical expenses.* Paragraph (d) of this section sets forth the mandatory procedures for debit cards to substantiate section 213(d) medical expenses. These rules apply to all debit cards used to pay or

reimburse medical expenses. Paragraph (e) of this section sets forth additional substantiation rules that may be used for medical expenses incurred at medical care providers and certain stores with the Drug Stores and Pharmacies merchant category code. Paragraph (f) in this section sets forth the requirements for an inventory information approval system which must be used to substantiate medical expenses incurred at merchants or service providers that are not medical care providers or certain stores with the Drug Stores and Pharmacies merchant category code and that may be used for medical expenses incurred at all merchants.

(2) *Debit cards used for dependent care assistance*. Paragraph (g) of this section sets forth additional rules for debit cards usable for reimbursing dependent care expenses.

(3) *Additional guidance*. The Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), to provide additional rules for debit cards.

(d) *Mandatory rules for all debit cards usable to pay or reimburse medical expenses*. A health FSA paying or reimbursing section 213(d) medical expenses through a debit card must satisfy all of the following requirements—

(1) Before any employee participating in a health FSA receives the debit card, the employee agrees in writing that he or she will only use the card to pay for medical expenses (as defined in section 213(d)) of the employee or his or her spouse or dependents, that he or she will not use the debit card for any medical expense that has already been reimbursed, that he or she will not seek reimbursement under any other health plan for any expense paid for with a debit card, and that he or she will acquire and retain sufficient documentation (including invoices and receipts) for any expense paid with the debit card.

(2) The debit card includes a statement providing that the agreements described in paragraph (d)(1) of this section are reaffirmed each time the employee uses the card.

(3) The amount available through the debit card equals the amount elected by the employee for the health FSA for the cafeteria plan year, and is reduced by amounts paid or reimbursed for section 213(d) medical expenses incurred during the plan year.

(4) The debit card is automatically cancelled when the employee ceases to participate in the health FSA.

(5) The employer limits use of the debit card to—

(i) Physicians, dentists, vision care offices, hospitals, other medical care providers (as identified by the merchant category code);

(ii) Stores with the merchant category code for Drugstores and Pharmacies if, on a location by location basis, 90 percent of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care described in section 213(d); and

(iii) Stores that have implemented the inventory information approval system under paragraph (f).

(6) The employer substantiates claims based on payments to medical care providers and stores described in paragraphs (d)(5)(i) and (ii) of this section in accordance with either paragraph (e) or paragraph (f) of this section.

(7) The employer follows all of the following correction procedures for any improper payments using the debit card—

(i) Until the amount of the improper payment is recovered, the debit card must be de-activated and the employee must request payments or reimbursements of medical expenses from the health FSA through other methods (for example, by submitting receipts or invoices from a merchant or service provider showing the employee incurred a section 213(d) medical expense);

(ii) The employer demands that the employee repay the cafeteria plan an amount equal to the improper payment;

(iii) If, after the demand for repayment of improper payment (as described in paragraph (d)(7)(ii) of this section), the employee fails to repay the amount of the improper charge, the employer withholds the amount of the improper charge from the employee's pay or other compensation, to the full extent allowed by applicable law;

(iv) If any portion of the improper payment remains outstanding after attempts to recover the amount (as described in paragraph (d)(7)(ii) and (iii) of this section), the employer applies a claims substitution or offset to resolve improper payments, such as a reimbursement for a later substantiated expense claim is reduced by the amount of the improper payment. So, for example, if an employee has received an improper payment of $200 and subsequently submits a substantiated claim for $250 incurred during the same coverage period, a reimbursement for $50 is made; and

(v) If, after applying all the procedures described in paragraph (d)(7)(ii) through (iv) of this section, the employee remains indebted to the employer for improper payments, the employer, consistent with its business practice, treats the improper payment as it would any other business indebtedness.

(e) *Substantiation of expenses incurred at medical care providers and certain other stores with Drug Stores and Pharmacies merchant category code*—(1) *In general*. A health FSA paying or reimbursing section 213(d) medical expenses through a debit card is permitted to comply with the substantiation provisions of this paragraph (e), instead of complying with the provisions of paragraph (f), for medical expenses incurred at providers described in paragraph (e)(2) of this section.

(2) *Medical care providers and certain other stores with Drug Stores and Pharmacies merchant category code*. Medical expenses may be substantiated using the methods described in paragraph (e)(3) of this section if incurred at physicians, pharmacies, dentists, vision care offices, hospitals, other medical care providers (as identified by the merchant category code) and at stores with the Drug Stores and Pharmacies merchant category code, if, on a store location-by-location basis, 90 percent of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care described in section 213(d).

(3) *Claims substantiation for copayment matches, certain recurring medical expenses and real-time substantiation*. If all of the requirements in this paragraph (e)(3) are satisfied, copayment matches, certain recurring medical expenses and medical expenses substantiated in real-time are substantiated without the need for submission of receipts or further review.

(i) *Matching copayments—multiples of five or fewer*. If an employer's accident or health plan covering the employee (or the employee's spouse or dependents) has copayments in specific dollar amounts, and the dollar amount of the transaction at a medical care provider equals an exact multiple of not more than five times the dollar amount of the copayment for the specific service (for example, pharmacy benefit copayment, copayment for a physician's office visit) under the accident or health plan covering the specific employee-cardholder, then the charge is fully substantiated without the need for submission of a receipt or further review.

(A) *Tiered copayments*. If a health plan has multiple copayments for the same benefit, (for example, tiered

copayments for a pharmacy benefit), exact matches of multiples or combinations of up to five copayments are similarly fully substantiated without the need for submission of a receipt or further review.

(B) *Copayment match must be exact multiple.* If the dollar amount of the transaction is not an exact multiple of the copayment (or an exact match of a multiple or combination of different copayments for a benefit in the case of multiple copayments), the transaction must be treated as conditional pending confirmation of the charge, even if the amount is less than five times the copayment.

(C) *No match for multiple of six or more times copayment.* If the dollar amount of the transaction at a medical care provider equals a multiple of six or more times the dollar amount of the copayment for the specific service, the transaction must be treated as conditional pending confirmation of the charge by the submission of additional third-party information. See paragraph (d) of this section. In the case of a plan with multiple copayments for the same benefit, if the dollar amount of the transaction exceeds five times the maximum copayment for the benefit, the transaction must also be treated as conditional pending confirmation of the charge by the submission of additional third-party information. In these cases, the employer must require that additional third-party information, such as merchant or service provider receipts, be submitted for review and substantiation, and the third-party information must satisfy the requirements in paragraph (b)(3) of this section.

(D) *Independent verification of copayment required.* The copayment schedule required under the accident or health plan must be independently verified by the employer. Statements or other representations by the employee are not sufficient. Self-substantiation or self-certification of an employee's copayment in connection with copayment matching procedures through debit cards or otherwise does not constitute substantiation. If a plan's copayment matching system relies on an employee to provide a copayment amount without verification of the amount, claims have not been substantiated, and all amounts paid from the plan are included in gross income, including amounts paid for medical care whether or not substantiated. See paragraph (b) in this section.

(4) *Certain recurring medical expenses.* Automatic payment or reimbursement satisfies the substantiation rules in this paragraph (e) for payment of recurring expenses that match expenses previously approved as to amount, medical care provider and time period (for example, for an employee who refills a prescription drug on a regular basis at the same provider and in the same amount). The payment is substantiated without the need for submission of a receipt or further review.

(5) *Real-time substantiation.* If a third party that is independent of the employee and the employee's spouse and dependents (for example, medical care provider, merchant, or pharmacy benefit manager) provides, at the time and point of sale, information to verify to the employer (including electronically by email, the internet, intranet or telephone) that the charge is for a section 213(d) medical expense, the expense is substantiated without the need for further review.

(6) *Substantiation requirements for all other medical expenses paid or reimbursed through a health FSA debit card.* All other charges to the debit card (other than substantiated copayments, recurring medical expenses or real-time substantiation, or charges substantiated through the inventory information approval system described in paragraph (f) of this section) must be treated as conditional, pending substantiation of the charge through additional independent third-party information describing the goods or services, the date of the service or sale and the amount of the transaction. All such debit card payments must be substantiated, regardless of the amount of the payment.

(f) *Inventory information approval system*—(1) *In general.* An inventory information approval system that complies with this paragraph (f) may be used to substantiate payments made using a debit card, including payments at merchants and service providers that are not described in paragraph (e)(2) of this section. Debit card transactions using this system are fully substantiated without the need for submission of a receipt by the employee or further review.

(2) *Operation of inventory information approval system.* An inventory information approval system must operate in the manner described in this paragraph (f)(2).

(i) When an employee uses the card, the payment card processor's or participating merchant's system collects information about the items purchased using the inventory control information (for example, *stock keeping units* (SKUs)). The system compares the inventory control information for the items purchased against a list of items, the purchase of which qualifies as expenses for medical care under section 213(d) (including nonprescription medications).

(ii) The section 213(d) medical expenses are totaled and the merchant's or payment card processor's system approves the use of the card only for the amount of the section 213(d) medical expenses eligible for coverage under the health FSA (taking into consideration the uniform coverage rule in paragraph (d) of § 1.125–5);

(iii) If the transaction is only partially approved, the employee is required to tender additional amounts, resulting in a split-tender transaction. For example, if, after matching inventory information, it is determined that all items purchased are section 213(d) medical expenses, the entire transaction is approved, subject to the coverage limitations of the health FSA;

(iv) If, after matching inventory information, it is determined that only some of the items purchased are section 213(d) medical expenses, the transaction is approved only as to the section 213(d) medical expenses. In this case, the merchant or service-provider must request additional payment from the employee for the items that do not satisfy the definition of medical care under section 213(d);

(v) The merchant or service-provider must also request additional payment from the employee if the employee does not have sufficient health FSA coverage to purchase the section 213(d) medical items;

(vi) Any attempt to use the card at non-participating merchants or service-providers must fail.

(3) *Employer's responsibility for ensuring inventory information approval system's compliance with § 1.105–2, § 1.125–1, § 1.125–6 and recordkeeping requirements.* An employer that uses the inventory information approval system must ensure that the inventory information approval system complies with the requirements in §§ 1.105–2, 1.125–1, and § 1.125–6 for substantiating, paying or reimbursing section 213(d) medical expenses and with the recordkeeping requirements in section 6001.

(g) *Debit cards used to pay or reimburse dependent care assistance*—(1) *In general.* An employer may use a debit card to provide benefits under its dependent care assistance program (including a dependent care assistance FSA). However, dependent care expenses may not be reimbursed before the expenses are incurred. See paragraph (a)(4) in this section. Thus, if a dependent care provider requires

payment before the dependent care services are provided, the expenses cannot be reimbursed at the time of payment through use of a debit card or otherwise.

(2) *Reimbursing dependent care assistance through a debit card.* An employer offering a dependent care assistance FSA may adopt the following method to provide reimbursements for dependent care expenses through a debit card—

(i) At the beginning of the plan year or upon enrollment in the dependent care assistance program, the employee pays initial expenses to the dependent care provider and substantiates the initial expenses by submitting to the employer or plan administrator a statement from the dependent care provider substantiating the dates and amounts for the services provided.

(ii) After the employer or plan administrator receives the substantiation (but not before the date the services are provided as indicated by the statement provided by the dependent care provider), the plan makes available through the debit card an amount equal to the lesser of—

(A) The previously incurred and substantiated expense; or

(B) The employee's total salary reduction amount to date.

(iii) The card may be used to pay for subsequently incurred dependent care expenses.

(iv) The amount available through the card may be increased in the amount of any additional dependent care expenses only after the additional expenses have been incurred.

(3) *Substantiating recurring dependent care expenses.* Card transactions that collect information matching expenses previously substantiated and approved as to dependent care provider and time period may be treated as substantiated without further review if the transaction is for an amount equal to or less than the previously substantiated expenses. Similarly, dependent care expenses previously substantiated and approved through nonelectronic methods may also be treated as substantiated without further review. In both cases, if there is an increase in previously substantiated amounts or a change in the dependent care provider, the employee must submit a statement or receipt from the dependent care provider substantiating the claimed expenses before amounts relating to the increased amounts or new providers may be added to the card.

(4) *Example.* The following example illustrates the rules in this paragraph (g):

Example. Recurring dependent care expenses. (i) Employer K sponsors a dependent care assistance FSA through its cafeteria plan. Salary reduction amounts for participating employees are made on a weekly payroll basis, which are available for dependent care coverage on a weekly basis. As a result, the amount of available dependent care coverage equals the employee's salary reduction amount minus claims previously paid from the plan. Employer K has adopted a payment card program for its dependent care FSA.

(ii) For the plan year ending December 31, 2009, Employee F is a participant in the dependent care FSA and elected $5,000 of dependent care coverage. Employer K reduces F's salary by $96.15 on a weekly basis to pay for coverage under the dependent care FSA.

(iii) At the beginning of the 2009 plan year, F is issued a debit card with a balance of zero. F's childcare provider, ABC Daycare Center, requires a $250 advance payment at the beginning of the week for dependent care services that will be provided during the week. The dependent care services provided for F by ABC qualify for reimbursement under section 129. However, because as of the beginning of the plan year, no services have yet been provided, F cannot be reimbursed for any of the amounts until the end of the first week of the plan year (that is, the week ending January 5, 2009), after the services have been provided.

(iv) F submits a claim for reimbursement that includes a statement from ABC with a description of the services, the amount of the services, and the dates of the services. Employer K increases the balance of F's payment card to $96.15 after the services have been provided (i.e., the lesser of F's salary reduction to date or the incurred dependent care expenses). F uses the card to pay ABC $96.15 on the first day of the next week (January 8, 2009) and pays ABC the remaining balance due for that week ($153.85) by check.

(v) To the extent that this card transaction and each subsequent transaction is with ABC and is for an amount equal to or less than the previously substantiated amount, the charges are fully substantiated without the need for the submission by F of a statement from the provider or further review by the employer. However, the subsequent amount is not made available on the card until the end of the week when the services have been provided. Employer K's dependent care debit card satisfies the substantiation requirements of this paragraph (g).

(h) *Effective/applicability date.* It is proposed that these regulations apply on and after plan years beginning on or after January 1, 2009. However, the effective dates for the previously issued guidance on debit cards, which is incorporated in this section, remain applicable.

§ 1.125–7 Cafeteria plan nondiscrimination rules.

(a) *Definitions*—(1) *In general.* The definitions set forth in this paragraph (a) apply for purposes of section 125(b), (c), (e) and (g) and this section.

(2) *Compensation.* The term *compensation* means compensation as defined in section 415(c)(3).

(3) *Highly compensated individual.* (i) *In general.* The term *highly compensated individual* means an individual who is—

(A) An officer;

(B) A five percent shareholder (as defined in paragraph (a)(8) of this section); or

(C) Highly compensated.

(ii) *Spouse or dependent.* A spouse or a dependent of any highly compensated individual described in (a)(3)(i) of this section is a highly compensated individual. Section 125(e).

(4) *Highly compensated participant.* The term *highly compensated participant* means a highly compensated individual who is eligible to participate in the cafeteria plan.

(5) *Nonhighly compensated individual.* The term *nonhighly compensated individual* means an individual who is not a highly compensated individual.

(6) *Nonhighly compensated participant.* The term *nonhighly compensated participant* means a participant who is not a highly compensated participant.

(7) *Officer.* The term officer means any individual or participant who for the preceding plan year (or the current plan year in the case of the first year of employment) was an officer. Whether an individual is an *officer* is determined based on all the facts and circumstances, including the source of the individual's authority, the term for which he or she is elected or appointed, and the nature and extent of his or her duties. Generally, the term officer means an administrative executive who is in regular and continued service. The term officer implies continuity of service and excludes individuals performing services in connection with a special and single transaction. An individual who merely has the title of an officer but not the authority of an officer, is not an officer. Similarly, an individual without the title of an officer but who has the authority of an officer is an officer. Sole proprietorships, partnerships, associations, trusts and labor organizations also may have officers. See §§ 301.7701–1 through –3

(8) *Five percent shareholder.* A *five percent shareholder* is an individual who in either the preceding plan year or current plan year owns more than five percent of the voting power or value of all classes of stock of the employer, determined without attribution.

(9) *Highly compensated*. The term *highly compensated* means any individual or participant who for the preceding plan year (or the current plan year in the case of the first year of employment) had compensation from the employer in excess of the compensation amount specified in section 414(q)(1)(B), and, if elected by the employer, was also in the top-paid group of employees (determined by reference to section 414(q)(3)) for such preceding plan year (or for the current plan year in the case of the first year of employment).

(10) *Key employee*. A *key employee* is a participant who is a key employee within the meaning of section 416(i)(1) at any time during the preceding plan year. A key employee covered by a collective bargaining agreement is a key employee.

(11) *Collectively bargained plan*. A *collectively bargained plan* is a plan or the portion of a plan maintained under an agreement which is a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that cafeteria plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(12) *Year of employment*. For purposes of section 125(g)(3)(B)(i), a *year of employment* is determined by reference to the elapsed time method of crediting service. See § 1.410(a)–7.

(13) *Premium-only-plan*. A premium-only-plan is described in paragraph (a)(5) in § 1.125–1.

(14) *Statutory nontaxable benefits*. *Statutory nontaxable benefits* are qualified benefits that are excluded from gross income (for example, an employer-provided accident and health plan excludible under section 106 or a dependent care assistance program excludible under section 129). Statutory nontaxable benefits also include group-term life insurance on the life of an employee includible in the employee's gross income solely because the coverage exceeds the limit in section 79(a).

(15) *Total benefits*. *Total benefits* are qualified benefits and permitted taxable benefits.

(b) *Nondiscrimination as to eligibility*—(1) *In general*. A cafeteria plan must not discriminate in favor of highly compensated individuals as to eligibility to participate for that plan year. A cafeteria plan does not discriminate in favor of highly compensated individuals if the plan benefits a group of employees who qualify under a reasonable classification established by the employer, as defined in § 1.410(b)–4(b), and the group of employees included in the classification satisfies the safe harbor percentage test or the unsafe harbor percentage component of the facts and circumstances test in § 1.410(b)–4(c). (In applying the § 1.410(b)–4 test, substitute highly compensated individual for highly compensated employee and substitute nonhighly compensated individual for nonhighly compensated employee).

(2) *Deadline for participation in cafeteria plan*. Any employee who has completed three years of employment (and who satisfies any conditions for participation in the cafeteria plan that are not related to completion of a requisite length of employment) must be permitted to elect to participate in the cafeteria plan no later than the first day of the first plan year beginning after the date the employee completed three years of employment (unless the employee separates from service before the first day of that plan year).

(3) *The safe harbor percentage test*—(i) *In general*. For purposes of the safe harbor percentage test and the unsafe harbor percentage component of the facts and circumstances test, if the cafeteria plan provides that only employees who have completed three years of employment are permitted to participate in the plan, employees who have not completed three years of employment may be excluded from consideration. However, if the cafeteria plan provides that employees are allowed to participate before completing three years of employment, all employees with less than three years of employment must be included in applying the safe harbor percentage test and the unsafe harbor percentage component of the facts and circumstances test. See paragraph (g) of this section for a permissive disaggregation rule.

(ii) *Employees excluded from consideration*. In addition, for purposes of the safe harbor percentage test and the unsafe harbor percentage component of the facts and circumstances test, the following employees are excluded from consideration—

(A) Employees (except key employees) covered by a collectively bargained plan as defined in paragraph (a)(11) of this section;

(B) Employees who are nonresident aliens and receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)); and

(C) Employees participating in the cafeteria plan under a COBRA continuation provision.

(iv) *Examples*. The following examples illustrate the rules in paragraph (b) of this section:

Example 1. Same qualified benefit for same salary reduction amount. Employer A has one employer-provided accident and health insurance plan. The cost to participants electing the accident and health plan is $10,000 per year for single coverage. All employees have the same opportunity to salary reduce $10,000 for accident and health plan. The cafeteria plan satisfies the eligibility test.

Example 2. Same qualified benefit for unequal salary reduction amounts. Same facts as *Example 1* except the cafeteria plan offers nonhighly compensated employees the election to salary reduce $10,000 to pay premiums for single coverage. The cafeteria plan provides an $8,000 employer flex-credit to highly compensated employees to pay a portion of the premium, and provides an election to them to salary reduce $2,000 to pay the balance of the premium. The cafeteria plan fails the eligibility test.

Example 3. Accident and health plans of unequal value. Employer B's cafeteria plan offers two employer-provided accident and health insurance plans: Plan X, available only to highly compensated participants, is a low-deductible plan. Plan Y, available only to nonhighly compensated participants, is a high deductible plan (as defined in section 223(c)(2)). The annual premium for single coverage under Plan X is $15,000 per year, and $8,000 per year for Plan Y. Employer B's cafeteria plan provides that highly compensated participants may elect salary reduction of $15,000 for coverage under Plan X, and that nonhighly compensated participants may elect salary reduction of $8,000 for coverage under Plan Y. The cafeteria plan fails the eligibility test.

Example 4. Accident and health plans of unequal value for unequal salary reduction amounts. Same facts as *Example 3*, except that the amount of salary reduction for highly compensated participants to elect Plan X is $8,000. The cafeteria plan fails the eligibility test.

(c) *Nondiscrimination as to contributions and benefits*—(1) *In general*. A cafeteria plan must not discriminate in favor of highly compensated participants as to contributions and benefits for a plan year.

(2) *Benefit availability and benefit election*. A cafeteria plan does not discriminate with respect to contributions and benefits if either qualified benefits and total benefits, or employer contributions allocable to statutory nontaxable benefits and employer contributions allocable to total benefits, do not discriminate in favor of highly compensated participants. A cafeteria plan must satisfy this paragraph (c) with respect to both benefit availability and benefit

utilization. Thus, a plan must give each similarly situated participant a uniform opportunity to elect qualified benefits, and the actual election of qualified benefits through the plan must not be disproportionate by highly compensated participants (while other participants elect permitted taxable benefits). Qualified benefits are disproportionately elected by highly compensated participants if the aggregate qualified benefits elected by highly compensated participants, measured as a percentage of the aggregate compensation of highly compensated participants, exceed the aggregate qualified benefits elected by nonhighly compensated participants measured as a percentage of the aggregate compensation of nonhighly compensated participants. A plan must also give each similarly situated participant a uniform election with respect to employer contributions, and the actual election with respect to employer contributions for qualified benefits through the plan must not be disproportionate by highly compensated participants (while other participants elect to receive employer contributions as permitted taxable benefits). Employer contributions are disproportionately utilized by highly compensated participants if the aggregate contributions utilized by highly compensated participants, measured as a percentage of the aggregate compensation of highly compensated participants, exceed the aggregate contributions utilized by nonhighly compensated participants measured as a percentage of the aggregate compensation of nonhighly compensated participants.

(3) *Example.* The following example illustrates the rules in paragraph (c) of this section:

Example. Contributions and benefits test. Employer C's cafeteria plan satisfies the eligibility test in paragraph (b) of this section. Highly compensated participants in the cafeteria plan elect aggregate qualified benefits equaling 5 percent of aggregate compensation; nonhighly compensated participants elect aggregate qualified benefits equaling 10 percent of aggregate compensation. Employer C's cafeteria plan passes the contribution and benefits test.

(d) *Key employees*—(1) *In general.* If for any plan year, the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of statutory nontaxable benefits provided for all employees through the cafeteria plan, each key employee includes in gross income an amount equaling the maximum taxable benefits that he or she could have elected for the plan year. However, see safe harbor for premium-only-plans in paragraph (f) of this section.

(2) *Example.* The following example illustrates the rules in paragraph (d) of this section:

Example. (i) *Key employee concentration test.* Employer D's cafeteria plan offers all employees an election between taxable benefits and qualified benefits. The cafeteria plan satisfies the eligibility test in paragraph (b) of this section. Employer D has two key employees and four nonhighly compensated employees. The key employees each elect $2,000 of qualified benefits. Each nonhighly compensated employee also elects $2,000 of qualified benefits. The qualified benefits are statutory nontaxable benefits.

(ii) Key employees receive $4,000 of statutory nontaxable benefits and nonhighly compensated employees receive $8,000 of statutory nontaxable benefits, for a total of $12,000. Key employees receive 33 percent of statutory nontaxable benefits (4,000/12,000). Because the cafeteria plan provides more than 25 percent of the aggregate of statutory nontaxable benefits to key employees, the plan fails the key employee concentration test.

(e) *Safe harbor for cafeteria plans providing health benefits*—(1) *In general.* A cafeteria plan that provides health benefits is not treated as discriminatory as to benefits and contributions if:

(i) Contributions under the plan on behalf of each participant include an amount which equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(ii) Contributions or benefits under the plan in excess of those described in paragraph (e)(1)(i) of this section bear a uniform relationship to compensation.

(2) *Similarly situated.* In determining which participants are similarly situated, reasonable differences in plan benefits may be taken into account (for example, variations in plan benefits offered to employees working in different geographical locations or to employees with family coverage versus employee-only coverage).

(3) *Health benefits.* Health benefits for purposes of this rule are limited to major medical coverage and exclude dental coverage and health FSAs.

(4) *Example.* The following example illustrates the rules in paragraph (e) of this section:

Example. (i) All 10 of Employer E's employees are eligible to elect between permitted taxable benefits and salary reduction of $8,000 per plan year for self-only coverage in the major medical health plan provided by Employer E. All 10 employees elect $8,000 salary reduction for the major medical plan.

(ii) The cafeteria plan satisfies the section 125(g)(2) safe harbor for cafeteria plans providing health benefits.

(f) *Safe harbor test for premium-only-plans*—(1) *In general.* A premium-only-plan (as defined in paragraph (a)(13) of this section) is deemed to satisfy the nondiscrimination rules in section 125(c) and this section for a plan year if, for that plan year, the plan satisfies the safe harbor percentage test for eligibility in paragraph (b)(3) of this section.

(2) *Example.* The following example illustrates the rules in paragraph (f) of this section:

Example. Premium-only-plan. (i) Employer F's cafeteria plan is a premium-only-plan (as defined in paragraph (a)(13) of this section). The written cafeteria plan offers one employer-provided accident and health plan and offers all employees the election to salary reduce same amount or same percentage of the premium for self-only or family coverage. All key employees and all highly compensated employees elect salary reduction for the accident and health plan, but only 20 percent of nonhighly compensated employees elect the accident and health plan.

(ii) The premium-only-plan satisfies the nondiscrimination rules in section 125(b) and (c) and this section.

(g) *Permissive disaggregation for nondiscrimination testing*—(1) *General rule.* If a cafeteria plan benefits employees who have not completed three years of employment, the cafeteria plan is permitted to test for nondiscrimination under this section as if the plan were two separate plans—

(i) One plan benefiting the employees who completed one day of employment but less than three years of employment; and

(ii) Another plan benefiting the employees who have completed three years of employment.

(2) *Disaggregated plans tested separately for eligibility test and contributions and benefits test.* If a cafeteria plan is disaggregated into two separate plans for purposes of nondiscrimination testing, the two separate plans must be tested separately for both the nondiscrimination as to eligibility test in paragraph (b) of this section and the nondiscrimination as to contributions and benefits test in paragraph (c) of this section.

(h) *Optional aggregation of plans for nondiscrimination testing.* An employer who sponsors more than one cafeteria plan is permitted to aggregate two or more of the cafeteria plans for purposes of nondiscrimination testing. If two or

more cafeteria plans are aggregated into a combined plan for this purpose, the combined plan must satisfy the nondiscrimination as to eligibility test in paragraph (b) of this section and the nondiscrimination as to contributions and benefits test in paragraph (c) of this section, as though the combined plan were a single plan. Thus, for example, in order to satisfy the benefit availability and benefit election requirements in paragraph (c)(2) of this section, the combined plan must give each similarly situated participant a uniform opportunity to elect qualified benefits and the actual election of qualified benefits by highly compensated participants must not be disproportionate. However, if a principal purpose of the aggregation is to manipulate the nondiscrimination testing requirements or to otherwise discriminate in favor of highly compensated individuals or participants, the plans will not be permitted to be aggregated for nondiscrimination testing.

(i) *Employees of certain controlled groups.* All employees who are treated as employed by a single employer under section 414(b), (c), (m), or (o) are treated as employed by a single employer for purposes of section 125. Section 125(g)(4); section 414(t).

(j) *Time to perform nondiscrimination testing*—(1) *In general.* Nondiscrimination testing must be performed as of the last day of the plan year, taking into account all non-excludable employees (or former employees) who were employees on any day during the plan year.

(2) The following example illustrates the rules in paragraph (j) of this section:

Example. When to perform discrimination testing. (i) Employer H employs three employees and maintains a calendar year cafeteria plan. During the 2009 plan year, Employee J was an employee the entire calendar year, Employee K was an employee from May 1, through August 31, 2009, and Employee L worked from January 1, 2009 to April 15, 2009, when he retired.

(ii) Nondiscrimination testing for the 2009 plan year must be performed on December 31, 2009, taking into account employees J, K, and L's compensation in the preceding year.

(k) *Discrimination in actual operation prohibited.* In addition to not discriminating as to either benefit availability or benefit utilization, a cafeteria plan must not discriminate in favor of highly compensated participants in actual operation. For example, a plan may be discriminatory in actual operation if the duration of the plan (or of a particular nontaxable benefit offered through the plan) is for a period during which only highly compensated participants utilize the plan (or the benefit). See also the key employee concentration test in section 125(b)(2).

(l) *Anti-abuse rule*—(1) *Interpretation.* The provisions of this section must be interpreted in a reasonable manner consistent with the purpose of preventing discrimination in favor of highly compensated individuals, highly compensated participants and key employees.

(2) *Change in plan testing procedures.* A plan will not be treated as satisfying the requirements of this section if there are repeated changes to plan testing procedures or plan provisions that have the effect of manipulating the nondiscrimination testing requirements of this section, if a principal purpose of the changes was to achieve this result.

(m) *Tax treatment of benefits in a cafeteria plan*—(1) *Nondiscriminatory cafeteria plan.* A participant in a nondiscriminatory cafeteria plan (including a highly compensated participant or key employee) who elects qualified benefits is not treated as having received taxable benefits offered through the plan, and thus the qualified benefits elected by the employee are not includible in the employee's gross income merely because of the availability of taxable benefits. But see paragraph (j) in § 1.125–1 on nondiscrimination rules for sections 79(d), 105(h), 129(d), and 137(c)(2), and limitations on exclusion.

(2) *Discriminatory cafeteria plan.* A highly compensated participant or key employee participating in a discriminatory cafeteria plan must include in gross income (in the participant's taxable year within which ends the plan year with respect to which an election was or could have been made) the value of the taxable benefit with the greatest value that the employee could have elected to receive, even if the employee elects to receive only the nontaxable benefits offered.

(n) *Employer contributions to employees' Health Savings Accounts.* If an employer contributes to employees' Health Savings Accounts (HSAs) through a cafeteria plan (as defined in § 54.4980G–5 of this chapter) those contributions are subject to the nondiscrimination rules in section 125 and this section and are not subject to the comparability rules in section 4980G. See §§ 54.4980G–0 through 54.4980G–5 of this chapter.

(o) *Effective/applicability date.* It is proposed that these regulations apply on and after plan years beginning on or after January 1, 2009.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 39

Mandatory Reliability Standards for Critical Infrastructure Protection; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 39

[Docket No. RM06–22–000]

Mandatory Reliability Standards for Critical Infrastructure Protection

July 20, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission), proposes to approve eight Critical Infrastructure Protection (CIP) Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets. In addition, pursuant to section 215(d)(5) of the FPA, the Commission proposes to direct NERC to develop modifications to the CIP Reliability Standards to address specific concerns identified by the Commission. Approval of these standards will help protect the nation's Bulk-Power System against potential disruptions from cyber attacks.

DATES: Comments are due October 5, 2007.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Please refer to the Comment Procedures section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Gary Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

Paul Silverman (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8683.

Regis Binder (Technical Issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6460.

Jan Bargen (Technical Issues), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6333.

SUPPLEMENTARY INFORMATION:

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

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission proposes to approve eight Critical Infrastructure Protection (CIP) Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets.[1] In

[1] In the context of the CIP Reliability Standards, cyber assets are programmable electronic devices

addition, pursuant to section 215(d)(5) of the FPA, the Commission proposes to direct NERC to develop modifications to the CIP Reliability Standards to address specific concerns identified by the Commission.

I. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[2] EPAct 2005 adds a new section 215 to the FPA, which requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[3]

3. On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[4] Pursuant to Order No. 672, the Commission certified one organization, NERC, as the ERO.[5] The Reliability Standards developed by the ERO and approved by the Commission will apply to users, owners and operators of the Bulk-Power System, as set forth in each Reliability Standard.

4. Pursuant to section 215(d)(2) of the FPA and § 39.5(c) of the Commission's regulations, the Commission is required to give due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard or to a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard or a proposed modification to a Reliability Standard to be applicable within that Interconnection.[6]

5. The ERO must file with the Commission each new or modified Reliability Standard that it proposes to be made effective under section 215 of the FPA. The Commission can then approve or remand the Reliability Standard. The Commission also can, among other actions, direct the ERO to modify an approved Reliability Standard to address a specific matter if it considers this appropriate to carry out section 215 of the FPA.[7] Only Reliability Standards approved by the Commission will become mandatory and enforceable.

6. On April 4, 2006, as modified on August 28, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a final rule, Order No. 693, approving 83 of these 107 Reliability Standards and directing other action related to these Reliability Standards.[8]

B. Development of CIP Reliability Standards

7. In August 2003, NERC approved the Urgent Action 1200 standard, which was the first comprehensive cyber security standard for the electric industry. This voluntary standard applied to control areas (*i.e.*, balancing authorities), transmission owners and operators, and generation owners and operators that perform defined functions. Specifically, it established a self-certification process relating to the security of system control centers of the applicable entities. The Urgent Action 1200 standard remained in effect on a voluntary basis until June 1, 2006, at which time the eight CIP Reliability Standards that are the subject of the current rulemaking replaced the Urgent Action 1200 standard.

8. On August 28, 2006, NERC submitted to the Commission for approval the following eight proposed CIP Reliability Standards:[9]

- CIP–002–1—Cyber Security—Critical Cyber Asset Identification: Requires a responsible entity to identify its critical assets and critical cyber assets using a risk-based assessment methodology.
- CIP–003–1—Cyber Security—Security Management Controls: Requires a responsible entity to develop and implement security management controls to protect critical cyber assets identified pursuant to CIP–002–1.
- CIP–004–1—Cyber Security—Personnel & Training: Requires personnel with access to critical cyber assets to have an identity verification and a criminal check. It also requires employee training.
- CIP–005–1—Cyber Security—Electronic Security Perimeters: Requires the identification and protection of an electronic security perimeter and access points. The electronic security perimeter is to encompass the critical cyber assets identified pursuant to the risk-based assessment methodology required by CIP–002–1.
- CIP–006–1—Cyber Security—Physical Security of Critical Cyber Assets: Requires a responsible entity to create and maintain a physical security plan that ensures that all cyber assets within an electronic security perimeter are kept in an identified physical security perimeter.
- CIP–007–1—Cyber Security—Systems Security Management: Requires a responsible entity to define methods, processes, and procedures for securing the systems identified as critical cyber assets, as well as the non-critical cyber assets within an electronic security perimeter.
- CIP–008–1—Cyber Security—Incident Reporting and Response Planning: Requires a responsible entity to identify, classify, respond to, and report cyber security incidents related to critical cyber assets.
- CIP–009–1—Cyber Security—Recovery Plans for Critical Cyber Assets: Requires the establishment of recovery plans for critical cyber assets using established business continuity and disaster recovery techniques and practices.

9. NERC stated that these Reliability Standards provide a comprehensive set of requirements to protect the Bulk-Power System from malicious cyber attacks.[10] They require Bulk-Power System users, owners, and operators to establish a risk-based vulnerability assessment methodology and use that methodology to identify and prioritize critical assets and critical cyber assets. Once the critical cyber assets are identified, the CIP Reliability Standards require, among other things, that the responsible entities establish plans,

and communication networks including hardware, software, and data. *See* note 69, *infra.*

[2] Energy Policy Act of 2005, Pub. L. No. 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), *to be codified* at 16 U.S.C. 824o.

[3] 16 U.S.C. 824o(e)(3).

[4] *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

[5] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (ERO Rehearing Order) (2006), *order on compliance,* 118 FERC ¶ 61,030 (2007) (Jan. 2007 Compliance Order), *appeal docket sub nom. Alcoa, Inc.* v. *FERC,* No. 06–1426 (D.C. Cir. Dec. 29, 2006).

[6] 18 CFR 39.5(c)(1), to be codified at 16 U.S.C.824o.

[7] Section 215(d)(5) of the FPA.

[8] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007); *reh'g pending.*

[9] The proposed Reliability Standards are not proposed to be codified in the CFR and are not attached to the NOPR. They are, however, available on the Commission's eLibrary document retrieval system in Docket No. RM06–22–000 and are available on the ERO's Web site, *http://www.nerc.com/filez/standards/Reliability_Standards.html#Critical_Infrastructure_Protection.*

[10] NERC Filing at 24.

protocols, and controls to safeguard physical and electronic access, to train personnel on security matters, to report security incidents, and to be prepared for recovery actions. Further, NERC explained that, because of the expanded scope of facilities and entities covered by the eight CIP Reliability Standards, and the investment in security upgrades required in many cases, NERC has also developed an implementation plan that provides for a three-year phase-in to achieve full compliance with all requirements.[11]

10. Each proposed Reliability Standard uses a common organizational format that includes five sections, as follows: (A) Introduction, which includes ''Purpose'' and ''Applicability'' sub-sections; (B) Requirements; (C) Measures; (D) Compliance; and (E) Regional Differences. In this NOPR, these section titles are capitalized when referencing a designated provision of a Reliability Standard.

C. CIP Assessment

11. On December 11, 2006, the Commission released a ''Staff Preliminary Assessment of the North American Electric Reliability Corporation's Proposed Mandatory Reliability Standards on Critical Infrastructure Protection'' (CIP Assessment). The CIP Assessment identified staff's preliminary observations and concerns regarding the eight proposed CIP Reliability Standards. The CIP Assessment described issues common to a number of the proposed CIP Reliability Standards. It also reviewed and identified issues regarding each individual CIP Reliability Standard but did not make specific recommendations regarding the appropriate action on a particular proposal.

12. Comments on the CIP Assessment were due by February 12, 2007. Entities that filed comments are listed in Appendix A to this NOPR.

II. Discussion

A. General Issues

1. Cyber Security Challenges

13. The CIP Reliability Standards represent the most thorough attempt to date to address cyber security issues that relate to the Bulk-Power System. For many years the control systems for the Bulk-Power System have operated in a stand-alone environment without computer or communication links to an external Information Technology (IT) infrastructure. However, over recent years, such stand-alone enclaves have been increasingly connected to both the corporate environment and the external world.

14. Modern computer and communication network interconnection brings with it the potential for cyber attacks on these systems. These concerns become particularly critical when several entities come under attack simultaneously. The CIP Assessment identified ''defense in depth'' as a widely recognized strategy to address cyber threats. Defense in depth involves the layering of various defense mechanisms in a way that either discourages an adversary from continuing an attack or aids in early detection of cyber threats.

15. A major challenge to preserving system protection is that changes occur rapidly in system architectures, technology, and threats. As a result, cyber security strategies must comprise a layered, interwoven approach to vigilantly protect the Bulk-Power System against evolving cyber security threats.

16. Cyber security involves a careful balance of the technologies available with the existing control equipment and the functions they perform. Cyber security does have purely technical components, which consist of the various available technologies to defend computer systems. The task of balancing technical options comes into play as one selects and combines the various available technologies into a comprehensive architecture to protect the specific computer environment.

17. A key to the successful cyber protection of the Bulk-Power System will be the establishment of CIP Reliability Standards that provide sound, reliable direction on how to choose among alternatives to achieve an adequate level of security, and the flexibility to make those choices. This conclusion is consistent with the lessons learned from the August 2003 blackout occurring in the central and northeastern United States. The identification of the causes of that and other previous major blackouts helped determine where existing Reliability Standards need modification or new Reliability Standards need to be developed to improve Bulk-Power System reliability. The U.S.—Canada Power System Blackout Task Force, in its Blackout Report, developed specific recommendations for the improving the then-current voluntary standards and development of new Reliability Standards.[12]

18. Thirteen of the 46 Blackout Report Recommendations relate to cyber security. They address topics such as the development of cyber security policies and procedures; strict control of physical and electronic access to operationally sensitive equipment; assessment of cyber security risks and vulnerability at regular intervals; capability to detect wireless and remote wireline intrusion and surveillance; guidance on employee background checks; procedures to prevent or mitigate inappropriate disclosure of information; and improvement and maintenance of cyber forensic and diagnostic capabilities.[13] The proposed CIP Reliability Standards address these and related topics.

19. As we noted in Order No. 693, the Blackout Report recommendations address key issues for assuring Bulk-Power System reliability and represent a well-reasoned and sound basis for action.[14] Likewise, in this NOPR, the Commission recognizes the merits of specific Blackout Report recommendations as a basis for proposing certain modifications to the eight CIP Reliability Standards that the Commission proposes to approve.

20. We recognize that the guidance and directives in the cyber security Reliability Standards themselves must also strike a reasonable balance. If the provisions are overly prescriptive they tend to become a ''one size fits all'' solution, which does not suit this environment, where systems vary greatly in architecture, technology, and risk profile. However, if Reliability Standards lack sufficient detail, they will provide little useful direction, thereby making compliance and enforcement difficult, allow flawed implementation of security mechanisms, and result in inadequate protection. The Commission will evaluate the proposed CIP Reliability Standards in the context of the above over-arching considerations.

2. Applicability

21. The Applicability section of each proposed CIP Reliability Standard identifies the following 11 categories of responsible entities that must comply

[11] *Id.* at 24: Exhibit B (Implementation Plan for Cyber Security Standards).

[12] U.S.—Canada Power System Blackout Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Blackout Report). The Blackout Report is available on the Internet at *http://www.ferc.gov/industries/electric/indus-act/blackout.asp.*

[13] *See* Blackout Report at 163–169, Recommendations 32–44.

[14] *See* Order No. 693 at P 234.

with the Reliability Standard: reliability coordinators, balancing authorities, interchange authorities, transmission service providers, transmission owners, transmission operators, generator owners, generator operators, load serving entities, NERC, and Regional Reliability Organizations.

22. The CIP Assessment raised two issues regarding applicability of the CIP Reliability Standards. First, it stated that, although it is likely that NERC and the Regional Entities [15] are not directly subject to mandatory Reliability Standards, their compliance with the CIP Reliability Standards is important to the extent that they have cyber communications with users, owners or operators of the Bulk-Power System.[16] The CIP Assessment suggested that NERC and Regional Entity compliance could be required pursuant to NERC's Rules of Procedure. Some commenters pointed out that NERC out-sources critical application systems that are relied upon by many responsible entities, such as the Interchange Distribution Calculator, and suggest that the out-source provider should be contractually compelled to comply with the CIP Reliability Standards, with NERC ultimately responsible for non-compliance.[17]

23. Second, the CIP Assessment raised concerns about the appropriateness of a size threshold, below which small entities would be exempt from compliance. It explained that, while the assets and operations of a smaller entity may not have a major day-to-day operational impact on the Bulk-Power System, such an entity can provide a cyber gateway to compromise larger users, owners, or operators of the Bulk-Power System. When attacked simultaneously with the facilities of other small entities, the aggregate result could have an adverse impact on the reliability of the Bulk-Power System. Thus, the CIP Assessment suggested that a key to any determination of whether an entity should be subject to the CIP Reliability Standards is whether or not it is a user, owner, or operator of the Bulk-Power System and whether it has a cyber connection to other users, owners or operators of the Bulk-Power System. The CIP Assessment concluded that the CIP Reliability Standards should apply to all users, owners, or operators regardless of size, because a relatively small entity could have critical importance from a cyber security perspective.

24. A number of commenters stated that the focus should be on those entities that own or operate critical assets, rather than being addressed in terms of ''large'' or ''small'' size of entities.[18] These commenters warn that a blanket waiver that uniformly exempts small entities from compliance with certain provisions of the proposed CIP Reliability Standards therefore would not be appropriate. NERC and other commenters maintain that applicability should not be determined based on cyber connections but, rather by identifying those users, owners and operators of the Bulk-Power System that own or operate critical assets and associated critical cyber assets. Another group of commenters urge that the Commission not impose the same compliance obligations on smaller entities as on larger entities when a violation by the smaller entity would not have a critical impact on the Bulk-Power System. They maintain that adverse impacts on the grid from small entities would be an uncommon occurrence and urge a case-by-case approach to granting waivers from compliance with the CIP Reliability Standards.[19]

Commission Proposal

25. With regard to the applicability of the CIP Reliability Standards to the ERO, NERC has modified its Rules of Procedure to provide that the ERO will comply with each Reliability Standard that identifies the ERO as an applicable entity.[20] Similarly, the delegation agreements between NERC and each of the eight Regional Entities expressly state that the Regional Entity is committed to comply with approved Reliability Standards.[21] The Commission believes that this approach is sufficient and, accordingly, does not propose any additional measures or revisions on this issue.

26. The Commission's determinations in Order No. 693 are relevant to deciding the applicability of the CIP Reliability Standards to small entities. In Order No. 693, the Commission approved NERC's compliance registry process as a reasonable means ''to ensure that the proper entities are registered and that each knows which Commission-approved Reliability Standard(s) are applicable to it.'' [22] Further, the Commission approved NERC registry criteria that identify specific categories of users, owners and operators of the Bulk-Power System and criteria for registering entities within each of the categories.[23]

27. The Commission will also rely on the NERC registration process to determine applicability with the CIP Reliability Standards. In other words, an entity would be responsible to comply with the CIP Reliability Standards if the entity is (1) registered by NERC under one or more functional categories and (2) within a functional category for which the entity is registered as identified in the Applicability section of the CIP Reliability Standards. However, even though it is the Commission's present intention to rely on the NERC registration process to identify appropriate entities, we remain concerned about the possibility of entities not identified by the registration process becoming a weakness in the security of the Bulk-Power System. In this regard, we note that, in Order No. 693, the Commission explained that, ''if there is an entity that is not registered and NERC later discovers that the entity should have been subject to the Reliability Standards, NERC has the ability to add the entity, and possibly other entities of a similar class, to the registration list * * *.'' [24] In addition, in Order No. 693, the Commission indicated that it would further examine applicability issues under section 215 of the FPA in a future proceeding, and notes the same intention here.[25]

28. Regarding our concern about small entities becoming a gateway for cyber attacks, some commenters argue that the Commission should not focus on cyber connections to determine applicability of the CIP Reliability Standards. Others state that it would be uncommon for a small entity to cause an adverse impact upon the grid. The Commission's reliance upon the NERC registration process to determine the applicability of the CIP Reliability Standards is in part based upon our expectation that industry will use the ''mutual distrust'' posture discussed below regarding CIP–

[15] In Order No. 693, at P 157, the Commission directed NERC to remove all references to the Regional Reliability Organization and replace them with a reference to the Regional Entity where appropriate. This directive should apply to the CIP Reliability Standards as well.

[16] *See* CIP Assessment at 12–14.

[17] *E.g.,* ISO–NE, ISO/RTO Council, and SPP.

[18] *E.g.,* Allegheny, California PUC, EEI, Georgia System, ISO–NE, MidAmerican, NERC, ReliabilityFirst, Northeast Utilities, NRECA, Ontario IESO, Tampa Electric, and Xcel.

[19] *E.g.,* APPA/LPPC and Santa Clara.

[20] *See* NERC Rules of Procedure, section 100.

[21] *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 at P 4–5 (2007) (approving the delegation agreements and directing certain modifications).

[22] Order No. 693 at P 92, *quoting ERO Certification Order*, 116 FERC ¶ 61,062 at P 689.

[23] Order No. 693 at P 93–95. NERC's Statement of Compliance Registry Criteria (Revision 3), approved by the Commission in Order No. 693, is available on NERC's Web site at: *ftp://www.nerc.com/pub/sys/all_updl/ero/Statement_of_Compliance_Registry_Criteria_Rev3.pdf.*

[24] Order No. 693 at P 97.

[25] *Id.* at P 77.

003–1. The term ''mutual distrust'' is used to denote how these ''outside world'' systems are treated by those inside the control system. A mutual distrust posture requires each responsible entity that has identified critical cyber assets to protect itself and not trust any communication crossing an electronic security perimeter, regardless of where that communication originates.

29. Similarly, the Commission is relying on the NERC registration process to include all critical assets and associated critical cyber assets. For example, if assets are important to the reliability of the Bulk-Power System, such as black start units, we would expect that the NERC registration process would identify the owners or operators of those units as critical, and require them to register, even though the facilities may be ''smaller'' or at low voltages. Demand side aggregators might also need to be included in the NERC registration process if their load shedding capacity would affect the reliability or operability of the Bulk-Power System.

30. As discussed later, as an initial compliance step, each entity that is responsible for compliance with the CIP Reliability Standards must identify critical assets through the application of a risk-based assessment as required by CIP–002–1. Whether that entity must comply with the remainder of the requirements in the CIP Reliability Standards would depend on the outcome of that assessment and the subsequent identification of critical cyber assets, also required by CIP–002–1. Thus, CIP–002–1 acts as a filter, determining which entities must comply with the remaining CIP requirements (*i.e.*, CIP–003–1 through CIP–009–1).

31. The Commission agrees with the commenters that access to information essential to the operation of critical cyber assets by out-sourced entities that are not otherwise subject to the CIP Reliability Standards presents a potential vulnerability to the Bulk-Power System. We understand that, on occasion, NERC negotiates contracts with such third party vendors, and the products developed by the vendors are then used by responsible entities that, as owners of the critical cyber assets, are ultimately responsible for their cyber security protection under the CIP Reliability Standards. The Commission invites comment on whether and how such out-sourced entities should be contractually obligated to comply with the CIP Reliability Standards while satisfying their other contractual obligations.

3. Compliance Measured by Outcome

a. Performance-Based Standards

32. The CIP Assessment expressed concern that the lack of specificity within the proposed CIP Reliability Standards could result in inadequate implementation efforts and inconsistent results.[26] NERC, along with a number of other commenters, states that the CIP Reliability Standards are not prescriptive, positing that the level of specificity they embody is appropriate. NERC explains that the use of a performance-based structure frames the CIP Reliability Standards in terms of required results or outcomes with criteria for verifying compliance, but without prescribing the methods for achieving the required results. In other words, the specific means to achieve that outcome are left to the discretion of the responsible entity. Such an approach contrasts with a prescribed or design-based standard. NERC concludes that, when taken together, the proposed Reliability Standards constitute a comprehensive set of cyber security activities, stating that it is more important that a pre-defined, desirable outcome is achieved than prescribing the means to that end.

33. The Commission generally agrees that use of performance-based standards is a part of the design of cyber security safeguards for the Bulk-Power System's critical assets. However, as we indicated in Order No. 672, performance-based standards may not always be appropriate, for example, in situations where ''the 'how' may be inextricably linked to the Reliability Standard and may need to be specified to ensure the enforceability of the standard.''[27] Accordingly, where necessary, the Commission proposes to direct NERC to modify the CIP Reliability Standards to address the ''how.'' Moreover, the Commission is concerned that, while NERC explains that the CIP Reliability Standards are performance-based, the CIP Reliability Standards do not provide a mechanism to measure performance or otherwise determine whether a responsible entity has met the goals of a particular requirement set forth in the standards.

34. The Commission believes that monitoring the performance of responsible entities identified in the CIP Reliability Standards involves three strategies. First, it is important that there be both internal and external oversight of the responsible entity's activities. While the proposed Reliability Standards embody internal management oversight strategies, there should also be oversight that embodies a wide-area view. Second, when flexibility is exercised in a way that excepts an entity from a Requirement, such action should be monitored, documented, and periodically revisited to determine consistency and effectiveness of the implementation. Third, reporting certain wide-area information and analysis to the Commission is vital to its role in ensuring that approved CIP Reliability Standards achieve on an ongoing basis an adequate level of cyber security protection to the Bulk-Power System. These three strategies are applied in our discussion below of various provisions of the CIP Reliability Standards.

b. Adequacy of Outcomes

35. The CIP Assessment explained that many of the Requirements in the proposed CIP Reliability Standards consist of broad directives, and that the Measures and Compliance provisions focus largely on proper documentation. The Reliability Standards themselves do not explain the interplay between the Requirements, on one hand, and the Measures and Levels of Non-Compliance, on the other.

36. The CIP Assessment expressed the view that the focus of the Measures and Compliance provisions on documentation could be interpreted to suggest that possession of documentation can demonstrate compliance, regardless of the quality of its contents. It suggested that compliance with the CIP Reliability Standards must be understood in terms of compliance with the Requirements, which, according to NERC, define what an entity must do to be compliant and establishes an enforceable obligation.

Comments

37. NERC and others do not share the CIP Assessment concern regarding the focus on documentation.[28] NERC and ReliabilityFirst acknowledge the extensive use of documentation throughout the CIP Reliability Standards, but note that the majority of this documentation is used to demonstrate that the Requirements have been met. NERC indicates that, while the ''mere possession of documentation'' does not guarantee compliance, appropriate documentation is essential to demonstrate that steps to comply with the Requirements have been taken and will streamline after-the-

[26] CIP Assessment at 3.

[27] Order No. 672 at P 260. The Commission also explained that, for some Reliability Standards, ''leaving out implementation features could [*inter alia*] sacrifice necessary uniformity in implementation * * *''.

[28] *E.g.,* ReliabilityFirst, APPA/LPPC, and SPP.

fact compliance audits. Similarly, EEI believes that the quality of the documentation is an important factor for assessing compliance and should be the subject of an audit. FirstEnergy and Santa Clara state that it would be helpful for NERC to provide guidance on what constitutes reasonable documentation.

38. Others raise concerns regarding the emphasis on documentation. For example, Duke Energy agrees with the CIP Assessment that the CIP Reliability Standards rely heavily on documentation to verify compliance. Duke Energy believes that the accumulation of documentation to facilitate audits may prove to be less than optimum for the CIP Reliability Standards and suggests that efforts to improve the CIP Requirements should gradually focus less on documentation, and more on the actual level of cyber security to be implemented by the responsible entity. ISA Group states that the CIP Reliability Standards do not specify clear Requirements and do not provide sufficient guidance. ISA Group believes that the clarity and detail of the Levels of Non-Compliance in terms of documentation give the impression that the documentation is the focus of the CIP Reliability Standards.

Commission Proposal

39. The Commission agrees with NERC that, while documentation is necessary, the documentation by itself does not satisfy the Requirements of a Reliability Standard. Rather, implementation of the substance of the Requirements is most important in determining compliance. As we explained in Order No. 693, ''while Measures and Levels of Non-Compliance provide useful guidance to the industry, compliance will in all cases be measured by determining whether a party met or failed to meet the Requirement given the specific facts and circumstances of its use, ownership or operation of the Bulk-Power System.'' [29] Moreover, the Commission recognized that:

> The most critical element of a Reliability Standard is the Requirements. As NERC explains, ''the Requirements within a standard define what an entity must do to be compliant * * * [and] binds an entity to certain obligations of performance under section 215 of the FPA.'' If properly drafted, a Reliability Standard may be enforced in the absence of specified Measures or Levels of Non-Compliance.[30]

40. To reiterate, while documentation set forth in the Measures and Levels of Non-Compliance plays an important role in assuring that a responsible entity is able to demonstrate to an auditor or others that it has complied with the substantive Requirement of a Reliability Standard, adequate documentation does not substitute for substantive compliance with the obligations and responsibilities set forth in the Requirement.

41. Related, certain Requirements of the CIP Reliability Standards obligate a responsible entity to develop and maintain a plan, policy or procedure. However, such Requirements do not always explicitly require implementation of the plan, policy or procedure.[31] The Commission interprets such provisions to include an implicit requirement to implement the plan, policy or procedure; and to make a responsible entity subject to a non-compliance action for failing to implement the policy. Such an interpretation is reasonable to prevent the scenario in which the ERO, Regional Entity or the Commission could assess a penalty against a responsible entity for failure to develop a plan, policy or procedure that satisfies the Requirements of the Reliability Standard, but unable to assess a penalty against a responsible entity that has developed an adequate plan but fails to implement it. Further, the Commission proposes that the ERO, in developing modifications to the CIP Reliability Standards, include explicitly in such Requirements that a responsible entity must implement a plan, policy or procedure that it is required to develop.

4. Implementation Plan

42. Unlike the Reliability Standards approved in Order No. 693, which NERC formulated based on existing voluntary standards, the CIP Reliability Standards are new and require applicable entities in many cases to develop new cyber security systems and procedures, which will take time to develop and implement. To address this task, NERC developed an implementation plan that includes a proposed four-stage schedule for implementing the proposed CIP Reliability Standards over a three-year period.[32]

43. The Implementation Plan sets out a proposed schedule for accomplishing the various tasks associated with compliance with the CIP Reliability Standards. The schedule gives a timeline by calendar quarters for completing various tasks and prescribes milestones for when a responsible entity must: (1) ''Begin work;'' (2) ''be substantially compliant'' with a requirement; (3) ''be compliant'' with a requirement; and (4) ''be auditably compliant'' with a requirement.

44. According to the implementation plan, ''auditably compliant'' must be achieved in 2009 for certain Requirements by certain responsible entities, and in 2010 for the remainder.

CIP Assessment

45. The CIP Assessment suggested that it may be possible to assess a responsible entity's level of compliance prior to the time when it achieves its ''auditably compliant'' status. It noted that, if a responsible entity is in the ''begin work'' phase, it has: (1) Developed and approved a plan to address the Requirements of a Reliability Standard; (2) identified and planned for necessary resources; and (3) begun implementing the Requirements. These are specific steps that an audit can examine. The CIP Assessment observed that the difference between the ''compliant'' and ''auditably compliant'' status for many of the Requirements is the accumulation of 12 months of compliance records. It sought comment on whether it would be beneficial to audit a responsible entity at the ''begin work'' and ''compliant'' stages, even though the responsible entity may not have the full 12 month accumulation of compliance records.

Comments

46. A number of commenters agree that some type of assessment, although not necessarily in the form of an audit, is both possible and potentially beneficial prior to the time an entity achieves ''auditably compliant'' status.[33] NERC agrees that there is a benefit to ensuring that responsible entities are moving timely toward ''auditably compliant'' status. While NERC believes that audits at an interim stage are not possible, it states that it plans to monitor progress through self-certification without assessing penalties. Other commenters oppose interim audits, stating that they could interfere with implementation plans and lead to penalties for non-compliance.[34]

[29] Order No. 693 at P 253.

[30] *Id., quoting* NOPR at P 105 (footnote omitted).

[31] *See, e.g.*, CIP–006–1, Requirement R1 (requiring a responsible entity to ''create and maintain a 'physical security plan' '); *cf.* CIP–003–1, Requirement R1 (requiring a responsible entity to ''document and implement a cyber security policy'').

[32] NERC August 28, 2006 Filing, Exhibit B ''Implementation Plan for Cyber Security Standards'' (Implementation Plan).

[33] *E.g.,* Santa Clara, SPP, APPA/LPPC, NERC, Allegheny, Georgia Operators, ISO RTO Council, MidAmerican, SoCal Edison, and NRECA.

[34] *E.g.,* ATC, EEI, National Grid, Tampa Electric, and FirstEnergy.

Commission Proposal

47. The Commission proposes to approve NERC's Implementation Plan, including the proposed timelines for achieving compliance. NERC indicates that the proposed timelines were developed with input from all sectors of the electric industry. Further, while some responsible entities have already installed the necessary equipment and software to address cyber security, the Commission recognizes that many responsible entities must purchase and install new equipment and software to achieve compliance. Based on these considerations, the Commission believes that the timetable proposed by NERC sets reasonable deadlines for industry compliance.

48. However, the Commission is concerned whether the industry will be fully prepared for compliance upon reaching the implementation deadline and will take reasonable action to protect the Bulk-Power System during this interim period. The Commission believes that NERC's plans to require self-certification during the interim period are helpful. NERC, however, does not indicate the interval for self-certification. We believe that an annual certification would not allow adequate monitoring of progress and propose to direct that the ERO develop a self-certification process with more frequent certifications, either tied to target dates in the schedule or perhaps quarterly or semi-annual certifications. While we agree with NERC that an entity should not be subject to a monetary penalty if it is unable to certify that it is on schedule, such an entity should explain to the ERO the reason it is unable to self-certify. The ERO and the Regional Entities should then work with such an entity either informally or, if appropriate, by requiring a remedial plan to assist such an entity in achieving full compliance in a timely manner. Further, the ERO and the Regional Entities should provide informational guidance, upon request, to assist a responsible entity in assessing its progress in reaching ''auditably compliant'' status.

49. To further address our concerns about the period prior to when responsible entities achieve full compliance with the CIP Reliability Standards, the Commission also proposes to direct the ERO to add a cyber security assessment to NERC's existing readiness reviews. In this readiness assessment process, the ERO should assist in the identification of best practices and deficiencies of the reviewed entities, both to help them prepare for implementation of the CIP Reliability Standards and to assess the status of their compliance efforts. The readiness reviews will also help the Commission to evaluate the potential effectiveness of the cyber security Reliability Standards before they are implemented by disclosing the progress made by reviewed entities in their CIP Reliability Standards implementation efforts.

5. Issues Presented by Terminology

a. Business Judgment

NERC Proposal

50. Each of the proposed CIP Reliability Standards incorporates the concept of ''reasonable business judgment'' as a guide for determining what constitutes appropriate compliance with those Reliability Standards. The Purpose statement of Reliability Standard CIP–002–1 provides that:

> These standards recognize the differing roles of each entity in the operation of the Bulk Electric System, the criticality and vulnerability of the assets needed to manage Bulk Electric System reliability, and the risks to which they are exposed. Responsible entities should interpret and apply Standards CIP–002 through CIP–009 using reasonable business judgment.

Each of the subsequent CIP Reliability Standards includes a statement that ''Responsible Entities should interpret and apply the Reliability Standard using reasonable business judgment.''

51. NERC's Glossary of Terms Used in Reliability Standards (NERC glossary) does not define the term ''reasonable business judgment,'' and the CIP Reliability Standards do not otherwise suggest how the term is to be interpreted. NERC's Frequently Asked Questions (FAQ) document that accompanies the CIP Reliability Standards provides the only available guidance on the issue.[35] It states that the phrase is meant ''to reflect—and to inform—any regulatory body or ultimate judicial arbiter of disputes regarding interpretation of these Standards—that responsible entities have a significant degree of flexibility in implementing these Standards.'' The FAQ document notes that there is a long history of judicial interpretation of the business judgment rule and suggests that this history is relevant to the use of this rule in the context of the CIP Reliability Standards. The document goes on to say:

> Courts generally hold that the phrase indicates reviewing tribunals should not substitute their own judgment for that of the entity under review other than in extreme circumstances. A common formulation indicates the business judgment of an entity—even if incorrect in hindsight—should not be overturned as long as it was made (1) in good faith (not an abuse or indiscretion), (2) without improper favor or bias, (3) using reasonably complete (if imperfect) information as available at the time of the decision, (4) based on a rational belief that the decision is in the entity's business interest. This principle, however, does not protect an entity from simply failing to make a decision.

CIP Assessment

52. The CIP Assessment acknowledged the importance of flexibility and discretion in implementing cyber security strategies. However, it expressed skepticism about the appropriateness of the business judgment rule in this context, given the unusually broad discretion it permits. The CIP Assessment thus expressed concern that such an approach to flexibility and discretion would unduly compromise the effectiveness of the CIP Reliability Standards and the ability to enforce compliance with them.

53. The CIP Assessment sought comment on: (1) Specific examples of the differing roles of entities in relationship to their potential impact on cyber security risks to Bulk-Power System reliability; (2) alternatives to reliance on the reasonable business judgment rule that would allow for recognition of differing roles of entities, vulnerability of assets, and exposure to risk but also permit effective enforcement of the CIP Reliability Standards; and (3) the ramifications of removing the ''reasonable business judgment'' language from the proposed CIP Reliability Standards while an alternative approach is developed using the ERO's Reliability Standards development process.

Comments

54. A number of commenters stress the importance of flexibility and discretion in implementing the CIP Reliability Standards, but agree that it would not be reasonable to give the term ''business judgment'' the meaning it has in the context of corporate fiduciary responsibility.[36] Other commenters state that the use of reasonable business judgment was not meant to allow entities to evade application of the CIP Reliability Standards, but they acknowledge that legal precedent

[35] NERC included the FAQ document in its August 28, 2006 filing. The FAQ document is also available at *ftp://www.nerc.com/pub/sys/all_updl/standards/sar/Revised_CIP–002–009_FAQs_06Mar06.pdf.*

[36] *E.g.*, California PUC, APPA/LPPC, EPSA, and Progress Energy.

suggests that inclusion of the term could increase the potential for disputes.[37] These commenters support the use of alternative terms to acknowledge the need for flexibility and discretion, such as ''reasonableness,'' ''good utility practice,'' or ''good engineering practices.''

55. Other commenters argue that the ''reasonable business judgment'' language is essential to provide balance in the implementation of the CIP Reliability Standards and should not be removed. Some indicate that use of the term was intended to allow consideration of cost or business implications of an action.[38] For instance, NERC states that, if business considerations are left out of account, the CIP Reliability Standards would describe an impossibly high level of technical content, and the cost of implementing such a solution would approach an infinite amount of time, money, and resources. Commenters also state that use of reasonable business judgment allows every entity the flexibility to make the best choice for its unique situation.[39] Finally, some commenters believe that the term reasonable business judgment will ensure that the CIP Reliability Standards are enforceable by permitting development of a record of industry practices over time that provides a body of reasonable, industry cyber security practices.[40]

56. Some commenters argue that use of the term ''reasonable business judgment'' was not intended to trigger the exculpatory ''business judgment rule'' as used in connection with the actions of corporate directors.[41] They contend the term was intended as a ''reasonableness'' standard that was meant to add a defined and objective measure for assessing an entity's actions in implementing the CIP Reliability Standards based on the entity's particular system and assets. EEI argues that while the NERC FAQ accurately describes traditional use of the reasonable business judgment rule in the context of corporate law, it does not articulate how this language is being used in the context of cyber security standards. EEI also states that it is unlikely that the FAQ document would control interpretation of the CIP Reliability Standards.

57. Finally, some commenters acknowledge that the traditional corporate business judgment rule does grant officers and directors broad discretion, but also contains elements that temper this discretion.[42] To receive the benefit of the rule, a business decision must be made on an informed basis, in good faith and in honest belief that the action taken was in the best interests of the company. In addition, the person making the decision must act with the care that an ordinarily prudent person would reasonably be expected to exercise in a like position with similar circumstances. The commenters argue that these requirements permit the term reasonable business judgment to be adapted to the cyber security context.

Commission Proposal

58. For the reasons discussed below, the Commission proposes to direct the ERO to modify the CIP Reliability Standards to remove references to the ''reasonable business judgment'' language before compliance audits start in 2009.

59. The Commission agrees with commenters that flexibility and discretion are essential in implementing the CIP Reliability Standards and that implementing those Reliability Standards must be done on the basis of the specific facts and circumstances applicable in the individual case at hand. Cyber security problems do not lend themselves to one-size-fits-all solutions. In addition, the Commission acknowledges that cost can be a valid consideration in implementing the CIP Reliability Standards. However, the Commission believes that the traditional concept of reasonable business judgment is ill suited to the task of implementing an appropriate program of cyber security pursuant to FPA section 215. The concept of reasonable business judgment addresses the issue of whether a decision-making process conforms to certain standards. It was developed specifically to address the issue of how courts should approach business decisions made by a company's officers or directors, and the answer it provides is based on certain assumptions about how our economic system operates and who is most likely to have the knowledge and expertise needed to make appropriate business decisions. However, the concept of reasonable business judgment takes on a very different meaning when removed from its original context and applied to a different factual situation where very different assumptions apply. As explained below, when transferred to the realm of cyber security or Bulk-Power System reliability generally, recourse to reasonable business judgment is inconsistent with the purpose of FPA section 215.

60. Cyber standards are essential to protecting the Bulk-Power System against attacks by terrorists and others seeking to damage the grid. Because of the interconnected nature of the grid, an attack on one system can affect the entire grid. It is therefore unreasonable to allow each user, owner or operator to determine compliance with the CIP Reliability Standards based on its own ''business interests.'' Business convenience cannot excuse compliance with mandatory Reliability Standards.

61. While some commenters argue that references to reasonable business judgment in the CIP Reliability Standards were not intended to trigger the traditional corporate business judgment rule, the FAQ document can be read to suggest the contrary. In fact, the FAQ document states explicitly that ''reasonable business judgment'' means what the courts have said it means in the corporate context. It states that the phrase has an almost 200 year history in the common law nations and notes that ''[c]ourts generally hold that the phrase indicates reviewing tribunals should not substitute their own judgment for that of the entity under review other than in extreme circumstances.'' The FAQ document then goes on to list the elements of reasonable business judgment as the courts generally define it. The FAQ document nowhere states or suggests that the meaning and significance of reasonable business judgment is subject to some modification or qualification in the context of implementing and complying with the CIP Reliability Standards.

62. Moreover, as the FAQ document makes clear, compliance turns on whether a decision was ''based on a rational belief that the decision is in the entity's business interest.'' That test is fundamentally incompatible with Congress' decision to adopt a regime of mandatory Reliability Standards. As we stated above, the vulnerability of one entity can pose risks to the entire grid. We therefore cannot allow each user, owner or operator to determine compliance based on its own parochial business interests. The purpose of section 215 is to protect the national interest in grid reliability.

63. The business judgment rule was adopted in a context that is simply not appropriate for mandatory Reliability Standards. The business judgment rule recognizes that officers and directors

[37] *E.g.*, Duke, Progress Energy, Xcel, and National Grid.

[38] *E.g.*, NERC, Southern, and PG&E.

[39] *E.g.*, NERC, NU, PJM, Santa Clara, and Cleveland Public Power.

[40] *E.g.*, IRC and Tampa Electric.

[41] *E.g.*, Arizona Public Service, EEI, Progress Energy, SoCal, TEC, Duke, ReliabilityFirst and National Grid.

[42] *E.g.*, EEI and Progress Energy.

must have wide latitude if a company is to be managed properly and efficiently and that it is not in the interest of shareholders to create incentives for officers and directors to be overly cautious.[43] Courts have noted that shareholders voluntarily undertake the risk of bad business judgments and investors who are adverse to such risk have alternative investment opportunities available to them.[44] In the context of section 215, however, these principles do not apply. The issue under section 215 is not whether the management of a business is acting in the interest of its own shareholders, but rather whether an entity is taking appropriate action to avert risks that could threaten the entire grid.

64. It is also notable that the business judgment rule is invoked, in the corporate governance context, only in extreme circumstances. Generally, to find an officer or director liable there must be evidence establishing that he or she acted fraudulently, in bad faith, or with gross or culpable negligence.[45] Some cases refer to unconscionable conduct, illegal or oppressive acts, willful abuse of discretionary power or neglect of duty, and recklessness as situations that fall outside reasonable business judgment.[46] While the FAQ document does not explain this point clearly, it does allude to it when it notes that the ''[c]ourts generally hold that the phrase indicates reviewing tribunals should not substitute their own judgment for that of the entity under review *other than in extreme circumstances*.'' (Emphasis supplied).

65. These criteria are plainly inappropriate for mandatory CIP Reliability Standards. For example, if an inadequate cyber plan caused a grid-wide disturbance or blackout, a violation could be established only in ''extreme circumstances'' where there was ''unconscionable conduct'' or ''recklessness'' or, as discussed above, where the entity's plan was not consistent with its ''own business interest.'' These highly deferential legal standards are not compatible with a mandatory reliability regime under section 215 of the FPA. We therefore propose to direct NERC to delete references to ''reasonable business judgment'' from the CIP Reliability Standards.

66. We wish to stress, however, that, even though we propose to delete the business judgment rule, we believe flexibility in the application of the CIP Reliability Standards remains appropriate. First, as discussed throughout this NOPR, the CIP Reliability Standards contain specific provisions that explicitly permit various alternative courses of action. More importantly, however, the CIP Reliability Standards do not simply allow the exercise of flexibility and discretion, they require it. Even with the various revisions and additions that the Commission is proposing in this NOPR, the CIP Reliability Standards constitute a relatively brief document, and the Requirements it contains are largely performance based. These Requirements for the most part are quite general and do not dictate specific solutions to cyber-security problems. Responsible entities therefore must interpret and apply them to their specific circumstances. The CIP Assessment explained:

> The task of balancing technical options comes into play as one selects and combines the various available technologies into a comprehensive architecture to protect the specific computer environment. The key to success is possessing cyber security standards that provide reliable direction on how to choose among alternatives to achieve an adequate level of security.[47]

67. Based on our careful consideration of this issue as discussed above, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, the Commission proposes to direct that the ERO modify each of the proposed CIP Reliability Standards to remove references to the ''reasonable business judgment'' language before compliance audits start in 2009.

b. ''Technical Feasibility'' and ''Acceptance of Risk''

68. Two CIP Reliability Standards contain language that provides exceptions from compliance with a Requirement. This language takes two forms: one focuses on technical feasibility, and the other focuses on acceptance of risk.

69. Some provisions require a responsible entity to take action ''where technically feasible.''[48] The NERC glossary does not define the term ''technically feasible,'' and the Reliability Standards themselves do not specify how an entity is to determine whether an action is technically feasible. NERC's FAQ document provides the following guidance on the meaning of the phrase ''where technically feasible:''

> Technical feasibility refers only to engineering possibility and is expected to be a ''can/cannot'' determination in every circumstance. It is also intended to be determined in light of the equipment and facilities already owned by the responsible entity. The responsible entity is not required to replace any equipment in order to achieve compliance with the Cyber Security Standards. When existing equipment is replaced, however, the responsible entity is expected to use reasonable business judgment to evaluate the need to upgrade the equipment so that the new equipment can perform a particular specified technical function in order to meet the requirements of these standards.[49]

Technical feasibility is here related to reasonable business judgment, but only in a situation where equipment is being replaced. Otherwise, the FAQ document treats technical feasibility in terms of objective engineering judgments regarding what is possible with existing equipment.

70. Some Requirements in the CIP Reliability Standards permit an entity *not* to take the actions specified in the Requirement if they ''document compensating measures applied to mitigate risk exposure or an acceptance of risk.''[50] The Reliability Standards do not provide explicit guidance on the circumstances in which it is appropriate to accept the risk of non-compliance.

CIP Assessment

71. In the discussion of specific Reliability Standards, the CIP Assessment expressed concern about the need to reference technical feasibility, either because the action in question appeared to be clearly technically feasible or because of the extremely limited number of situations in which technical feasibility could become an issue.[51]

72. The CIP Assessment noted that acceptance of risk raised special concern in a cyber environment. Where there are interconnected control systems, an acceptance of a cyber risk by one entity would actually be tantamount to an acceptance of risk on behalf of all entities connected with it because the first entity can serve as a gateway to the others as noted above. The entity that initially accepts the risk

[43] *Cramer* v. *General Telephone and Electronics Corp.*, 582 F.2d 259 (3d Cir. 1978); *Joy* v. *North*, 692 F.2d 880 (2d Cir. 1982).

[44] *Joy* v. *North*, 692 F.2d 880 (2d Cir. 1982).

[45] *In Re Bal Harbour Club, Inc.*, 316 F.3d 1192 (11th Cir. 2003) (*Bal Harbour*); *Froelich* v. *Senior Campus Living LLC*, 355 F.3d 802 (4th Cir. 2004); *Poth* v. *Rassey*, 281 F. Supp. 2d (E.D. Va. 2003) (*Poth* v. *Rassey*).

[46] *Bal Harbour; Poth* v. *Rassey*; *Gray* v. *Manhattan Medical Center, Inc.*, (18 P.3d 291 (Kan. 2001); *G & N Aircraft, Inc.* v. *Boehm*, 743 N.E.2d 227 (Ind. 2001).

[47] CIP Assessment at 8.

[48] The ''technically feasible'' phrase is found in CIP–005–1, Requirements R2.4, R2.6, R3.1, R3.2 and CIP–007–1, Requirements R4, R5.3, R6, R6.3. Additionally, CIP–007, Requirement R2.3 uses ''technical limitations'' to similar effect.

[49] FAQ Document at 1.

[50] *See* CIP–007–1, Requirements R2.3, R3.2, and R4.1.

[51] *See, e.g.*, CIP Assessment at 26–27, 32–33.

becomes a ''weak link'' in the chain. The CIP Assessment noted that there is no provision in the proposed CIP Reliability Standards for oversight or consideration of the broader impacts of risk acceptance in individual cases. It sought comment on the appropriateness of risk acceptance and suggested that, if this concept is appropriate, clear guidance is needed to explain the limited circumstances in which it is appropriate.

Comments

73. NERC states that the term ''technical feasibility'' is intended to be very limited in scope. It defines the term as the physical ability of in-place equipment or software to conform directly to some Requirement in the Reliability Standards or the ability of in-place equipment or software to perform its required function if modified in a way that would most directly conform to some Requirement. The term is used to prevent penalizing responsible entities unnecessarily in situations where they cannot change immediately or prudently to comply with a Requirement. NERC states that where the concept of technical feasibility applies, the responsible entity should document the technical issue and its mitigation plans or strategies.

74. Many commenters [52] emphasize that the phrase ''where technically feasible'' is intended to permit flexibility, to permit the application of the Reliability Standards to a wide variety of situations, and to allow compliance with the Reliability Standards to evolve over time as technologies change. Some commenters note that in many cases it is not feasible to enhance equipment without replacing it. In some cases, off-the-shelf solutions are not available for various parts of the system.

75. ISA Group states that the phrase ''where technically feasible'' could be eliminated entirely from the CIP Reliability Standards and replaced with an exception mechanism that requires a decision to invoke technical feasibility to be explicit and reviewable. The exception mechanism should require that there be alternative mitigation that provides the level of security that would otherwise have been achieved. California PUC argues that the phrase ''technically feasible'' should be removed unless there is a serious question about the actual feasibility of a requirement being imposed.

76. Most commenters support the ''acceptance of risk'' terminology with certain qualifications. NERC states that the concept of risk acceptance recognizes that flexibility and judgment are required to make prudent decisions, but does not allow an entity to do nothing. It also contends that acceptance of risk is a fundamental tenet of an audit process, which recognizes that not all systems or implementations can be perfect. Other commenters state that acceptance of risk is needed to allow for flexibility and that it can be workable if decisions to accept risk are documented, compensating or mitigating action is taken, and decisions to accept risk are transparent and subject to review and oversight.[53] Some commenters state that any invocation of the risk acceptance provision should be subject to a sunset date or plan to achieve compliance.[54] In contrast, Wisconsin Electric states that acceptance of risk could seriously endanger reliability and supports removal of the option to accept risk.

Commission Proposal

77. For the reasons discussed below, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, the Commission proposes to direct that the ERO: (1) interpret the term ''technical feasibility'' narrowly as applying to the technical characteristics of existing assets and having no relation to the considerations of business judgment discussed above; (2) treat instances where technical feasibility is invoked as exceptions that require certain alternative courses of action; (3) eliminate the ''acceptance of risk'' option from the CIP Reliability Standards; and (4) develop an annual report that quantifies, on a wide-area basis, the frequency with which responsible entities invoke ''technical feasibility'' or other provisions that produce the same outcome. The reason the Commission believes these proposed safeguards are necessary, as well as additional details regarding these proposals, are provided below.

Technical Feasibility

78. The Commission acknowledges that, in the near term, exceptions from compliance based on the concept of ''technical feasibility'' may be appropriate in a limited set of circumstances.[55] However, responsible entities should not be permitted to invoke technical feasibility on the basis of ''reasonable business judgment,'' as NERC's FAQ suggests. We have already discussed the concerns that reasonable business judgment can create for effective cyber security. Nor should a responsible entity be able to except itself unilaterally from a Requirement of a mandatory Reliability Standard with no oversight. Unless invocation of the technical feasibility exception is carefully circumscribed, substantial opportunity for abuse, difficulty in enforcement and the continued allowance of unacceptable reliability risks could result.

79. Therefore, the Commission proposes to require the ERO to establish a structure to require accountability from those who rely on ''technical feasibility'' as the basis for an exception. Such a structure would require a responsible entity to: (1) Develop and implement interim mitigation steps to address the vulnerabilities associated with each exception; (2) develop and implement a remediation plan to eliminate the exception, including interim milestones and a reasonable completion date; and (3) obtain written approval of these steps by the senior manager assigned with overall responsibility for leading and managing the entity's implementation of, and adherence to, the CIP Reliability Standards as provided in CIP–003–1, Requirement R2. This proposed structure should include a review by senior management of the expediency and effectiveness of the manner in which a responsible entity has addressed each of these three proposed conditions. In addition, the Commission proposes to require a responsible entity to report and justify to the ERO and the Regional Entity for approval each exception and its expected duration. In situations where any of the proposed conditions are not satisfied, the ERO or the Regional Entity would inform the responsible entity that its claim to an exception based on technical feasibility is insufficient and therefore not approved. Failure to timely rectify the deficiency would invalidate the exception for compliance purposes.

80. The Commission believes that it is important that the ERO, Regional Entities and the Commission understand the circumstances and manner in which responsible entities invoke the technical feasibility provision as well as other provisions that function as an exception to the CIP Reliability Standards. The Commission,

[52] *E.g.*, National Grid; ISO/RTO Council; PJM, Ontario IESO, SPP, and ISO–NE.

[53] *E.g.*, Allegheny, MidAmerican and National Grid.

[54] *E.g.*, MidAmerican and Allegheny.

[55] For example, it is understandable that some older ''legacy'' systems are not capable of utilizing certain cyber protection strategies needed to fully comply with the Requirements of these CIP Reliability Standards. In such a case, the responsible entity could be granted an exception upon the satisfactory submittal of a mitigation plan leading to compliance, by a date certain.

therefore, proposes to direct the ERO to submit an annual report that would include, at a minimum, the frequency of the use of such provisions, the circumstances or justifications that prompt their use, the interim mitigation measures used to address the vulnerabilities, and the milestone schedule to eliminate them and to bring the entities into compliance to eliminate future reliance on the exception. The Commission expects that the report would not provide a level of detail so as to contain critical energy infrastructure information, but would include sufficient information such that it is clear that the mitigation measures have addressed the interim vulnerabilities and the milestone schedules will be sufficient to bring the entities into compliance by a date certain in a timely manner. The report should include aggregated information with sufficient detail for the Commission to understand the frequency in which specific provisions are being invoked as well as mitigation and remediation plans over time and by region. Such information would allow the Commission to evaluate whether to initiate the development of additional Reliability Standards or require new Reliability Standards and/or modifications to existing Reliability Standards.

81. The Commission also seeks comment on additional categories of information that should be included in the content of this report that would be useful for the Commission, as well as the ERO and Regional Entities, in evaluating the invocation of technical feasibility and similar provisions, and the impact on protection of critical assets.

82. The Commission proposes to direct the ERO to consider making ''technically feasible,'' and derivative forms of that phrase as used in the CIP Reliability Standards, defined terms in NERC's glossary, pursuant to the prior clarifications, without any reference to reasonable business judgment.

Acceptance of Risk

83. The Commission has several concerns regarding the references to ''acceptance of risk'' that appear in the CIP Reliability Standards. As proposed by NERC, there are no controls or limits on a responsible entity's use of this exception. For example, a responsible entity may invoke the ''acceptance of risk'' exception without any explanation, mitigation efforts, evaluation of the potential ramifications of accepting the risk, or other accountability. In essence, the phrase ''or an acceptance of risk'' allows a responsible Entity to opt out of certain provisions of a mandatory Reliability Standard at its discretion.

84. Further, there is no requirement that a responsible entity communicate to a responsible authority information related to the potential vulnerabilities created by a decision to accept risk and how they could affect Bulk-Power System reliability. The resulting uncertainty concerning who had invoked ''acceptance of risk'' and in what connection would mean that neither the ERO, Regional Entities nor others would know whether adequate cyber security precautions are in place to protect critical assets. The possibility that appropriate security measures for critical assets have not been implemented due to acceptance of risk and that no corresponding compensating or mitigating steps have been taken presents an undue and unacceptable risk to Bulk-Power System reliability.

85. Moreover, the Commission believes the acceptance of risk language does not serve any justifiable purpose. To the extent that an entity would invoke this exception because compliance is not technically feasible, it should rely on that exception, which with the Commission's proposal would have specific safeguards and limitations. To the extent that a responsible entity would invoke the acceptance of risk language because its business preference is not to expend resources on cyber vulnerability, we believe that is inappropriate for all the reasons discussed previously. A responsible entity should not be able to jeopardize critical assets of others, and create a significant and unknown risk to Bulk-Power System reliability, simply because it is willing to ''accept the risk'' that its own assets may be compromised.

86. Accordingly, the Commission proposes to direct that the ERO remove the ''acceptance of risk'' language from the CIP Reliability Standards.

6. Guidance for Improving CIP Reliability Standards

87. Several commenters discussed the proposed CIP Reliability Standards in relation to other standards that exist for governmental and industrial cyber security. MITRE and NIST suggest that more advanced cyber security standards have been developed that could provide a model in future improvements to the CIP Reliability Standards. In particular, they point to NIST Special Publication 800–53 Revision 1, Recommended Security Controls for Federal Information Systems (SP 800–53). MITRE believes that the relevant NIST publications, including Federal Information Processing Standards (FIPS) 199, FIPS 200, and SP 800–53, constitute a comprehensive and coherent basis for cyber security in the electric power sector. NIST recommends that the Commission consider a planned transition to cyber security standards that are identical to, consistent with, or based on SP 800–53 and related NIST standards and guidelines.

Commission Proposal

88. The Commission declines to propose at this time that NERC incorporate any provisions of the NIST standards into the CIP Reliability Standards. However, the Commission expects NERC to monitor the development and implementation of the NIST standards to determine if they contain provisions that will better protect the Bulk-Power System.[56] Several federal entities, such as the Tennessee Valley Authority and Western Area Power Administration, are subject to both the NIST standards and the Reliability Standards, and therefore are likely to have unique insights into the NIST standards. The Commission expects the ERO to seek and consider comments from those federal entities on the effectiveness of the NIST standards and on any implementation issues. Any provisions that will better protect the Bulk-Power System should be addressed in the ERO's Reliability Standards development process. The Commission may revisit this issue in future proceedings as part of an evaluation of existing Reliability Standards or the need for new Reliability Standards, or as part of assessing NERC's performance of its responsibilities as the ERO.[57]

B. Discussion of Each CIP Reliability Standard

1. CIP–002–1—Critical Cyber Asset Identification

89. Reliability Standard CIP–002–1 deals with the identification of critical cyber assets. The NERC glossary defines ''cyber assets'' as ''programmable electronic devices and communication networks including hardware, software, and data.'' It defines ''critical cyber assets'' as ''cyber assets essential to the reliable operation of critical assets.'' NERC defines ''critical assets'' as ''facilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would

[56] The Commission is also aware that the Instrumentation, Systems, and Automation Society (ISA) is developing cyber security standards, referred to as ISA SP–99, and that other infrastructure sectors are considering adopting the ISA standards for their control systems.

[57] *See* Order No. 672 at P 186–91.

affect the reliability or operability of the Bulk Electric System.'' [58]

90. As the first step in identifying critical cyber assets, CIP–002–1 requires each responsible entity to develop a risk-based assessment methodology to use in identifying its critical assets. Requirement R1 specifies certain types of assets that an assessment must consider for critical asset status and also allows the consideration of additional assets that the responsible entity deems appropriate. Requirement R2 requires the responsible entity to develop a list of critical assets based on an annual application of the risk-based assessment methodology. Requirement R3 provides that the responsible entity must use the list of critical assets to develop a list of associated critical cyber assets that are essential to the operation of the critical assets. CIP–002–1 requires an annual re-evaluation and approval by senior management of the lists of critical assets and critical cyber assets.

91. The CIP Assessment emphasized that, while CIP–002–1 through CIP–009–1 function as an integrated whole, CIP–002–1 is a key to the success of the cyber security framework that these Reliability Standards seek to create.[59] The CIP Assessment also stressed that, because CIP–002–1 addresses the assessment methodology and process for identifying critical assets and critical cyber assets, it represents the critical first step that can fundamentally affect the chances for successful implementation of the remaining CIP Reliability Standards. The methodology and process used by a responsible entity must be stringent and rigorous. Otherwise, a responsible entity may fail to identify some facilities that are critical to effective cyber protection and, as a consequence, leave them vulnerable to an attack that could threaten the reliability of the Bulk-Power System.

92. The Commission proposes to approve Reliability Standard CIP–002–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO to develop modifications to this Reliability Standard. In our discussion below, the Commission addresses its concerns in the following topic areas regarding CIP–002–1: (1) The proper risk-based assessment methodology for identifying critical assets and associated critical cyber assets; (2) internal approval of the risk assessment; (3) oversight of critical asset identification; and (4) interdependency analysis.

a. Risk-Based Assessment Methodology

93. As mentioned above, CIP–002–1 requires each responsible entity to develop a risk-based assessment methodology to identify critical assets.

CIP Assessment

94. The CIP Assessment noted that, while CIP–002–1 requires use of a risk-based assessment methodology, it does not provide direction on the nature and scope of that methodology, its basic features or the issues it should address. The CIP Assessment expressed concern that the absence of such direction could result in the Requirement being unevenly executed, which could result in inconsistency and inefficiency. It stated that, due to this lack of direction, the Reliability Standard does not provide a basis for evaluating whether the risk-based assessment methodology adopted by a particular entity will permit effective identification of all critical assets.

95. The CIP Assessment explained that proper risk-based assessment methodology is essential to achieve sufficient scope and implementation of critical infrastructure protection. Requirement R4 specifically contemplates the circumstance that a ''Responsible Entity may determine that it has no Critical Assets or Critical Cyber Assets,'' and correspondingly requires that a signed and dated record of management approval of the list of critical assets and critical cyber assets be kept ''even if such lists are null.'' The CIP Assessment pointed out, however, that a small entity whose operations may not have a major, day-to-day operational impact on the Bulk-Power System can have critical importance from a cyber security perspective, especially as a gateway to larger entities or when attacked simultaneously with other entities. The absence of adequate direction on what constitutes a proper risk-based assessment methodology may potentially result in entities improperly identifying a limited or ''null set'' of critical assets and critical cyber assets. This result could have serious adverse effects for Bulk-Power System reliability.

Comments

96. Commenters generally agree that CIP–002–1 plays a crucial role because whether a responsible entity must comply with the substance of the remaining CIP Reliability Standards depends on whether it identifies critical cyber assets pursuant to CIP–002–1. Commenters also agree that the risk assessment methodology is the key to a responsible entity accurately identifying its critical assets and critical cyber security assets.

97. While some commenters agree with the CIP Assessment that the Requirement for the risk-based assessment methodology would benefit from additional guidance or specificity, the majority disagree. Among those who support the need for more specificity, Arizona Public Service expresses concern that CIP–002–1, as proposed, may place a responsible entity in the position of not having enough guidance on whether its risk-based methodology will result in the identification of all critical assets.

98. Ontario IESO agrees that the CIP Assessment's reasons for concern are valid, which stem from the fact that many assessments will be performed by entities not previously subject to compliance with NERC Reliability Standards, and from the potential disagreement between entities on what constitutes a critical asset. It also shares the concern that some entities may avoid declaring critical assets to avoid further compliance obligations with the CIP Reliability Standards. Ontario IESO emphasizes that an essential feature of a good assessment is the quality of the judgments that necessarily must be applied. Rather than making modifications to provide more explicit direction, Ontario IESO suggests that much of the concern associated with critical asset identification could be addressed by modifying the Reliability Standard to require that the responsible entity consult with its reliability coordinator, and granting the reliability coordinator the authority to make the final determination of critical assets within its territory.

99. NERC and others oppose including additional specificity, claiming that CIP–002–1 is specifically written to allow each responsible entity the flexibility to implement it as it applies to the specific circumstances within each organization, and at each location containing critical cyber assets.[60] These commenters are concerned that a Commission directive to include additional guidance would restrict the needed flexibility. For example, APPA argues that the proposed provisions provide an adequate basis for evaluating the methodology, stating that prescribing a national-level ''one size fits all'' risk-based assessment methodology would

[58] ''The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.'' EPAct 2005, section 215(a)(4).

[59] CIP Assessment at 16–17.

[60] E.g., ReliabilityFirst, EEI, EPSA, and APPA.

require a costly effort to comply, but would not result in measurable cyber security improvements. APPA adds that every entity's risk-based assessment will be subject to challenge by an audit team from time-to-time, which will include review by peer technical experts who share the goal of preventing any successful attack on critical assets. AMP-Ohio suggests that it would be inappropriate to divide the Bulk Electric System into a large number of small, discrete and in some cases rather isolated pieces and then to assign responsibility to each of these small pieces to determine what is or is not critical to the reliable operation of the Bulk Electric System.

Commission Proposal

100. Most commenters on the CIP Assessment acknowledge the importance of CIP–002–1 in ensuring that an appropriate set of critical assets is identified. However, many commenters oppose any modification to CIP–002–1 to provide additional specificity regarding the risk assessment methodology for identifying critical assets, based on concerns that such specificity will impede the needed flexibility that is currently provided by the Reliability Standard.

101. The Commission recognizes the commenters' concerns and is mindful of the need for flexibility in the risk assessment process to take into account the individual circumstances of a responsible entity. Yet, the Commission is concerned that, without some additional guidance, each responsible entity will have to devise its own assessment methodology without sufficient assurance that the methodology is adequate to identify the types of assets necessary to protect the reliability of the Bulk-Power System. As explained by Ontario IESO, many responsible entities performing the risk assessment have not previously been subject to compliance with NERC's Reliability Standards. Further, there is a potential for disagreement among responsible entities regarding what constitutes a critical asset.

102. The Commission also is concerned that the risk assessment methodologies required by CIP–002–1 must place the proper emphasis on the possible consequences from an outage of a particular asset. Generically, risk assessments include consideration of both consequence (in this case, the effect of loss of availability of an asset on the reliable operation of the Bulk-Power System) and threat (the likelihood that an outage will occur, naturally or by malicious act). However, in this context we believe that the consequence of an outage should be the controlling factor. We note that the definition of ''critical assets'' is focused on the criticality of the assets, not the likelihood of an outage.

103. Accordingly, the Commission proposes to direct NERC to develop modifications to CIP–002–1 to provide some basic guidance on the content or considerations to be applied in a risk assessment methodology. We are not proposing that NERC develop specific details of a methodology that must be applied in all circumstances. However, the Commission believes that responsible entities would benefit from NERC providing some common understanding regarding the scope, purpose and basic direction of the risk assessment methodology. For example, the Reliability Standard should indicate that a proper risk-based assessment methodology to identify critical assets should examine (1) the consequences of the loss of the asset to the Bulk-Power System and (2) the consequence to the Bulk-Power System if an adversary gains control of the asset for intentional misuse. Such guidance could also address how a generation owner, or even a partial owner of generation, without a wide-area reliability perspective, should approach a risk-based assessment.

104. Further, we are concerned that relatively smaller registered entities, such as some resources, load-serving entities, and demand side aggregators, may have difficulty in determining whether a particular asset is ''critical'' for Bulk-Power System reliability, since, for example, the impact of their facilities may be dependent on their connection with a transmission owner or operator. We believe that such an entity may want to perform an accurate assessment but lack the regional view to make a determination on its own. Thus, we propose that the ERO and Regional Entities provide reasonable technical support to such entities that would assist them in determining whether their assets are critical to the Bulk-Power System.

105. Accordingly, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, the Commission proposes to direct that the ERO develop modifications to CIP–002–1 through its Reliability Standards development process to provide additional guidance as to the features and functionality of an adequate risk-based assessment methodology, as discussed above.

b. Internal Approval of Risk Assessment

106. Requirement R4 of CIP–002–1 requires that a senior manager ''or delegate(s)'' must approve annually the list of critical assets and critical cyber assets. The CIP Assessment suggested that that this senior management involvement should be extended to approving the risk-based assessment methodology developed pursuant to Requirement R1.[61] Several commenters disagree,[62] stating that this approval is implied by the requirement for senior management approval of the critical asset list and the critical cyber asset list. Other commenters generally believe that senior management approval of the risk-based assessment methodology would be a benefit.[63]

Commission Proposal

107. The Commission believes that senior management approval of the risk-based assessment methodology has clear benefits that exceed any additional burden placed on the responsible entities, and the rigor that the senior management approval would encourage is worth the effort. As explained in the CIP Assessment, since a poor methodology will likely result in an inadequate identification of critical assets and critical cyber assets, senior management awareness and approval of the chosen risk-based assessment methodology is of critical importance.[64] It is not clear to the Commission that, as some commenters suggest, senior management approval of the risk-based assessment methodology is implicit in the requirement that senior management approve the critical asset list and critical cyber asset list. Commenters did not object to the concept, but only believed that it might be redundant. We believe this additional layer of oversight is important and should be made explicit. The Commission also notes that requiring this senior management approval helps to implement the Blackout Report's Recommendation 43, which calls for establishing ''clear authority and ownership for physical and cyber security.''[65]

108. Thus, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, the Commission proposes to direct that the ERO develop a modification to CIP–002–1 through its Reliability Standards development process to include a requirement that a senior manager annually review and approve the risk-based assessment methodology.

[61] CIP Assessment at 17–18.

[62] NERC, ReliabilityFirst, and Santa Clara.

[63] *E.g.,* APPA/LPPC, FirstEnergy, National Grid, Progress Energy, and Xcel.

[64] CIP Assessment at 18.

[65] *See* Blackout Report at 169, Recommendation 43.

c. Oversight of Critical Assets Identification

109. The CIP Assessment emphasized the underlying importance that each responsible entity develop accurate lists of critical assets and critical cyber assets. Several commenters note that responsible entities currently lack a wide-area view that would enable them to better assess the risks associated with certain assets.[66] They suggest that guidance or oversight from an external organization could help ensure that responsible entities have properly identified critical assets from a regional perspective. Cleveland Public Power suggests that the Regional Entities should assume this role. Similarly, AMP-Ohio recommends that the Regional Entities should be responsible for identifying critical assets, with input from reliability coordinators and transmission planners. EPSA indicates that independent system operators (ISOs) and regional transmission organizations (RTOs) could provide guidance to individual companies in assessing critical assets and their vulnerability, in coordination with NERC and the Commission.

110. NERC, however, opposes regional oversight, stating that ''[i]t is not the function of the standards to implement an oversight or hierarchical organization for determining risks or vulnerabilities.'' [67] NERC suggests that regional perspective is gained through information sharing forums such as the Electricity Sector Information Sharing and Analysis Center (ESISAC) [68] and NERC's Critical Infrastructure Protection Committee.

Commission Proposal

111. The Commission disagrees with commenters that suggest that the responsibility for identifying critical assets should be placed on the Regional Entities or another organization instead of the categories of applicable entities currently identified in CIP–002–1. Such an approach would shift primary responsibility away from the asset owner or operator. We believe that such a shift would not improve the identification of critical assets, but more likely overwhelm the Regional Entities.

112. On the other hand, the Commission believes that a formal or systematic approach to external oversight of the identification of critical assets would assure a wide-area view. Such an approach, on a regional basis, would better ensure that responsible entities are identifying similar assets. Even taking into account the individual circumstances of a responsible entity, we would expect certain trends in critical asset identification within a class of responsible entities, such as generator owners or transmission owners. If the vast majority of transmission owners, for example, identified a certain asset as critical, and a few did not, this result could be due to the unique circumstances of those transmission owners or from a flawed risk-based assessment methodology. However, without external oversight using a wide-area view, such trends or deviations would never be identified prior to an incident or audit, perhaps precluding a necessary adjustment to a particular critical asset list. In addition, a wide-area view would help to ensure that assets that have regional importance, such as for reactive power supply, are included as critical assets.

113. NERC suggests that such issues can be addressed through existing forums for the voluntary exchange of information on cyber security issues. The Commission believes that this matter is too important to leave to voluntary mechanisms. Accordingly, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, the Commission proposes to direct that the ERO develop a modification to CIP–002–1 through its Reliability Standards development process to include a mechanism for the external review and approval of critical asset lists based on a regional perspective. While we propose that the Regional Entities should be responsible for this function, we will not exclude the possibility of a critical asset review process that allows for participation of other organizations, such as transmission planners and reliability coordinators.

114. Moreover, we note that the definition of ''critical cyber assets'' encompasses data.[69] Thus, marketing or other data essential to the proper operation of a critical asset, and possibly the computer systems that produce or process that data, would be considered critical cyber assets subject to the CIP Reliability Standards. Therefore, the Commission proposes to direct the ERO to develop guidance on the steps that would be required to apply the CIP Reliability Standards to such data and to include computer systems that produce the data.

115. The Commission is concerned that all critical assets are identified, and interprets the phrase, ''[t]he risk-based assessment shall consider the following assets:'' in Requirement R1.2 to mean that a responsible entity must be able to show, based on the risk-based assessment methodology used, why specific assets were or were not chosen as critical assets. The Commission is also concerned that sufficient rigor is applied in examining whether control systems are determined to be critical assets. While it seems obvious that an evaluation of a control system for critical asset status would consider the potential loss of operability of the control center due to power or communications failure, we also believe that such an evaluation should include an examination of any misuse of the control system, the impact this misuse could have on any electric facilities that the responsible entity controls, and the combined impact of such facilities. Therefore, the Commission proposes to direct the ERO to modify Requirement R1.2 to clarify the requirement to show why specific assets were or were not chosen as critical assets, and to require the consideration of misuse of control systems.

d. Interdependency

116. The CIP Assessment noted that CIP–002–1 does not address the issue of interdependency with other infrastructures and explained that there may be occasions where an electric sector asset, while not critical to Bulk-Power System reliability, may be crucial to the operation of another critical infrastructure.[70] The CIP Assessment asked (1) whether this issue is appropriate for inclusion in CIP–002–1 and (2) whether this topic is an area for future coordination and collaboration with other industries and government agencies.

117. Commenters generally agree that this issue is worthy of consideration and coordination and cooperation could be

[66] *E.g.,* AMP-Ohio, EPSA, and Cleveland Public Power.

[67] NERC Comments, Attachment 1 at 17 (in response to a CIP Assessment suggestion regarding the need for regional perspective in CIP–003–1).

[68] The Electric Sector Information Sharing and Analysis Center was created based on a recommendation of Presidential Decision Directive 63, which defined specific infrastructures critical to the national economy and public well-being. ESISAC serves the Electricity Sector by facilitating communications between electricity sector participants, governmental entities, and other critical infrastructures. It is the job of the ESISAC to promptly disseminate threat indications, analyses, and warnings, together with interpretations, to assist electricity sector participants to take protective actions. NERC is functioning as the operator of the ESISAC.

[69] The NERC Glossary defines ''Critical Cyber Assets'' as ''Cyber Assets essential to the reliable operation of critical assets.'' It defines ''Cyber Assets'' as ''programmable electronic devices and communication networks including hardware, software, and data.'' Therefore, marketing data or other system data that are essential to the proper operation of the critical asset may confer critical cyber asset status to those data and the computer systems that process them.

[70] CIP Assessment at 17.

advantageous. However, most commenters consider the topic outside the scope of CIP–002–1.[71] By contrast, one commenter posits that there is a clear need to articulate that this type of interdependency analysis should be part of the responsible entity's determination of critical assets.[72]

Commission Proposal

118. Reliability Standard CIP–002–1 pertains to the identification of assets critical to Bulk-Power System reliability. While broader interdependency issues cannot be ignored, the Commission intends to revisit this matter through future proceedings and with other agencies. This work will help to inform the electric sector and this Commission about the need for future Reliability Standards, especially when the interdependent infrastructures affect generating capabilities, such as through fuel transportation.

e. Commission Proposal Summary

119. In summary,[73] the Commission proposes to approve Reliability Standard CIP–002–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, to develop modifications to CIP–002–1 through its Reliability Standards development process that: (1) Provide some basic guidance on the content or considerations to be applied in a risk-based assessment methodology; (2) include a requirement that a senior manager annually review and approve the risk-based assessment methodology; (3) include a mechanism for the external review and approval of critical asset lists based on a regional perspective; and (4) modify Requirement R1.2 to (a) clarify the requirement to show why specific assets were or were not chosen as critical assets and (b) require the consideration of misuse of control systems.

2. CIP–003–1—Security Management Controls

120. Reliability Standard CIP–003–1 seeks to ensure that each responsible entity has minimum security management controls in place to protect critical cyber assets identified pursuant to CIP–002–1. To achieve this goal, a responsible entity first must develop a cyber security policy that represents management's commitment and ability to secure its critical cyber assets. The responsible entity must designate a senior manager to lead and direct the responsible entity's cyber security program. This senior manager will also be the person authorized to approve any exception set out in the entity's cyber security policy.

121. Further, a responsible entity must implement an information protection program to identify, classify and protect sensitive information concerning critical cyber assets, as well as an access control program to designate who may have access to such information. Finally, the responsible entity must establish a change control and configuration management program to oversee changes made to the critical cyber assets' hardware or software.

122. The Commission proposes to approve Reliability Standard CIP–003–1 as mandatory and enforceable. In addition, we propose to direct the ERO to develop modifications to this Reliability Standard. In our discussion below, the Commission addresses its concerns in the following topic areas regarding CIP–003–1: (1) Adequacy of policy guidance; (2) discretion to grant exceptions; (3) leadership; (4) access authorization; (5) change control and configuration management; and (6) interconnected networks.

a. Adequacy of Policy Guidance

123. Requirement R1 of Reliability Standard CIP–003–1 directs the responsible entity to ''document and implement a cyber security policy that represents management's commitment and ability to secure its critical cyber assets.'' The only guidance that is given with regard to the nature and scope of the cyber security policy is that it ''addresses the Requirements in CIP–002–1 through CIP–009–1, including the provisions for emergency situations.'' The Requirement also requires that a senior manager annually review and approve the policy.

124. The CIP Assessment stated that senior management involvement should improve the prioritization of control system security within the entity, including allocation of resources.[74] It explained that, since many of the Requirements in the CIP Reliability Standards leave considerable discretion to each responsible entity, the scope and thoroughness of the cyber security policies could vary widely. Thus, the CIP Assessment expressed concern that, because Requirement R1 does not address the policy's adequacy, this Requirement could actually mask certain security vulnerabilities.

125. APPA/LPPC are not convinced that the variation allowed in cyber security policies means that plans lack a sufficient level of protection. They believe that the Reliability Standard allows an appropriate level of variation as to how specific requirements will be met. Likewise, Georgia System does not share the CIP Assessment's concern that Requirement R1 could allow responsible entities to mask vulnerabilities, positing that it is in a utility's self-interest to take actions that improve reliability. Thus, it does not see a need for any additional guarantee that the involvement of senior management will result in improvements to the responsible entity's cyber security policy.

Commission Proposal

126. The Commission acknowledges that details of particular security policies will vary due to the different cyber architectures and equipment used by the responsible entities. However, in addition to consideration of every Requirement in Reliability Standards CIP–002–1 through CIP–009–1, the Commission expects that responsible entities' security policies will address issues that are not currently reflected in the CIP Reliability Standards, but are important to the security of the control system. For instance, currently data networks and communication networks are not covered by any CIP Reliability Standard. Yet these networks play an important role in the proper functioning of the control systems. The Commission would expect a security policy for control systems to address the responsible entity's actions to protect communication networks. Other possible topics for guidance here are the appropriate use of defense in depth strategy; the use of wireless communications for control systems; uninterruptible power supplies; and heating, ventilation, and air-conditioning equipment for critical cyber assets. We note that Recommendation 34 of the Blackout Report states that ''grid-related organizations should have a planned and documented security strategy, governance model, and architecture for EMS [energy management systems] automation systems.''[75]

127. The Commission proposes to direct the ERO to modify CIP–003–1 to provide additional guidance for the topics and processes that the required cyber security policy should address to ensure that the responsible entity

[71] *E.g.,* APPA/LPPC, Duke, EEI, Georgia System, National Grid, NERC, ReliabilityFirst, SPP, Xcel, SoCal Edison, Progress Energy, and MidAmerican.

[72] ISA Group.

[73] This summary should be read in conjunction with the discussion above.

[74] CIP Assessment at 19.

[75] *See* Blackout Report at 165, Recommendation 34.

reasonably protects its critical cyber assets.

b. Discretion to Grant Exceptions

128. Requirement R3 of CIP–003–1 provides that a responsible entity must document as an exception, with senior manager authorization, each instance where a responsible entity cannot conform to its security policy developed pursuant to Requirement R1. Documentation of the exception must include ''an explanation as to why the exception is necessary and any compensating measures, or a statement accepting risk.'' An exception to the cyber security policy must be documented within 30 days of senior management approval. An authorized exception must be reviewed and approved annually to ensure that the exception is still required and valid.

129. The CIP Assessment expressed concern that this provision allows for broad discretion and may serve as a disincentive for upgrading to control systems that fully comply with cyber security Reliability Standards.[76] With regard to a responsible entity's option to ''accept the risk,'' it pointed out that, for interconnected control systems of various entities, acceptance of risk by one entity is actually an acceptance of risk for all those that are interconnected. Yet, other entities may not be aware of the vulnerability, particularly absent any oversight or regional perspective of the risks or vulnerabilities that may exist.

130. Most commenters believe that it is appropriate to provide latitude for management to document exceptions to the responsible entity's established policies, select alternative and mitigating solutions, and ultimately accept residual risk. APPA/LPPC expect that the exercise of discretion will be one of the areas that will draw the most attention from auditors.

131. Others, such as California PUC agree with the CIP Assessment's concern that the broad discretion allowed for exceptions could act as a disincentive for upgrading control systems. California PUC also agrees that acceptance of the risk in a cyber environment is actually an acceptance of risk for all connected entities because the entity that initially accepts the risk becomes the ''weak link'' in the chain. Santa Clara suggests that a responsible entity that makes exceptions and ''accepts risks'' is responsible for communicating such exceptions to its Regional Entity, which can then evaluate the overall ''risk,'' if any, to the bulk electric system. The Regional Entity, in turn, can then communicate appropriately to any interconnected entities so that they might take any necessary action.

Commission Proposal

132. The Commission is concerned that CIP–003–1 allows a responsible entity too much latitude in excusing itself from compliance with its cyber security policy. While there may be valid reasons for exceptions to a cyber security policy, and it is helpful that exceptions must be explained in writing and approved by a designated senior manager, the Commission does not believe that the ''exceptions'' provision provides sufficient rigor or external accountability regarding the decision of a responsible entity to except itself from the cyber security policy. Accordingly, the Commission proposes to direct that NERC develop a modification to Requirement R3 of CIP–003–1 to require a responsible entity to periodically submit to the Regional Entity the documentation of exceptions to the cyber security policy. The Commission believes that the external review of this documentation will provide added assurance that each responsible entity adequately justifies the exceptions to its cyber security policy.

133. In addition, the Commission believes that there is a distinction between situations where a responsible entity excepts itself from its cyber security policy, rather than from specific Requirements of the CIP Reliability Standards based on technical feasibility. An exception to a cyber security policy provision does not also excuse compliance with a Requirement of a CIP Reliability Standard. Generally, a responsible entity has no authority to excuse itself from compliance with a mandatory Reliability Standard. As discussed above in section II.B.1.6, the CIP Reliability Standards do include several Requirements that allow an exception based on technical feasibility. However, the Commission has proposed to direct NERC to modify such provisions so that a responsible entity can only invoke the technical feasibility exception after fulfilling specific conditions including receiving approval from the ERO or the relevant Regional Entity. In contrast, an exception to a cyber security policy would require only senior manager approval and after-the-fact reporting to the Regional Entity. Accordingly, the Commission proposes to direct NERC to clarify that the exceptions mentioned in Reliability Standard CIP–003–1, Requirements R2.3 and R3, do not except responsible entities from the requirements of the CIP Reliability Standards.

c. Leadership

134. The CIP Assessment notes that senior management involvement in security issues is important to ensure that responsible entities achieve compliance as quickly as possible and to ensure that it exercises any necessary discretion in an appropriate manner.[77]

135. While National Grid concurs with the CIP Assessment, it also suggests that given the wide variety of critical assets, critical cyber assets and physical security requirements, no single senior manager has the expertise or authority to ensure compliance with all of the CIP Reliability Standards.

Commission Proposal

136. The Commission's view is that Requirement R2 of CIP–003–1 should be interpreted to require the designation of a single manager who has direct and comprehensive responsibility for the implementation and ongoing compliance with the CIP Reliability Standards. While this senior manager must have authority to delegate tasks and responsibilities within the entity's management structure, we believe that the senior manager must remain accountable for the responsible entity's compliance with the CIP Reliability Standards. In our view, it is essential to make clear both the ''authority and ownership'' for security, as Recommendation 43 of the Blackout Report states.[78] Therefore, the Commission proposes to direct the ERO to modify CIP–003–1, to make clear the senior manager's ultimate responsibility.

d. Access Authorization

137. Requirement R5 of CIP–003–1 directs the responsible entity to implement a program for managing access to protected critical cyber asset information. The CIP Assessment suggested that an annual review of personnel access to this information appears insufficient and could result in unnecessary vulnerability, especially since there is no requirement that a responsible entity revise access privileges to such protected information upon employee termination or job reassignment.

138. Many commenters agree with the CIP Assessment's concern that an employee who leaves the company or who no longer performs job functions that require access to critical cyber assets should have that access revoked

[76] CIP Assessment at 20.

[77] CIP Assessment at 20.

[78] *See* Blackout Report at 169, Recommendation 43.

promptly.[79] NERC, Xcel, FirstEnergy and ReliabilityFirst note that this Requirement seeks establishment of ''a program for managing access to protected critical cyber asset information.'' They stress that CIP–003–1, Requirement R5 relates to the governance and approval process, not the implementation and review of individual access (the oversight responsibility of which lies with the senior manager of the responsible entity). NERC asserts that the three requirements work together. The implementation provisions are in Requirement R5 of CIP–007–1, the revocation requirements are in Requirement R4 of CIP–004–1, and the management review and approval requirements are in Requirement R5 of CIP–003–1. NERC argues that, together, these provisions serve as a check that the CIP–004–1 revocation provision has been implemented.

Commission Proposal

139. The Commission believes that the language of CIP–007–1, Requirement R5, CIP–004–1, Requirement R4, and CIP–003–1, Requirement R5 does not interlink these related provisions as clearly as some commenters assert. We are not persuaded by commenters who claim these Requirements adequately address the access issues related to employee turnover. We believe that the interrelationship among these provisions must be made clearer. We note that CIP–007–1, Requirement R5.1.3, which specifically refers to CIP–003–1, Requirement R5, addresses ''user accounts.'' Likewise, CIP–004–1, Requirement R4 addresses authorization for unescorted physical or cyber access to ''critical cyber assets.'' However, the information for which Requirement R4 of CIP–003–1 requires protection appears to be broader than ''user accounts'' and ''critical cyber assets.'' According to CIP–003–1, Requirement R4, protected information includes lists of critical cyber assets, floor plans, and security configuration information. While the concept of access authorization is similar across these provisions, there is no explicit mention in them of revoking access to ''information'' about critical cyber assets. While the priority must be on granting and revoking access to the critical cyber assets themselves, access to information concerning the critical cyber assets should also be adequately protected, and revocations always should be made promptly. We also note that Recommendation 44 of the Blackout Report stresses the need to prevent inappropriate disclosure of information.[80] Thus, the Commission proposes to direct the ERO to modify Reliability Standards CIP–003–1, CIP–004–1, and/or CIP–007–1, to ensure and make clear that access to protected information is revoked promptly.

e. Change Control and Configuration Management

140. Requirement R6 requires the responsible entity to establish a process of change control and configuration management for adding, modifying, replacing, or removing critical cyber asset hardware or software.

141. The CIP Assessment noted that entities often rely on commercial vendors to test and certify that electronic security patches they provide will not adversely affect other electronic systems already in place. It is not clear how a responsible entity could otherwise verify that a problem does not exist without burdensome testing each time a patch is implemented. Such a testing requirement may also inhibit or delay the use of security patches and thereby prolong vulnerabilities that would otherwise be relatively easy to fix.

142. Santa Clara submits that electric utilities, like all ''cyber users,'' must rely on information technology vendors for accurate and reliable ''emergency or normal modifications.'' It suggests that it is not only unrealistic, but unnecessary, to expect that all responsible entities under the CIP Reliability Standards should, or could, possess the technical expertise to understand an IT vendor's code in enough detail to ensure that any modifications made by the IT vendor are accurate and reliable.

143. SPP believes that the purpose of the change management program is to ensure the entity is aware of all changes being made to a critical cyber asset and, in being aware, readily recognizes when an unapproved change is made. An unapproved change could be an indication of a cyber attack in progress. SPP comments that Requirement R6 may fall short because it does not specify the need for detection and monitoring controls to determine when changes occur. SPP also asserts that a proper change management program includes provisions for routine, planned changes and emergency, unplanned changes.

Commission Proposal

144. While Requirement R6 of Reliability Standard CIP–003–1 captures the essence of managing changes intentionally made to critical cyber assets, it fails to address accidental consequences or malicious actions by individuals. Thus, the Commission believes that this Requirement needs to go further and we propose to direct the ERO to make two changes. First, we propose additional wording to require verification that authorized changes made to critical cyber assets, which include software and data, only affect processes that are intended. Our concern here includes both accidental consequences and malicious actions by individuals performing the changes. Second, we propose a requirement for responsible entities to take actions to detect unauthorized changes to critical cyber assets. Such changes could result from malicious actions originating either outside or inside the responsible entity. No electronic security perimeter is 100 percent effective, especially when a malicious action is performed by an insider, and detection must be part of a good cyber security program. Therefore, the Commission proposes, as suggested by SPP, to direct the ERO to modify Requirement R6 of Reliability Standard CIP–003–1 to include in the process of change control and configuration management a requirement for detection and monitoring controls to determine if changes are made as intended and to investigate whether any unintended or unplanned changes have been made.

f. Interconnected Networks

145. The CIP Assessment also raised a concern that interconnected control system networks are more susceptible to infiltration by a cyber intruder. Georgia Operators responds that every responsible entity must protect its critical cyber assets by guarding its electronic access points against the spread of harm from external interconnected entities. This task can only be accomplished by assuming that such external entities are themselves unprotected.

146. NERC and ReliabilityFirst claim that the purpose of establishing policy and procedure is for a responsible entity to protect itself from the ''outside world'' wherever that ''outside world'' might exist. It does not matter if the ''outside'' is an internally connected corporate network, or a completely separate entity. These commenters explain that the CIP Reliability Standards address a responsible entity's area of responsibility—the equipment it owns and controls. All interconnected control system network communications will traverse through electronic access points; therefore, there exists a need for ''security'' on the

[79] *E.g.,* APPA/LPPC and California PUC.

[80] *See* Blackout Report at 169, Recommendation 44.

interconnection points. Both commenters state that the electronic security perimeter effectively implements a model of mutual distrust between any collection of critical cyber assets within an electronic security perimeter, and any and all other cyber assets.

Commission Proposal

147. The Commission agrees with commenters who caution that a responsible entity should protect itself from whatever is outside its control system. The phrase ''mutual distrust'' has been used to denote how these ''outside world'' systems are treated by those inside the control system. However, there is very little guidance for how a responsible entity would configure an architecture under a ''mutual distrust'' posture to handle both interactive login-type connectivity between the outside world and the control system as well as direct application communications (data shared between programs) that also occur between the control system and the outside world (both internal and external to the responsible entity). In addition, the Commission notes that, in our earlier discussion regarding the applicability of the CIP Reliability Standards to small entities, we relied in part upon the expectation that the responsible entities would adopt ''mutual distrust'' postures when receiving communications from others that impact the functioning of control systems. Therefore, the Commission proposes to direct the ERO to modify Reliability Standard CIP–003–1 to provide direction regarding the issues and concerns that a ''mutual distrust'' posture must address to protect the control system from the ''outside world.'' [81]

g. Commission Proposal Summary

148. In summary, the Commission proposes to approve Reliability Standard CIP–003–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, to develop modifications to CIP–003–1 through its Reliability Standards development process that (1) provide additional guidance for the topics and processes that should be addressed by the required cyber security policy in order to ensure that the responsible entity reasonably protects its critical cyber assets; (2) require a responsible entity to submit periodically to the Regional Entity the documentation of exceptions to the cyber security policy; (3) clarify that the exceptions mentioned in Requirements R2.3 and R3 of CIP–003–1 do not except responsible entities from the requirements of the CIP Reliability Standards; (4) make clear that the senior manager ultimately remains responsible for the responsible entity's compliance with the CIP Reliability Standards; (5) ensure and make clear that access to protected critical cyber asset information is revoked promptly (and make parallel modifications to CIP–004–1 and CIP–007–1 as needed); (6) include in the process of change control and configuration management a requirement for detection and monitoring controls to determine if changes were made as intended and to investigate whether any unintended or unplanned changes have occurred; and (7) provide direction regarding the issues and concerns that a ''mutual distrust'' posture must address in order to protect a responsible entity's control system from the ''outside world.''

3. CIP–004–1—Personnel and Training

149. Reliability Standard CIP–004–1 requires that personnel having authorized cyber access or unescorted physical access to critical cyber assets must have an appropriate level of personnel risk assessment, training and security awareness. Responsible entities must develop and implement a security awareness program that addresses concerns related to cyber security; a cyber security training program for affected personnel that addresses policies, access controls, procedures for the proper use of critical cyber assets, physical and electronic access to critical cyber assets, proper handling of asset information, and recovery methods after a Cyber Security Incident; and a personnel risk assessment program for all personnel having access to critical cyber assets.

150. The Commission proposes to approve Reliability Standard CIP–004–1 as mandatory and enforceable. In addition, we propose to direct the ERO to develop modifications to this Reliability Standard. In our discussion below, the Commission addresses its concerns in the following topic areas regarding CIP–004–1: (1) Training; (2) personnel risk assessments; (3) access; and (4) jointly owned facilities.

a. Training

151. The CIP Assessment noted that the training requirements specified in Requirement R2 apply to all personnel, contractors, and service vendors who have authorized cyber access or unescorted physical access to critical cyber assets.[82] It then expressed concern that this requirement does not clearly address the interconnectivity of systems; *i.e.*, the required training programs should address not only the critical cyber assets themselves, but also any networking hardware or software linking them. It noted that the importance of network support to overall security environment may not be understood by personnel if the training does not encompass the related non-critical cyber assets, such as switches and routers that can impact the security of the critical cyber assets. Moreover, it pointed out that while this requirement specifies the minimum topics that training should cover, it does not provide criteria for assessing the quality and adequacy of the training. With regard to both the awareness program of Requirement R1 and the training program of Requirement R2, the CIP Assessment noted that certain NIST publications provide guidance on training of personnel and practices that enhance the security posture of information systems.[83]

152. NERC states that a subset of networking hardware and software is included in Requirement R2 to the extent active communications hardware and software reside within the defined electronic security perimeter, and because hardware and software acts as an electronic access control, defining the electronic security perimeter. NERC draws attention to the fact that communication networks and data communication links between discrete electronic security perimeters are specifically excluded by Applicability section 4.2.2 of this Reliability Standard.

153. APPA/LPPC believe that most, if not all, networking hardware and software will be essential to the operation and control of critical cyber assets and therefore will be subject to the Reliability Standard and encompassed by the security training requirement. FirstEnergy notes the Measures and Compliance provisions currently require only documentation of

[81] An architecture with a mutual distrust posture could involve various hardware or software mechanisms or manual procedures to restrict and verify access to the control system from these outside sources. Examples include: Firewalls; data checking software(s); or procedures for manually implementing a connection to allow a vendor to perform maintenance work.

[82] CIP Assessment at 23.

[83] *See* NIST Special Publication 800–16, Information Technology Security Training Requirements: A Role- and Performance-Based Model (1998); and NIST Special Publication 800–50, Building an Information Technology Security Awareness Training Program (2003), *available* at: *http://csrc.nist.gov/publications/nistpubs/.*

the requirements and states that NERC should focus on developing Reliability Standards to maintain the quality of personnel training in this area. FirstEnergy states that training requirements should be appropriate to each employee's experience and access level.

154. The CIP Assessment also questioned whether it is appropriate to allow personnel to have access to critical cyber assets for up to 90 days prior to receiving any cyber security training, as Requirement R2.1 allows. It suggested that personnel should receive the training prior to such access.

155. NERC and ReliabilityFirst state that the sub-requirements of Requirement R2 list specific expected outcomes from the training. NERC and ReliabilityFirst state that the 90-day period is based on the belief that certain conditions may require that personnel receive access prior to specific additional training in cyber security processes and procedures in order to maintain or restore the reliable operation of the Bulk-Power System. They explain that standard industry practice ensures anyone with access to sensitive systems has had adequate training, but that such training may not have been specific to the systems or environment to which they receive access, such as when, in an emergency restoration, personnel with specialized knowledge may be required to access systems outside their normal assignments.[84]

156. APPA/LPPC agree with the CIP Assessment that, whenever possible, personnel should receive their cyber security training and undergo the required personnel risk assessment before being allowed access to critical cyber assets. However, APPA/LPPC favor retention of the 90-day period for conducting training so that responsible entities will not risk a technical violation of the Reliability Standard when emergency conditions require that personnel obtain access before they are trained or authorized with access.

157. ISA Group agrees with the CIP Assessment that training in critical security practices should occur prior to an individual having the corresponding access and suggests making a distinction between the training that is needed before access is granted and the remaining training that is not critical for access but still significant. The ISA Group also states that training and awareness programs should be specific to the critical cyber assets to be protected and that persons who provide the training should be adequately trained to address the cyber security of the systems. SPP and ISO–NE agree with the CIP Assessment that allowing unescorted access to critical cyber assets prior to security training introduces an unnecessary risk. SPP suggests that, under normal circumstances, training prior to access should be the requirement with provisions made for emergency conditions.

Commission Proposal

158. Training is clearly integral to the protection of critical cyber assets. Allowing personnel to access critical cyber assets prior to receiving training increases the vulnerability of and risk to such assets. Thus, such access should not be the norm under the Reliability Standard. Accordingly, we propose to direct the ERO to modify this provision to require affected personnel to receive the required training before obtaining access to critical cyber assets (rather than within 90 days of access authorization), but allowing limited exceptions, such as during emergencies, subject to documentation and mitigation.

159. Alternate provisions for emergencies and certain other conditions could be designed, such as requiring documentation of all personnel who received access to particular equipment during the emergency and whether they received a briefing or any other training prior to their access concerning the specific facilities; the extent to which people needed for the emergency had received general training and possessed appropriate specialized expertise for the circumstance; and any risk mitigation steps taken during the emergency access, as discussed by commenters in this proceeding. To facilitate communications in emergency situations, the Commission proposes to direct the ERO to require responsible entities to identify ''core training'' elements to ensure that essential training elements will not go unheeded in an emergency and other contingency situations where full training prior to access will not best serve the reliability of the Bulk-Power System. We note that during ''emergency conditions,'' the Bulk-Power System could be particularly vulnerable to mischief or mistakes, and we propose to require the ERO to consider this when developing the modification. We also propose to direct the ERO to consider what, if any, modifications to CIP–004–1 should be made to address the concern raised by the ISA Group that security trainers be adequately trained themselves.

160. In addition, we propose to direct the ERO to modify the CIP–004–1 to clarify that the cyber security training programs required by Requirement R2 are intended to encompass training on the networking hardware and software and other issues of electronic interconnectivity supporting the operation and control of the critical cyber assets. As indicated by the comments, it is not clear whether interconnectivity issues are already included in the proposed language of the training requirement of CIP–004–1. One method of clarification the ERO should consider is the addition of a provision such as that contained in CIP–005–1, Requirement R1.4, which specifically subjects any non-critical cyber asset within a defined electronic security perimeter to the Reliability Standard. CIP–004–1 should leave no doubt that cyber security training concerning a critical cyber asset should encompass the electronic environment in which the asset is situated and the attendant vulnerabilities.

161. Finally, we propose to direct the ERO to increase the guidance in the Reliability Standard as to the scope and quality of training. We note that part of the goal for training, in conjunction with awareness programs, is to keep security practices on the minds of employees, contractors, and vendors. Examples of some areas where the inclusion of guidance can be considered are: control of electronic devices (such as laptop computers), the appropriate audiences for the training, delivery methods, and updates of training materials. In our view, the awareness and training programs, addressed separately by Requirements R1 and R2, complement each other and work in tandem. In parallel with the security awareness program, we expect the ERO to consider relevant aspects of the cited NIST Special Publications, as well as other relevant models, to improve CIP–004–1 and prevent a lowest common denominator result.

b. Personnel Risk Assessment

162. Requirement R3 of CIP–004–1 requires each responsible entity to have a documented personnel risk assessment program. It also requires that a personnel risk assessment, including a criminal check, be conducted within 30 days after a person receives cyber access or unescorted physical access to critical cyber assets. The CIP Assessment noted that Requirement R3 would allow access to critical cyber assets while investigation is still underway, and even before an investigation has started.

[84] APPA/LPPC, SPP and Xcel agree that this flexibility is needed in emergency situations, and comment that training beforehand would not always be practical.

163. NERC and ReliabilityFirst assert that certain conditions affecting the reliable operation of the Bulk-Power System may require that personnel be allowed to access the critical cyber assets prior to completing the personnel risk assessment process, although they may be subject to escort and review during the investigative period.

164. Several commenters agree with the CIP Assessment that an appropriate personnel risk assessment should be completed before an employee (especially a newly hired employee or vendor) is granted access to critical cyber assets. SPP states that emergency contingency procedures can be developed to handle situations where access must be granted prior to completing the required background check.

165. However, NERC and other commenters have concerns about existing personnel. NERC and ReliabilityFirst assert that certain conditions affecting the reliable operation of the Bulk-Power System may require that personnel be allowed to access the critical cyber assets prior to the completion of the personnel risk assessment process, although they may be subject to escort and review during the investigative period. National Grid expresses concern that, since the Requirement appears to apply to a significant portion of existing utility workforce, any attempt to revoke access to such employees while completing their personnel risk assessments would create more reliability concerns than simply allowing such employees to remain on the job. FirstEnergy states that the 30-day window may be appropriate for employees and vendors with which the responsible entity has had a working relationship. FirstEnergy comments that Requirement R3 does not provide sufficient detail on what constitutes an adequate personnel risk assessment, which could cause variable interpretations of this Requirement. ISO–NE agrees with the CIP Assessment that the Reliability Standard provides insufficient direction regarding the elements of an appropriate awareness program.

Commission Proposal

166. Similar to our concerns regarding the training provisions of Requirement R2, we believe that allowing applicable personnel, including vendors, to access critical cyber assets prior to the completion of their personnel risk assessment increases the vulnerability of, and risk to, these assets. We also observe that Recommendation 41 of the Blackout Report emphasizes the need for guidance on implementing background checks.[85] At the same time, we believe that commenters have raised a valid concern regarding the disruptions that would result if current employees and vendors with established involvement were denied access to critical cyber assets for a 30-day period. Accordingly, we propose that the ERO develop modifications to Requirement R2 to provide that newly-hired personnel and vendors should not have access to critical cyber assets, except in specified circumstances such as an emergency. The ERO should determine the parameters of such exceptional circumstances in developing the proposed modification through its Reliability Standards development process. However, to avoid disruptions, we propose that the 30-day window allowing access before the personnel risk assessment is completed remain in effect for current employees and vendors with existing contractual relationships with the responsible entity as of the effective date of the Reliability Standard. We propose to direct that the ERO include, in developing modifications to CIP–004–1, criteria that address circumstances in which current personnel can continue access to critical cyber assets during the 30-day investigative period during initial compliance with CIP–004–1.

c. Access

167. Requirement R4 directs the responsible entity to maintain list(s) of personnel with authorized cyber or authorized unescorted physical access to critical cyber assets. The CIP Assessment observed that the lists do not serve to deny personnel access from critical cyber assets prior to completion of a personnel risk assessment. However, Requirement R4.2 requires that access to critical cyber assets be revoked within 24 hours for personnel terminated for cause and within seven calendar days for personnel who no longer require such access.

168. NERC states that while the access list itself does not prevent access, it does provide for identification of personnel for which additional levels of review and escort may be assigned. California PUC suggests amending the Reliability Standard to require immediate updates when an employee is transferred, retires, or is terminated.

Commission Proposal

169. Timely system updates to access rights are important. Employee, contractor, or vendor access to critical cyber assets when the employee, contractor, or vendor no longer has a need for such access, due for example to a transfer or termination, represents a gap in security. Moreover, while Requirement R4 of CIP–004–1 requires a responsible entity to maintain a list of authorized personnel, it does not indicate what the responsible entity must do with the list. Accordingly, the Commission proposes to direct that NERC develop modifications to CIP–004–1 to require immediate revocation of access privileges when an employee, contractor, or vendor no longer performs a function that requires authorized physical or electronic access to a critical cyber asset for any reason (including disciplinary action, transfer, retirement or termination). Because an organization is typically aware in advance of personnel action dates, timely updating of the authorization list should not be unduly burdensome. Further, we propose to direct that NERC modify Requirement R4 to make clear that unescorted physical access should be denied to individuals that are not identified on the authorization list.

d. Question of Jointly Owned Facilities

170. APPA/LPPC request that the Commission direct NERC to consider clarifications for entities with facilities governed by existing joint use or joint ownership agreements. They explain that most of there members have joint facilities with neighboring entities (*e.g.*, a transmission substation at a point of interconnection with an adjacent system), and that joint facility agreements often prohibit individual co-owners from blocking the other co-owners' use of, or access to, such facilities. APPA/LPPC state that CIP–004–1 obligates individual responsible entities to block certain persons from their facilities, possibly including persons with existing contractual rights of access. APPA/LPPC believe that one joint facility owner should not be able to block another unaffiliated entity's existing contractual rights of access. APPA/LPPC also ask that entities with joint facilities not be subject to sanctions solely because an unaffiliated entity that is a party to one of its joint facility agreements failed to comply with CIP–004–1 when acting independently.

Commission Proposal

171. The Commission views joint owners of critical cyber assets as being

[85] *See* Blackout Report at 167–168, Recommendation 41, where the Blackout Report recommends that NERC provide guidance on background checks to be completed on contractor and sub-contractor employees in advance of allowing access to secure facilities.

equally subject to the CIP Reliability Standards as other responsible entities. If an asset is designated as a critical cyber asset by one joint owner, it must be treated likewise by the other owner(s). Thus, each entity that possesses an interest in a jointly-owned facility would be responsible to develop a list of its authorized personnel and to respect each other joint owner's corresponding list.

172. APPA/LPPC also raise the issue of ''joint use'' arrangements. For example, an owner of a critical cyber asset substation may well house electronic or other equipment on its premises that belongs to another entity that may or may not be subject to these Reliability Standards. The Commission believes that, in principle, the owner of a critical cyber asset is responsible under the Reliability Standards for ensuring that all persons having access to the critical cyber asset meet the requirements of these Reliability Standards, much as the owner is responsible to ensure that vendor personnel have the required levels of security training, awareness and background checks.

173. Nevertheless, we can appreciate that even with this general guidance, further clarification regarding how ''joint use'' arrangements should be addressed. Therefore, we propose to direct the ERO to address the ''joint use'' concerns expressed by APPA/LPPC while developing any modifications to these Reliability Standards directed in a final rule. Regardless of whether a facility subject to CIP–004–1 is jointly owned or not, all entities that have access to it must comply with CIP–004–1. Each entity, however, is responsible for only its compliance and may not attempt to block or limit another's access on the basis of its perception that the other entity has not complied with CIP–004–1. In the event non-compliance is suspected, it must be promptly reported to the Regional Entity or ERO.

e. Commission Proposal Summary

174. In summary, the Commission proposes to approve Reliability Standard CIP–004–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, to develop modifications to CIP–004–1 through its Reliability Standards development process that: (1) Require affected personnel, with limited exceptions, to receive required training before obtaining access to critical cyber assets (rather than within 90 days of access authorization); (2) require responsible entities to identify ''core training'' elements to ensure that essential training elements will not go unheeded in an emergency and other contingency situations where full training prior to access will not best serve the reliability of the Bulk-Power System; (3) clarify that the cyber security training programs required by Requirement R2 are intended to encompass training on networking hardware and software and other issues of electronic interconnectivity supporting the operation and control of critical cyber assets; (4) provide increased guidance on the scope and quality of training; (5) make modifications to Requirement R2 to provide that newly-hired personnel and vendors should not have access to critical cyber assets, except in specified circumstances such as an emergency; (6) address circumstances in which current personnel can continue access to critical cyber assets during the 30-day investigative period during initial compliance with CIP–004–1; and (7) require immediate revocation of both physical and electronic access privileges when an employee, for any reason (including disciplinary action, transfer, termination, or retirement), no longer performs a function that requires access to critical cyber assets.

175. In addition, the Commission proposes to direct the ERO to (1) consider what, if any, modifications to CIP–004–1 should be made to address the concern raised by the ISA Group that security trainers be adequately trained; (2) consider relevant aspects of certain NIST Special Publications, as well as other relevant models, to improve CIP–004–1; and (3) address the ''joint use'' concerns expressed by APPA/LPPC and discussed herein by the Commission when developing modifications to the Reliability Standards that the Commission may direct when we issue our final rule.

4. CIP–005–1—Electronic Security Perimeter(s)

176. Reliability Standard CIP–005–1 requires identification and protection of the electronic security perimeters inside which all critical cyber assets are located, as well as all access points. The electronic security perimeters are to encompass all the critical cyber assets that are identified using the risk-based assessment methodology required by Reliability Standard CIP–002–1. Multiple electronic security perimeters may be required; for example, one may be needed around a control room while another may be established around a substation. Once each electronic security perimeter has been established, the responsible entity must develop mechanisms to control and monitor electronic access to all electronic access points. Furthermore, the responsible entity must assess the electronic security perimeter's cyber vulnerability and test every electronic access point at least annually.

177. The Commission proposes to approve Reliability Standard CIP–005–1 as mandatory and enforceable. In addition, we propose to direct the ERO to develop modifications to this Reliability Standard. Further, the Commission also proposes to require the ERO to consider various other matters of clarification, guidance, and modification. In our discussion below, the Commission addresses its concerns in the following topic areas regarding CIP–005–1: (1) Adequacy of electronic security perimeters; (2) protecting access points and controls; (3) monitoring access logs; (4) vulnerability assessments; and (5) document updates.

a. Adequacy of Electronic Security Perimeters

178. Requirement R1 of CIP–005–1 addresses the identification of electronic security perimeters to ensure that every critical cyber asset resides within one. The CIP Assessment explained that the electronic security perimeter constitutes the appropriate first line of defense. However, a responsible entity should use a cyber security protection program that contains additional security measures to detect and stop intrusions that penetrate the outer shell of the defense (*i.e.*, a defense in depth approach).

179. APPA/LPPC and Xcel agree with the CIP Assessment's concept of defense in depth and when possible, securing the non-critical cyber assets outside the electronic security perimeter. However, APPA/LPPC state that the use of ''defense in depth'' may not be practical for all critical cyber assets, such as assets supplied by vendors that are no longer in business.

180. Xcel notes that a line needs to be drawn in order to avoid responsible entities taking expensive precautions that are not cost-effective. It further adds that CIP–005–1 should not be extended to equipment and systems beyond the electronic security perimeter.

Commission Proposal

181. The Commission recognizes that there is a point at which having multiple defense layers would not be cost effective. However, the effectiveness of any one defense measure is often dependent upon the quality of active human maintenance, and there is no one perfect defense measure that will guarantee the

protection of the Bulk-Power System. Therefore, we believe that a responsible entity must implement two or more distinct security measures when constructing an electronic security perimeter. Thus, the Commission proposes to direct the ERO to develop a requirement to implement a defensive security approach including two or more defensive measures in a defense in depth posture. This approach should not inhibit, but instead supplement the establishment of an electronic security perimeter. While such layers/measures are generally integrated within and constitute part of a system or program, many are also effectively, and more feasibly, placed ''in front of'' a system, such as an older, legacy system.

b. Protecting Access Points and Controls

182. Requirement R2 of CIP–005–1 requires a responsible entity to implement organizational processes and technical and procedural mechanisms for control of electronic access at all electronic access points to the electronic security perimeter. Requirement R2.4 requires ''strong procedural and technical controls'' at enabled external access points ''to ensure authenticity of the accessing party, where technically feasible.''

183. The CIP Assessment raised concerns regarding the qualifier ''where technically feasible'' in Requirement R2.4. The CIP Assessment also cautioned that keeping pace with advances in cyber security is a necessary part of the defense strategy needed to protect against intrusion by an adversary. The CIP Assessment noted that implementation and maintenance of strong controls to ensure authenticity of the accessing party is not a question of technical feasibility. It represents that the technology currently exists and that every responsible entity identifying critical cyber assets should be able to implement such controls. Balancing an appropriate mix of protections and technology is part of achieving effective cyber security. The CIP Assessment also expressed the view that Requirement R2.4 should not allow a responsible entity to fail to implement rudimentary procedural and technical access controls.

184. California PUC states that electronic access from outside the electronic security perimeter should require strong verification, such as digital certificates or two-factor authentication. It suggests that such a system is virtually impenetrable and that it, or some similar system, should be required in the CIP Reliability Standards.

185. California PUC comments that access controls should be implemented at all access points to the network and that the caveat of ''technical feasibility'' in the NERC-proposed Reliability Standard is inappropriate. California PUC further states that Requirement R2.0 prescribes, *inter alia,* that only those ports and services required for normal or emergency operations should be enabled, while all others should be disabled. Furthermore, it notes that access control, including the authorization process and authentication method for each access point, should be documented. Access should be monitored twenty-four hours a day, seven days a week, and disturbances and unauthorized access attempts should be identified. All responsible entities should conduct vulnerability assessments of their access points, scanning to verify that only the proper ports and services are enabled. California PUC agrees with the CIP Assessment assertion that ''such (strong access control) technology currently exists'' and implementation by every entity is feasible.

186. NERC disagrees with the CIP Assessment comment that a ''technical feasibility'' caveat is not needed in Requirement R2.4, particularly for legacy implementations and substation environments. NERC agrees that the CIP Assessment statement may be applicable in a modern control center environment, where common IT systems have migrated into the control environment. However, NERC states that this is not the case for many existing field systems. The technical feasibility clause, NERC claims, is needed to accommodate the vast majority of legacy systems that cannot be upgraded due to the age and nature of their system configurations.[86]

187. Given the numerous scenarios surrounding access control, APPA/LPPC believe that removing the ''technically feasibility'' caveat will not provide a solution in every situation. They assert that Requirement R2.4 is appropriate as currently written. APPA/LPPC note that some access control solutions, such as biometric ones, are still subject to failure and may grant access to unauthorized people.

Commission Proposal

188. Requirement R2.4 of CIP–005–1 calls for the implementation of ''strong procedural or technical controls'' at access points to ensure authenticity of the accessing party. While we agree with the goal of Requirement R2.4, we are concerned that requiring ''strong'' controls does not provide sufficient guidance and possibly sets subjective criteria. Thus, we believe that Requirement R2.4 should provide greater clarity regarding the expectation for adequate compliance by identifying examples of specific verification technologies that would satisfy the Requirement, while also allowing compliance pursuant to other technically equivalent measures or technologies. The Commission agrees with California PUC that strong verification includes technologies such as digital certificates and two-factor authentication. We also note that Recommendation 32 of the Blackout Report emphasizes the need ''to ensure access is granted only to users who have corresponding job responsibilities.''[87] We propose to direct the ERO to modify this Reliability Standard accordingly.

189. The Commission believes that providing such basic security measures as access control can be accomplished using/placing measures ''in front of'' systems as opposed to ''inside'' systems. Such an approach can be used to secure even older, yet functioning, legacy systems. The Commission proposes to direct the ERO to evaluate the issue and provide specific guidance to responsible entities that must face such issues.

190. The Commission is persuaded by commenters that maintain that, due to the variety of equipment and systems, some discretion must be preserved that would allow responsible entities to control access points. Further, in our general discussion of ''technical feasibility'' in section II.A.5.b above, we explained that, while we have concerns regarding the broad discretion currently allowed in the use of the technical feasibility language, we would not propose to eliminate the provision but, rather, propose to require specific controls and accountability when a responsible entity chooses to invoke the provision. Specifically, a responsible entity invoking a technical feasibility exception would have to: (1) Develop and implement interim mitigation steps to address the vulnerabilities associated with each exception; (2) develop and implement a remediation plan to eliminate the exception, including interim milestones and a reasonable completion date; and (3) obtain written approval of these steps by the senior manager responsible for leading and managing compliance with the CIP Reliability Standards. As discussed previously, the Commission proposes that a responsible entity invoking a

[86] Progress Energy, ReliabilityFirst, and Santa Clara agree with NERC.

[87] *See* Blackout Report at 164–165, Recommendation 32.

technical feasibility exception must have a review by senior management of the expediency and effectiveness of the manner in which a responsible entity has addressed each of these three proposed conditions. In addition, the Commission proposes to require a responsible entity to report and justify to the ERO and the Regional Entity for approval each exception and its expected duration.

191. Consistent with our earlier discussion, we will not propose the removal of the ''technical feasibility'' language from Requirement R2.4 of CIP–005–1. However, such discretion will not lie solely with the responsible entities. We propose to direct that Regional Entities review the application of ''technical feasibility'' as the basis for allowing a responsible entity an exception to full compliance with a Requirement.

c. Monitoring Access Logs

192. Requirement R3. of CIP–005–1 requires responsible entities to implement electronic or manual processes for monitoring and logging access at access points to the electronic security perimeter at all times. Further, where technically feasible, the security monitoring process must detect and alert for attempts at or actual unauthorized access. Where such alerts are not technically feasible, Requirement R3.2 requires a responsible entity to review access logs at least every 90 calendar days.

193. The CIP Assessment noted that frequent reviews of access logs are necessary to look for security breaches that automated alerts do not detect. It cautioned that the ''technical feasibility'' caveat in Requirement R3.2 can allow a 90-day lapse in review of access logs when it is commonplace in the IT industry for logs to be reviewed every one or two days. The CIP Assessment also advised that the use of discretion to address ''technical feasibility'' permitted in Requirement R3.2 should not be a basis for failing to implement a process that detects attempts to access or actual unauthorized access. Such monitoring technology is available [88] and no responsible entity should be excepted due to technical infeasibility.

194. NERC agrees with the CIP Assessment that logs should be reviewed frequently. However, NERC believes that a strict requirement for the review period cannot be specified because of the varied methods and technologies used to gather and review the logs. NERC asserts that automated alert technology can detect many attempts and breaches, and leave a much smaller set of ''questionable'' events which can readily be analyzed manually.[89]

Commission Proposal

195. The Commission is persuaded by the commenters that varied technologies and locations make setting a ''one size fits all'' frequency of access log review requirement difficult. However, the Commission believes that, while automated review systems provide a reasonable day-to-day check of the system and a convenient screening for obvious system breaches, periodic manual review provides the opportunity to recognize an unanticipated form of malicious activity and improve automated detection settings. Thus, regular manual review is beneficial.

196. The Commission believes that frequent reviews of access logs are necessary to detect breaches that automated alerts do not detect. Moreover, where automated alerts are not used, frequent monitoring takes on even greater importance. The Commission recognizes that accessibility of an access log may affect the review interval. For instance, logs that are readily available, such as those from within a control room setting, should be reviewed at least weekly. Those logs that are not readily available, such as those located at a remote substation, are less accessible and therefore can be read less frequently. However, any attempt to differentiate the required frequency of review of these logs must be balanced against the criticality of the facilities. It is not acceptable to dismiss a critical facility from timely review simply because it is remote.

197. For the reasons discussed above, the Commission believes that more frequent review of access logs is important and therefore proposes to direct the ERO to develop a bifurcated review requirement of access logs at electronic access points in which readily available logs are reviewed more frequently than every 90 days. The Commission believes such review should be performed at least weekly. As part of developing this bifurcated review requirement, the ERO must include in the Reliability Standard guidance on how a responsible entity should designate individual assets as ''readily accessible'' or ''not readily accessible,'' consistent with our discussion above.

d. Vulnerability Assessments

198. The CIP Assessment stated that Requirement R4 fails to specify whether a live vulnerability assessment is required, as opposed to a paper assessment.[90] It recommends performing a ''live'' cyber vulnerability assessment at least annually and developing an action plan to remediate any weaknesses identified. It also notes that permitting a one year window, without any specificity regarding updates, could be inadequate.

199. NERC, Progress Energy and ReliabilityFirst state that Requirement R4 intentionally allows for either vulnerability assessment approach, live or paper-based, to allow a responsible entity to determine the approach best suited to its own level of sophistication and tolerance for risk. NERC acknowledges that some responsible entities already perform live testing but notes that such testing is limited to specific systems and circumstances of the responsible entity.

200. Georgia System argues that the existing Requirement R4 is well-designed. It suggests, however, that annual testing of each electronic access point should not be imposed, because such wide-spread ''live'' testing could have adverse impacts on system reliability. APPA/LPPC disagree with the CIP Assessment and insist that an annual testing requirement is sufficient, as long as the responsible entity does not make changes to any border devices. APPA/LPPC argue that, if changes occur to the perimeter, then the entity should, as a good business practice, reassess the vulnerability of that portion of the perimeter.

Commission Proposal

201. The Commission believes that annual vulnerability assessments are sufficient, provided that no modifications are made to the electronic security perimeter during the year. However, when the electronic security perimeter, or another measure in a defense in depth strategy, is modified, it is not acceptable to wait a year to test modifications. Thus, the Commission proposes to direct the ERO to revise the Reliability Standard to require a vulnerability assessment of the electronic access points as part of, or contemporaneously with, any

[88] Technology that is currently available for monitoring access (*e.g.*, network servers, firewalls, Intrusion Detection Systems, Intrusion Prevention Systems) has alarm capability built into it.

[89] FirstEnergy, ReliabilityFirst, ISO/RTO Council, Georgia System, Xcel, and Santa Clara agree with NERC.

[90] A live vulnerability assessment typically involves the use of specialized software or hardware to scan electronic access points to determine which communications each access point allows to pass through.

modifications to the electronic security perimeter or defense in depth strategy.

202. In addition, the Commission proposes that Requirement R4 should provide for the conduct of live vulnerability assessments at least once every three years, with subsequent annual paper assessments in the intervening years. If such live vulnerability assessments are not ''technically feasible,'' consistent with the Commission's earlier determination, a responsible entity may seek to be excused from full compliance via an application to the Regional Entity fully documenting the necessary interim actions, milestone schedule, and mitigation plan.

e. Commission Proposal Summary

203. In summary, the Commission proposes to approve Reliability Standard CIP–005–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, to develop modifications to CIP–005–1 through its Reliability Standards development process that (1) require implementation of a defensive security approach, including two or more defensive measures in a defense in depth posture; (2) add guidance to Requirement R2 by identifying examples of specific verification technologies that would satisfy compliance with the ''strong controls'' in Requirement R2.4, such as digital certificates and two-factor authentication, while also allowing compliance by means of technically equivalent measures; (3) evaluates and provides guidance regarding the use of access security measures ''in front of'' as opposed to ''inside of'' older systems; (4) require additional controls and accountability when a responsible entity invokes the ''technical feasibility'' exception in Requirement R2.4 consistent with the proposal discussion in section II.A.5.b of the NOPR; (5) provide a bifurcated review requirement of access logs at electronic access points in which readily available logs are reviewed more frequently than 90 days including guidance on which assets should be designated ''readily accessible;'' (6) require a vulnerability assessment of electronic access points as part of, or contemporaneously with, any modifications to an electronic security perimeter or defense in depth strategy; and (7) provide for the conduct of live vulnerability assessments at least once every three years, with subsequent annual paper assessments in the intervening years.

5. CIP–006–1—Physical Security of Critical Cyber Assets

204. Reliability Standard CIP–006–1 addresses the physical security of the critical cyber assets identified in Reliability Standard CIP–002–1. In particular, CIP–006–1 requires a responsible entity to create and maintain a physical security plan that ensures that all cyber assets within an electronic security perimeter also reside within an identified physical security perimeter.[91] The physical security plan must be approved by senior management and must contain processes for identifying, controlling, and monitoring all access points and authorization requests.

205. Reliability Standard CIP–006–1 also addresses operational and procedural controls to manage physical access at all access points to the physical security perimeter at all times by the use of alarm systems and/or human observation or video monitoring. The Reliability Standard also requires that the logging of physical access must occur at all times, and the information logged must be sufficient to uniquely identify individuals crossing the perimeter. Finally, the Reliability Standard requires responsible entities to test and maintain all physical security mechanisms on a three-year cycle.

206. The Commission proposes to approve Reliability Standard CIP–006–1 as mandatory and enforceable. In addition, we propose to direct the ERO to develop modifications to this Reliability Standard. Further, the Commission also proposes to require the ERO to consider various other matters of clarification, guidance, and modification. In our discussion below, we address our concerns in the following topic areas regarding CIP–006–1: (1) Physical security plan; (2) physical access controls and monitoring physical access controls; (3) physical security breach; and (4) maintenance and testing.

a. Physical Security Plan

207. Requirement R1.1 of CIP–006–1 addresses processes that a responsible entity must include in its physical security plan to ensure that all cyber assets within an electronic security perimeter also reside within an identified physical security perimeter. The CIP Assessment noted that Requirement R1.1 anticipates that there may be instances where a completely enclosed border cannot be established and that, in such instances, the responsible entity shall deploy and document ''alternative measures'' to control physical access to the critical cyber assets. It cautioned, however, that Requirement R1.1 does not provide guidance on how an alternative measure should be identified or determined to be adequate.

208. SPP recognizes the CIP Assessment concern with Requirement R1.1, but disagrees that the language of the Requirement needs revision. SPP maintains that while the Reliability Standard prescribes what must be done, it does not and should not prescribe how a particular Requirement is to be implemented. SPP states that NERC's FAQ document offers suggestions on how to physically secure critical cyber assets when they cannot be enclosed within a restricted access six-wall boundary. Progress Energy agrees with the CIP Assessment that NERC should provide guidance on how an alternative measure would be identified or determined adequate. However, Progress Energy contends that this guidance should not be in the Reliability Standard itself, but rather in an interpretive document like a FAQ document.

Commission Proposal

209. The Commission's current view is that the phrase ''alternative measures'' as referenced in Requirement R1.1 should be interpreted to be a Requirement exception.[92] Under this Requirement, the responsible entity is required to deploy and document alternative measures if a completely enclosed ''six-wall'' border cannot be established to control physical access to the critical cyber assets. However, the Requirements do not provide guidance on how an alternative measure should be identified or determined to be adequate. Therefore, the Commission proposes to direct the ERO to treat the allowance of ''alternative measures'' as ''interim actions'' developed and implemented as part of a mitigation plan under a ''technical feasibility'' exception.

[91] As defined in the NERC Glossary, an ''Electronic Security Perimeter'' means, ''[t]he logical border surrounding a network to which Critical Cyber Assets are connected and for which access is controlled. * * * and a Physical Security Perimeter is ''the physical, completely enclosed (''six-wall'') border surrounding computer rooms, telecommunications rooms, operations centers, and other locations in which Critical Cyber Assets means are housed and for which access is controlled * * *.''

[92] The Commission's discussion elsewhere in this NOPR, relating to discretion to make exceptions to a Requirement based on technical feasibility applies here.

b. Physical Access Controls and Monitoring Physical Access Controls

210. The CIP Assessment noted that Requirement R2 of the Reliability Standard requires the use of at least one of four listed physical access control methods, but does not require or suggest that the method(s) employed to control physical access consider the characteristics of the access point at issue and the criticality of the asset being protected.[93] Requirement R3 requires monitoring at each access point to the physical security perimeter, including alarm systems and/or human monitoring. For both Requirement R2 and Requirement R3, a responsible entity can choose whether to implement single or multiple access control methods and monitoring devices. The CIP Assessment suggested that, consistent with a defense in depth strategy, a layered approach would increase the complexity of an intrusion by requiring that multiple security provisions be circumvented. The CIP Assessment further suggested that such an approach would provide redundancy in case one system requires maintenance or unexpectedly fails to function as expected.

211. Xcel, FirstEnergy and others agree that redundancy and the number of layers should be a function of a reasonable risk assessment and good utility practice, which provide an objective basis for measuring compliance. They also state that unnecessary redundancy would take funds and resources away from the assets that need the elaborate redundancy.

212. Xcel agrees with the CIP Assessment that defense in depth is an optimal strategy, but states that it is not always practical. For example, Xcel notes that where a substation has cyber security equipment inside a control building surrounded by a fence, it may not be worth the cost or administrative burden to install fence detection equipment at a remote substation.

213. FirstEnergy agrees with the CIP Assessment that Requirement R2 should include a process for identifying the criticality of critical cyber assets and a process for applying an appropriate number of layers based on criticality. NERC and ReliabilityFirst point out that, throughout the Reliability Standards, assets are classified as either critical or non-critical, with no subjectivity involved in determining their ''level'' of criticality. They suggest that all assets classified as critical must be afforded the same level of protection, regardless of their location or perceived level of criticality. Consequently, they believe the specific implementation of protection must be functionally equivalent and sufficient at all locations.

Commission Proposal

214. We do not believe that the proposal to require a minimum of two different security procedures creates an unreasonable burden. We believe that a responsible entity must, at a minimum, implement two or more different security procedures when establishing a physical security perimeter. Use of a minimum of two different security procedures will, for example, enable continuous security protection when one of the security protection measures is undergoing maintenance and provides redundant security protection in the event that one of the measures is breached. Therefore, while the Commission recognizes that there is a point at which implementing multiple layers of defense becomes an unreasonable burden to responsible entities, the Commission proposes to direct the ERO to modify this Reliability Standard to state that a responsible entity must, at a minimum, implement two or more different security procedures when establishing a physical security perimeter around critical cyber assets.

c. Physical Security Breach

215. The CIP Assessment noted that Reliability Standard CIP–006–1 does not include actions to be taken in response to a physical security breach. Thus, the CIP Assessment suggested that the physical security plan specify responsibilities and required communication in such an event.

216. California PUC states that CIP–006–1 is sound, except that it does not require a plan in the contingency of a physical security breach. California PUC suggests that a guideline for such a plan should be incorporated into this Reliability Standard.

Commission Proposal

217. Below, the Commission proposes, in CIP–008–1, to direct the ERO to develop and include (in CIP–008–1) language regarding what should be included in the term ''reportable incident.'' The Commission proposes to direct the ERO, when it develops its language in Reliability Standard CIP–008–1 on the term ''reportable incident,'' to include a breach that may occur through cyber or physical means. Thus, the Commission expects that the issue of a physical security breach will be fully addressed through that proposed modification and no revision of CIP–006–1 is needed to address this issue.

d. Maintenance and Testing

218. Requirement R6, which requires a maintenance and testing program, to ensure that all physical security systems under Requirements R2, R3, and R4 function properly, is critical for the overall success of CIP–006–1. The CIP Assessment explained that, if the system's outer physical security perimeter fails to secure critical assets, the electronic access controls may be rendered ineffective. The CIP Assessment questioned whether consideration should be given to testing the more important physical security mechanisms and systems more frequently, with testing and maintenance records maintained for the full three-year testing cycle.

219. NERC and ReliabilityFirst reiterate that the Reliability Standards do not make a distinction between levels of criticality. These commenters assert that testing of more important systems cannot be performed, because all critical assets have the same level of criticality. Xcel states that a more frequent testing of the physical security perimeter is not needed because most of the equipment will be used on a weekly basis. Xcel maintains that since the equipment will be in regular use, a Requirement for additional testing of the equipment appears redundant.

220. SPP agrees with the CIP Assessment, stating that a three-year inspection cycle of physical access control is too infrequent if a critical asset has high potential impact on reliability and where such testing is not inconvenient. SPP argues that, while it may be appropriate to test the physical access controls at a remote substation once every three years, the physical access controls at a generating plant and a control center can and should be tested far more frequently. FirstEnergy also agrees with the CIP Assessment, stating that more frequent testing should be required for critical facilities, but that the Requirement should specify the form of testing that will be considered adequate.

Commission Proposal

221. Currently, Requirement R6 of CIP–006–1 requires that responsible entities implement maintenance and testing programs of physical security systems on a cycle no longer than three years and retain testing and maintenance records for the same cycle. In addition, Requirement R6 requires retention of outage records of certain physical security systems for a

[93] CIP Assessment at 29.

minimum of one year. The Commission agrees with SPP that maintenance and testing of physical security systems should occur more frequently than once every three years. However, the Commission also agrees with SPP that such testing at remote substations should be allowed less frequently. Therefore, the Commission proposes to direct the ERO to modify this Reliability Standard to require that: (1) A readily accessible critical cyber asset be tested every year with a one-year record requirement for the retention of testing, maintenance, and outage records; and (2) a non-readily accessible critical cyber asset be tested in a three-year cycle with a three-year record retention requirement. The Commission believes that this approach provides an appropriate assurance that security measures for geographically dispersed physical assets are functioning properly.

e. Commission Proposal Summary

222. In summary, the Commission proposes to approve Reliability Standard CIP–006–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations, to develop modifications to CIP–006–1 through its Reliability Standards development process that require that: (1) The ERO treats the allowance of ''alternative measures'' referenced in Requirement R1.1 as ''interim actions'' developed and implemented as part of a mitigation plan under a ''technical feasibility'' exception; (2) a responsible entity must, at a minimum, implement two or more different security procedures when establishing a physical security perimeter around critical cyber assets; (3) the ERO, when it develops its language in Reliability Standard CIP–008–1 on the term ''reportable incident,'' include a breach that may occur through cyber or physical means; (4) a readily accessible critical cyber asset be tested every year with a one-year requirement for the retention of testing, maintenance, and outage records; and (5) a non-readily accessible critical cyber asset be tested in a three-year cycle with a three-year record retention requirement.

6. CIP–007–1—Systems Security Management

223. The Purpose statement in Reliability Standard CIP–007–1 states that it requires responsible entities to define methods, processes and procedures for securing those systems determined to be critical cyber assets, as well as the non-critical cyber assets within the electronic security perimeter(s).

224. The CIP Assessment explained that this Reliability Standard deals primarily with changes made to the operating control system [94] and verification that such changes will not inadvertently have adverse effects.[95] The CIP Assessment noted that the operating control system is vulnerable during the testing process for an indeterminate period of time prior to the installation of a patch, and an attacker could exploit the vulnerability. It explained that contracts with vendors present another security challenge. Service contracts typically provide that the vendor will test patches before allowing an entity to install them on its operating control system. The contracts also typically prohibit installation before the vendor verifies the patch, at risk of voiding the warranty. It explained that the time involved in the testing and installation of a patch may provide an attacker a window of opportunity to exploit the vulnerability that the patch is designed to prevent.

225. Another challenge the CIP Assessment identified is ensuring that the test environment accurately approximates and mirrors the operating control system. It noted that an inaccurate test environment can allow potential failures of the new product to go undetected. It noted that some entities may not have the resources to maintain a backup system, let alone a duplicate of their operating control system.

226. The Commission proposes to approve Reliability Standard CIP–007–1 as mandatory and enforceable. In addition, we propose to direct the ERO to develop modifications to this Reliability Standard. In our discussion below, the Commission addresses its concerns in the following topic areas regarding CIP–007–1: (1) Test procedures; (2) ports and services; (3) security patch management; (4) malicious software prevention; (5) security status Monitoring; (6) disposal or redeployment; (7) cyber vulnerability assessment; and (8) documentation review and maintenance.

a. Test Procedures

227. Requirement R1 of CIP–007–1 requires a responsible entity to ensure that new cyber assets and significant changes to existing cyber assets within the electronic security perimeter do not adversely affect existing cyber security controls. Responsible entities must create, implement, and maintain cyber security test procedures in a manner that minimizes adverse effects on the production system or its operation. They must document that testing is performed in a manner that reflects the production environment and must document test results.

228. The CIP Assessment suggested that Requirement R1.2 should require the responsible entity to document how each significant difference between the operation and testing environments is considered and addressed.[96]

229. NERC and ReliabilityFirst comment that any test environment that has a ''significant difference'' from the production environment is not a true ''reflection'' of the production requirement, as required by the Reliability Standard. National Grid states that the need for and amount of testing will depend on the nature of the change that needs to be implemented. Flexibility to assess each situation is necessary to determine the type of testing required. National Grid states that it may not be possible to establish an isolated testing environment for all security upgrades because cyber assets in production operate continuously. A responsible entity therefore may need to take substantial steps to configure a test environment, such as taking an entire substation out of service.

Commission Proposal

230. If a testing environment does not accurately reflect the operational environment, testing of systems may not be adequate to judge impacts on reliability. While, ideally, testing should be conducted on a precise duplicate of the production system, the Commission acknowledges that this is not always possible. When it is not, any differences between the test environment and the production system should be documented. In addition, the Commission believes that responsible entities should address to the satisfaction of senior management these differences and how they propose to mitigate the impact of any differences between the testing environment and the production system. Therefore, the Commission proposes to direct the ERO to modify Requirement R1 and its subparts to require documentation of each significant difference between the testing and the production environments, and how each such difference is mitigated or otherwise addressed.

[94] The term ''operating control system'' is used in this NOPR to represent the control system used to control critical assets in real time, as opposed to backup, training, or duplicate control systems.

[95] CIP Assessment at 31.

[96] CIP Assessment at 32.

b. Ports and Services

231. Requirement R2 of CIP–007–1 requires a responsible entity to establish a process to ensure that only those ports and services required for normal and emergency operations are enabled and all others are disabled.

232. The CIP Assessment stressed that the requirement to ''disable other ports and services'' is a basic building block of a cyber security program, and that it is a generally recognized security practice to assume a ''deny all'' stance (*i.e.*, disabling all ports and services first) before opening the various ports that are needed only for operations. The CIP Assessment expressed concern that Requirement R2.3 allows a responsible entity to ''accept risk'' rather than take mitigating action where unused ports and services cannot be disabled due to ''technical limitations.'' This Requirement specifies that the responsible entity must either document (1) compensating measures to mitigate exposure or (2) an ''acceptance of risk.'' The CIP Assessment noted that in situations where technical limitations prevent unused ports and services from being disabled and risk can at best be mitigated, acceptance of risk appears to mean acceptance of vulnerabilities without further action. The CIP Assessment suggested that clear guidance is needed to explain limited circumstances for its use, and warned that accepting risk could potentially become an exception from compliance that permits unacceptable risks.

233. NERC and ReliabilityFirst comment that many situations exist where ports and services must be left open due to operating system requirements, the requirements of equipment manufacturers or vendors or the lack of information from vendors that is necessary to determine if a port or service can be disabled. APPA/LPPC agree with the CIP Assessment that closing unused ports is generally a good business practice, but they disagree that it should be mandated. They state that in some cases there may be sound technical reasons why an unused port cannot be closed. They further comment that this Requirement is acceptable as written because it allows the responsible entity to use reasonable business judgment.

Commission Proposal

234. In section II.A.5.b above, the Commission discusses the problems presented by acceptance of risk. For the reasons discussed there, the Commission proposes to direct the ERO to eliminate the acceptance of risk language from Requirement R2.3. At the same time, the Commission proposes to leave intact the exception for ''technical limitations.'' However, the Commission believes that the ''technical limitations'' language of Requirement R2.3 raises the same concerns here as the ''technical feasibility'' language referenced in section II.A.5.b. While an exception for ''technical limitations'' may be appropriate, it must include the same conditions as discussed in the context of ''technical feasibility.'' Accordingly, we propose that the same conditions and reporting requirements should apply here. Thus, the Commission proposes to direct the ERO to revise Requirement R2 and its subparts to reflect our determinations discussed above to remove the ''acceptance of risk'' language and to impose the same conditions and reporting requirements here for ''technical limitations'' as imposed elsewhere in this NOPR regarding ''technical feasibility.''

c. Security Patch Management

235. Requirement R3 of CIP–007–1 requires a responsible entity to establish and document a security patch management program for tracking, evaluating, testing and installing applicable cyber security software patches for all cyber assets within an electronic security perimeter. Among other things, a responsible entity must document the implementation of security patches. Where a patch is not installed, the responsible entity must document compensating measure(s) applied to mitigate risk exposure or an acceptance of risk.

236. The CIP Assessment acknowledged that compensating measures are necessary at times, especially when patches require vendor support, but also expressed concern that Requirement R3.2 permits a wide variation of processes for patching a system when it allows an ''acceptance of risk'' in lieu of mitigating risk exposure through a patching program. The CIP Assessment asserted that an effective Reliability Standard cannot simply offer a responsible entity a choice between installing a patch or accepting the risk of not doing so, and that at least some form of mitigation should always be possible.

237. NERC and ReliabilityFirst believe that ''acceptance of risk'' is not a permanent solution but would be used during a period where testing and other required upgrades may be accomplished. In addition, they and other commenters are concerned about implementing language in the Reliability Standard that would seem to require installation of patches on platforms where patches cannot be implemented due to architecture, operating environment or warranty issues. Allegheny states that if patches were not applied, it is highly unlikely there would not be some form of mitigation available such as physical protection and/or firewalls. It also states that compensating measures should be in place before there is an acceptance of risk. SoCal Edison states that acceptance of the risk of non-compliance should be clearly documented so that an auditor can see the rationale for this decision.

238. PG&E comments that older devices have a limited modification capability, and as a result the responsible entity must balance the risk of replacing devices that currently operate with new, untested, and potentially inadequate devices.

Commission Proposal

239. The Commission has discussed acceptance of risk above and, because those remarks and proposals apply equally here, we propose that the ''acceptance of risk'' language must be removed here also.[97] With the exception of references to acceptance of risk, the Commission considers the provisions of Requirement R3 to be acceptable and appropriate. Patch management must be weighed in light of the risks involved, with senior management involved in the decision. As discussed under Recommendation 33 of the Blackout Report,[98] using the most up-to-date patches that deal specifically with security vulnerabilities is of the utmost importance, provided it does not degrade the system and the patch does not create more vulnerability than the problem it is intended to fix.

d. Malicious Software Prevention

240. Requirement R4 of CIP–007–1 requires responsible entities to use anti-virus and other malicious software prevention tools. The CIP Assessment noted that Reliability Standard CIP–007–1 does not provide any direction on how to implement this type of protection or where it should be deployed, and that care must be taken to implement and test malicious code protection in order to avoid harm to the operating control system. The CIP Assessment pointed out that the Reliability Standard could suggest the use of a multi-layer, defense in depth strategy, to forestall or detect an attacker's penetration of the electronic security.[99]

[97] *See supra* discussion in section II.A.5.b.

[98] *See* Blackout Report at 164, Recommendation 33.

[99] CIP Assessment at 33.

241. Requirement R4 requires the responsible entity to use anti-virus software and malicious software prevention tools where ''technically feasible.'' The CIP Assessment questioned this phrase as allowing unnecessary discretion to opt out of Requirement R4. It noted that Requirement R4.1 raises the same concerns regarding the phrase ''acceptance of risk'' as in Requirement R3.2, this time in connection with cases where anti-virus software and malicious software prevention tools are not installed. The CIP Assessment noted a lack of direction in the Reliability Standard and sought comment on what types of compensating measures are available and what would be an adequate justification for accepting risk.

242. In response to the CIP Assessment observation that Requirement R4 does not provide any direction on how to implement anti-virus protection or where it should be deployed, NERC and ReliabilityFirst comment that the Reliability Standards are performance based; that they do not specify how to perform a function, only that the Requirement must be met. This comment is similar to the suggestion addressed in Order No. 672,[100] that, ''in general, a Reliability Standard should address the 'what' and not the 'how' of reliability and that the actual implementation of a Reliability Standard should be left to entities such as control area operators and system planners * * *.'' [101] NERC and ReliabilityFirst conclude that, while the responsible entity must implement a solution that meets the Requirement, it should not be restricted with regard to how to do so. Thus, they argue the Reliability Standard should remain silent as to whether the anti-virus solution is implemented at the electronic security perimeter border, on an in-line device, or on the critical cyber asset itself, so long as the implemented solution meets the stated requirement.

243. In response to the CIP Assessment comment that the Reliability Standard does not suggest the use of a multi-layered, defense in depth strategy through the use of various products from multiple vendors, NERC and ReliabilityFirst state that a multi-layered defense may be appropriate in a best practice document, but not in a mandatory Reliability Standard.

Commission Proposal

244. The Commission has discussed the issues of defense in depth, technical feasibility, and risk acceptance elsewhere above in this NOPR. The remarks and proposals there apply equally to the issue of malicious software prevention. Therefore, the ''acceptance of risk'' language must be removed here, and the same conditions and reporting requirements regarding ''technical feasibility'' that apply elsewhere are applicable here. In addition, the Commission proposes to direct the ERO to modify Requirement R4 to include safeguards against personnel introducing, either maliciously or unintentionally, viruses or malicious software in to a cyber asset within the electronic security perimeter through remote access, electronic media, or other means.

e. Security Status Monitoring

245. Requirement R6 of CIP–007–1 requires responsible entities to ensure that all cyber assets within the electronic security perimeter, as technically feasible, implement automated tools or organizational process controls to monitor system events that are related to cyber security. Among other things, a responsible entity must maintain logs of system events related to cyber security, where technically feasible, to support incident response as required in Reliability Standard CIP–008–1. Logs must be retained for 90 calendar days, and the responsible entity must review logs of system events related to cyber security and maintain records documenting review of logs.

246. The CIP Assessment questioned the need to limit Requirement R6.3, which requires logs of system events related to cyber security to support incident reporting, as specified in CIP–008–1, to situations where this is ''technically feasible.'' The CIP Assessment also raised concerns about the record retention requirements for Requirements R6.3 and R6.4, which pertain to logs of cyber security-related system events used to identify reportable incidents and to support incident response, as required in CIP–008–1. It noted that, depending upon the frequency of log review, the 90-day period specified may be inadequate and that frequent review of logs would facilitate the early detection of reportable incidents. It also would ensure that current data are available for forensics. The CIP Assessment sought comment on whether the Reliability Standard should address the frequency and scope of the review of system event logs related to cyber security that is required by Requirement R6.5. It also noted the lack of guidance on how data should be saved, backed up and stored where computerized cyber incident monitoring and logging is performed.

247. Several commenters state that all devices of interest do not have the capability to create logs or that they may not provide the capability to capture ''security related'' information. They state that many installed devices in power plants and substations do not have log generation capability. If there is no capacity to generate logs, then it is technically infeasible to maintain logs.

248. NERC and ReliabilityFirst comment that generated logs from remote locations may not be readily collected for frequent review. In many cases, the telecommunications infrastructure connecting these remote locations cannot support the rapid and frequent collection of log data, especially if it is voluminous. The remote location of some sites makes frequent visits to collect and store log data impractical.

249. SPP recommends that logs be transferred in real time to a separate logging system to mitigate the risk of a successful attack destroying evidence of the intrusion. Where possible, the log should be readable separately from the device that created it or the device should be able to continue logging while in playback mode. Wisconsin Electric submits that cyber security logs should be reviewed with the frequency necessary to identify a cyber security incident within the timeframe established in the entity's cyber security incident response plan. The cyber security logs should be stored in a manner that assures that information is protected as required in CIP–003–1 and that it is available through the 90-day retention period.

Commission Proposal

250. We have discussed the issue of technical feasibility. Our remarks and proposals there apply equally to the technical feasibility of monitoring and logging of system events related to cyber security.

251. The Commission agrees with the CIP Assessment and Wisconsin Electric that logs should be reviewed with the frequency necessary to ensure timely identification of a cyber security incident. Simply reviewing logs at the end of the retention period will not ensure an appropriate level of security because it does not permit effective response to all incidents. We note that

[100] FERC Stats. & Regs. ¶ 31,204 at P 260.

[101] In Order No. 672, the Commission immediately followed this general statement with the caution that, ''in other situations, however, the 'how' may be inextricably linked to the Reliability Standard and may need to be specified by the ERO to ensure the enforcement of the Reliability Standard.'' Order No. 672 at P 265.

this issue of log review touches on Blackout Report Recommendation 35, which addresses network monitoring, and Recommendation 37 which addresses diagnostic capabilities.[102] The Commission therefore proposes to direct the ERO to revise Requirement R6 to include a requirement that logs be reviewed on a weekly basis for readily accessible critical assets and reviewed within the retention period for assets that are not readily accessible. This direction should be completed consistent with our discussion above regarding ''readily accessible'' assets.[103] Accessibility should take into account both physical remoteness and available communications channels. We would expect control centers to fall within the ''readily accessible'' category.

252. The Commission also proposes to direct the ERO to revise Requirement R6.4 to clarify that while the retention period for all logs specified in Requirement R6 is 90 days, the retention period for logs mentioned in Requirement R6.3 for the support of incident response as required in CIP–008–1 is the retention period required by CIP–008–1, *i.e.*, three years. Requirement R6.4 is somewhat unclear and could be read to suggest that the 90 day period also applies to logs kept for purposes of CIP–008–1, and such an interpretation would conflict with the Requirements of that Reliability Standard.

f. Disposal or Redeployment

253. Requirement R7 of CIP–007–1 requires the responsible entity to establish formal methods, processes and procedures for disposal or redeployment of cyber assets. The CIP Assessment noted that erasing alone may not be adequate because technology exists that allows retrieval of ''erased'' data from storage devices, and that effective protection requires discarded or redeployed assets to undergo high quality degaussing.[104]

254. Allegheny and SPP agree with the CIP Assessment that erasing alone may be inadequate because technology currently exists that allows retrieval of ''erased'' data from storage devices. SPP also states that if the magnetic media is being disposed of, physical destruction of the media is also an appropriate technique to render it unreadable.

255. NERC and ReliabilityFirst state that any method that fails to ''prevent unauthorized retrieval of sensitive cyber security or reliability data'' does not satisfy the Requirement. Likewise, APPA/LPPC believe that it is clear from the Requirement that ''erase'' means that there is no opportunity for unauthorized retrieval of data from a cyber asset prior to discarding it or redeploying it. They caution against being overly prescriptive regarding the exact process that responsible entities must use to meet this Requirement.

Commission Proposal

256. The Commission agrees with commenters that degaussing is not the sole means for achieving the goal of the requirement. As noted by commenters, the issue is less one of erasure, which is as much a method as it is a goal, than of assuring that there is no opportunity for unauthorized retrieval of data from a cyber asset prior to discarding it or redeploying it. The Commission therefore proposes to direct the ERO to modify this Requirement to clarify this point.

g. Cyber Vulnerability Assessment

257. Requirement R8 of CIP–007–1 requires a responsible entity to perform a cyber vulnerability assessment of all cyber assets within the electronic security perimeter at least annually. The CIP Assessment noted that this Requirement provides little direction on what features, functionality, and vulnerabilities responsible entities should focus on in a vulnerability assessment. The CIP Assessment pointed out that a poorly chosen vulnerability assessment process could result in a false sense of security. The CIP Assessment also noted that while Requirement R8.4 requires development of an action plan to remediate or mitigate vulnerabilities identified in the assessment, it does not provide a timeframe for completion of the action plan.[105]

258. Several commenters state that a responsible entity must determine the approach it will implement based on its own level of sophistication and its internal tolerance for risk. These commenters state that every environment and implementation is different, and any additional specificity would be impossible to describe for all possible situations, and, consequently, would not be productive. NERC and ReliabilityFirst state that requiring a specific timeframe for completion of an action regardless of its complexity serves no useful purpose because the timeframe will depend on the actions required. They maintain that the requirement to document the ''execution status'' of the action plan serves to keep the action plan on track.

259. ISA Group states that experience shows that most companies do not know what devices have actually been installed in the field. It maintains that a requirement for a detailed walk-down of all critical cyber assets should be mandatory for an acceptable vulnerability assessment. Progress and Xcel comment that the scope of the vulnerability test should be clearly defined.

Commission Proposal

260. The Commission believes that vulnerability testing is a valuable tool in determining whether actions that were taken to shore up the security posture of the electronic security perimeter and other areas of responsibility are in fact adequate. The Blackout Report recognized the importance of vulnerability assessments in Recommendation 38 that called for vulnerability assessment activities to identify weaknesses and mitigating actions.[106] The Commission believes, as noted by NERC and ReliabilityFirst, that execution status is a good means to keep the action plan on track. Therefore, the Commission proposes to require that the ERO provide more direction on what features, functionality, and vulnerabilities the responsible entities should address when conducting the vulnerability assessments, and to revise Requirement R8.4 to require an entity-imposed timeline for completion of the already-required action plan.

h. Documentation Review and Maintenance

261. Requirement R9 of CIP–007–1 requires the responsible entity to review, update and maintain all documentation needed to support compliance with the Requirements of CIP–007–1 at least annually. Changes resulting from modifications to the systems or controls must be documented within 90 calendar days of the change. The CIP Assessment expressed the view that the 90-day timeframe for updating documentation appears excessively long, especially when one considers that this Reliability Standard establishes a line of defense for protecting critical cyber assets and that up-to-date documentation is essential in case of an emergency.

262. NERC and ReliabilityFirst state that the 90-day time period is appropriate, given the nature and type of facilities and their locations,

[102] *See* Blackout Report at 165–166, Recommendations 35 and 37.

[103] *See* section II.B.4.c (Monitoring Access Logs) in this NOPR.

[104] CIP Assessment at 34–35. To degauss is to demagnetize. Degaussing a magnetic storage medium removes all data stored on it.

[105] CIP Assessment at 35.

[106] *See* Blackout Report at 167, Recommendation 38.

particularly in light of the potential need for internal reviews and approvals by a number of people or groups of people before a documentation change can be effected. ReliabilityFirst adds that the 90-day period also takes into account possible management changes or extended time out of the office.

Commission Proposal

263. The Commission proposes to direct the ERO to modify Requirement R9 to state that the changes resulting from modifications to the system or controls shall be documented within a 30-day time period. We believe that the planning and engineering of system and control modifications require sufficient lead time to enable the documentation of such modifications to take place within a 30 calendar day timeframe.

i. Commission Proposal Summary

264. In summary, the Commission proposes to approve Reliability Standard CIP–007–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations to develop modifications to CIP–007–1 through its Reliability Standards development process that: (1) Modify Requirement R1 and its subparts to require documentation of each significant difference between the testing and the production environments, and how each such difference is mitigated or otherwise addressed; (2) revise Requirement R2 and its subparts to remove the ''acceptance of risk'' language and apply the same conditions and reporting requirements here for ''technical limitations'' as imposed elsewhere in this NOPR for ''technical feasibility;'' (3) remove the ''acceptance of risk'' provision from Requirement R3 and R4; (4) modify Requirement R4 to include safeguards against personnel introducing, either maliciously or unintentionally, viruses or malicious software to a cyber asset within the electronic security perimeter through remote access, electronic media, or other means; (5) ensure that references to ''technical feasibility'' in CIP–007–1 are subject to the same conditions and reporting requirements discussed elsewhere; (6) revise Requirement R6 to include a requirement that logs be reviewed on a weekly basis for readily accessible critical assets and reviewed within the retention period for assets that are not readily accessible; (7) revise Requirement R6.4 to clarify that while the retention period for all logs specified in Requirement R6 is 90 days, the retention period for logs mentioned in Requirement R6.3 for the support of incident response as required in CIP–008–1 is the retention period required by CIP–008–1, *i.e.*, three years; (8) revise Requirement R7 of the Reliability Standard to clarify that the issue is less one of erasure than of assuring that there is no opportunity for unauthorized retrieval of data from a cyber asset prior to discarding it or redeploying; (9) provide more direction on what features, functionality, and vulnerabilities the responsible entities should address when conducting the vulnerability assessments; (10) revise Requirement R8.4 to require an entity-imposed timeline for completion of the already-required action plan; and (11) revise Requirement R9 to state that the changes resulting from modifications to the system or controls shall be documented in within 30 days.

7. CIP–008–1—Incident Reporting and Response Planning

265. Proposed Reliability Standard CIP–008–1 requires a responsible entity to identify, classify, respond to, and report cyber security incidents related to critical cyber assets. Specifically, Requirement R1 of CIP–008–1 requires responsible entities to develop and maintain an Incident Response Plan that addresses responses to a cyber security incident. The plan should characterize and classify pertinent events as reportable cyber security incidents and provide corresponding response actions. The response actions should include: (1) The roles and responsibilities of the incident response teams, (2) procedures for handling incidents, and (3) associated communication plans. In addition, cyber security incidents must be reported to the ESISAC either directly or through an intermediary. The Incident Response Plan should be reviewed and tested at least annually. Changes to the Incident Response Plan are to be documented within 90 days. Responsible entities must retain documentation related to reportable cyber security incidents for a period of three years.

266. The Commission proposes to approve Reliability Standard CIP–008–1 as mandatory and enforceable. In addition, we propose to direct the ERO to develop modifications to this Reliability Standard. In our discussion below, the Commission addresses its concerns in the following topic areas regarding CIP–008–1: (1) Definition of a reportable incident; (2) reporting; and (3) full operational exercises and lessons learned.

a. Definition of a Reportable Incident

267. The CIP Assessment noted that Requirement R1 of CIP–008–1 makes reference to reportable cyber security incidents, but it does not provide a definition of a ''reportable incident.'' Consequently, cyber security incidents may go unreported depending upon a responsible entity's interpretation of a ''reportable incident.'' [107]

268. NERC and ReliabilityFirst affirm the CIP Assessment concern, stating that each responsible entity is required to develop the required procedures for the determination of a reportable incident. They add that the definition of a reportable incident is currently undergoing extensive industry debate.

269. A number of commenters state that FERC should require NERC to clarify what types of cyber security incidents are ''reportable incidents.'' National Grid points out that the Commission should seek to ensure that any further interpretation of what is considered a reportable incident be consistent with the reporting obligations of utilities under the DOE Form 417. Allegheny suggests that, in order to maintain consistency, the DOE Form 417 reporting requirements should be referenced as part of the Reliability Standard. Progress Energy, on the other hand, states that such increased specificity is not possible and would be subject to constant revision in response to ever-changing incidents or threats to cyber systems.

Commission Proposal

270. The Commission believes that guidance regarding what should be included in the term ''reportable incident'' can be provided. The Blackout Report pointed out the need for ''uniform standards for the reporting and sharing of physical and cyber security incident information'' in Recommendation 42.[108] As NERC and ReliabilityFirst state, the definition of a ''reportable incident'' is currently undergoing extensive industry debate.

[107] CIP Assessment at 36. The CIP Assessment recognized that NERC's FAQ document answers the question of ''what is a reportable incident?'' by referencing definitions in the ESISAC Indications, Analysis, and Warnings Program guidelines document entitled ''Indications, Analysis and Warnings Program Standard Operating Procedure'' and the Department of Energy Form OE 417 Report entitled ''Electric Emergency Incident and Disturbance Report.'' However, since these materials are not incorporated into the proposed CIP Reliability Standards, CIP–008–1 remains ambiguous in this regard. North American Electric Reliability Council, Frequently Asked Questions (FAQs) Cyber Security Standards CIP–002–1 through CIP–009–1, March 6, 2006, page 27, question 1.

[108] *See* also Blackout Report at 168, Recommendation 42.

This debate can be a catalyst for developing an appropriate level of guidance. As noted in the NERC Glossary, a ''cyber security incident'' is defined as a compromise, or an attempt to compromise, the electronic security perimeter or physical security perimeter of a critical asset. The Commission proposes to direct the ERO to: (1) Develop and include in CIP–008–1 language that takes into account a breach that may occur through cyber or physical means; [109] (2) harmonize, but not necessarily limit, the meaning of the term reportable incident with other reporting mechanisms, such as DOE Form 417; (3) recognize that the term should not be triggered by ineffectual and untargeted attacks that proliferate on the internet; and (4) ensure that the guidance language that is developed results in a Reliability Standard that can be audited and enforced.

b. Reporting

271. CIP–008–1, Requirement R1.3, requires that each responsible entity establish a process for reporting cyber security incidents to the ESISAC. The responsible entity must ensure that all reportable cyber security incidents are reported to the ESISAC either directly or through an intermediary.

272. ESISAC procedures require the reporting of a cyber incident within one hour of a suspected malicious incident. However, compliance with ESISAC's Indications, Analysis and Warnings Program (IAW) Standard Operating Procedure (SOP) is voluntary. The CIP Assessment noted the importance of other responsible entities receiving timely information regarding a reportable cyber security incident, so they can take precautions against being the target of a similar incident. The CIP Assessment stated that, depending upon the nature of the incident, timelines of incident reporting may be critical. It expressed concern with regard to the voluntary nature of the one-hour reporting requirement associated with ESISAC's IAW SOP. Therefore, the CIP Assessment requested comment on whether CIP–008–1 should incorporate ESISAC's one-hour reporting limit or another reporting interval that would provide adequate time for another responsible entity to take meaningful precautions.

273. NERC and ReliabilityFirst agree that rapid reporting is desirable. However, they state that imposing a specific time period is not advisable because, when an event occurs, the need to meet a reporting deadline should not be the entity's primary concern, rather restoration of operations must take precedence. NERC and ReliabilityFirst state that ESISAC's IAW SOP is intentionally not a part of this Reliability Standard, and is classified as a guideline, because it has not been through the ERO standards development process. These commenters believe the requirement is to report incidents to the ESISAC, with the implication that an established ESISAC reporting protocol is to be used.

274. APPA/LPPC do not believe that incorporating the ESISAC one-hour reporting limit or any other deadline would provide adequate time for another responsible entity to take meaningful precautions to prevent a cyber attack. Cyber attacks are designed to occur nearly simultaneously in more than one location. Thus, even an extremely short deadline, such as one minute, is unlikely to provide other responsible entities time to take precautions. Nonetheless, APPA/LPPC suggest that, if a deadline is prescribed, it should run from the discovery of the incident by the responsible entity, and not from the occurrence of the incident.

275. Several commenters argue against any time limit for reporting security incidents. They believe the requirement to report such incidents to the ESISAC is sufficient. Wisconsin Electric notes that using the same one-hour limit in CIP 008–1 as in the ESISAC IAW SOP would not represent a new performance threshold to the industry.

Commission Proposal

276. The Commission believes that the ESISAC one-hour reporting limit is reasonable and proposes that it be incorporated into CIP 008–1. We reach this conclusion for several reasons. First, although it is true that cyber attacks against different entities could occur simultaneously, it would still be extremely useful to those attempting to defend against those attacks to know what kind of threat they are dealing with. The fact that simultaneous attacks are directed at other entities would be important information about the nature of the attacks.

277. Second, while the Commission agrees that, in the aftermath of a cyber attack, restoring the system is the utmost priority, we do not believe that sending this short report would be a time consuming distraction, and we judge that its probative value would justify the minimal time spent in making this report.

278. Third, the Commission disagrees with commenters that believe that a reporting limit will not provide others with time for responsive action to mitigate other potential Cyber Security Incidents. While a reporting time limit may not allow such mitigation in every situation, it very well could allow such mitigation in many situations.

279. Fourth, although ESISAC's time limit is voluntary, a one hour NERC reporting time limit would match up with the ESISAC reporting time limit and, thus, would avoid conflicting requirements and would not cause any new reporting burden.

280. Thus, the Commission proposes to direct the ERO to modify CIP–008–1 to require a responsible entity to contact appropriate government authorities and industry participants in the event of a Cyber Security Incident as soon as possible, but, in any event, within one hour of the event, even if it is a preliminary report. While we leave development of the details to NERC, the Commission agrees with APPA/LPPC that the reporting timeframe should run from the discovery of the incident by the responsible entity, and not the occurrence of the incident.

c. Full Operational Exercises and Lessons Learned

281. The CIP Assessment stated that the annual testing of the Incident Response Plan should require full operational exercises due to the potential for such exercises to uncover unforeseen complications.[110] In addition, it indicated that CIP–008–1 does not require documentation or reassessment of a plan's adequacy as a result of lessons learned from testing or in response to specific issues.

282. NERC and ReliabilityFirst state that there are many instances in substations or power plants where backup or fully functional test systems do not exist, making a full operational exercise an extremely risky proposition. Because of this, NERC and ReliabilityFirst believe that a universal requirement for a full operational exercise may be unduly disruptive and burdensome to reliable operations, and represent a threat to the overall reliability of the Bulk-Power System. NERC and ReliabilityFirst believe that table-top exercises are sufficient to test the effectiveness of an Incident Response Plan. Several commenters agree. Ontario IESO posits that there is no evidence that a paper drill would be materially inferior to an operational exercise.

[109] The Commission emphasizes that a cyber security incident that does not result in a material loss of physical assets should not prevent the incident from being reported.

[110] CIP Assessment at 37.

283. A number of commenters believe that requiring a full operational exercise during the three-year documentation cycle and paper drills during the other two years should provide the desired benefits of testing the Incident Response Plan. An actual incident response would satisfy the need for a full operational exercise during a three-year cycle. One commenter, the ISA Group, believes that full operational exercises should be mandated at least yearly. Wisconsin Electric states that, if full drills become a requirement, they should be conducted every five years, with paper drills only when the process or procedure is created or changed.

284. Several commenters note that there may be a significant benefit in executing an operational exercise over a paper drill, but note that an operational exercise also can require expensive back-up systems and may unnecessarily risk damaging system functionality in case of an error or unforeseen system effect. Georgia System believes each responsible entity has to determine whether the incremental benefit from a yearly exercise is worth the costs and reliability risks associated with the exercise. MidAmerican states it could support full operational exercises for a limited number of critical assets, with paper exercises for the remaining facilities. National Grid suggests that operational drills are more appropriate for actual recovery plans under CIP–009–1, and paper drills are more than adequate to assess whether the response plans under CIP–008–1 identify and alert the right responders. Xcel Energy is concerned that operational drills (like vulnerability tests) could cause an inadvertent disruption to EMS and SCADA systems.

285. NERC and ReliabilityFirst state that collection and maintenance of lessons learned, and plan improvement are included in the ''update'' language of Requirement R1.4. Allegheny states that documentation and implementation of lessons learned is a critical part of any incident response or drill. As such, Allegheny believes the need to maintain a collection of lessons learned as a result of testing the Incident Response Plan and to apply them to plan improvements is necessary to ensure response plans remain viable. Wisconsin Electric submits that lessons learned from incident response exercises should be documented as well as audited for completion of any enhancements to the process.

Commission Proposal

286. We understand from commenters that annual testing may be costly and disruptive. Nonetheless, periodic operational drills are important because they may reveal weaknesses, vulnerabilities, and opportunity for improvement that a paper drill would not identify. The Commission agrees with the commenters that suggest that a full operational exercise should be performed at least once every three years, and that tabletop exercises are sufficient for the other two years. We believe this strikes an appropriate balance between the benefits of executing an operational exercise and the associated costs and potential risks of misoperations. Therefore, the Commission proposes to direct the ERO to revise the Reliability Standard to require responsible entities to perform a ''full operational exercise'' at least once every three years, or to fully document its reason for not conducting an exercise in full operational mode pursuant to the technical feasibility parameters discussed earlier in section II.A.5.b. Further, the Commission proposes to direct the ERO to provide guidance on the meaning of the term ''full operational exercise.'' [111]

287. The Commission believes that industry will benefit from a requirement to document and implement lessons learned from testing or responses to actual cyber security incidents. Although NERC and ReliabilityFirst suggest that this is included in the ''update'' language of Requirement R1.4, we believe that the Reliability Standard would be improved by making a ''lessons learned'' requirement explicit. Therefore, the Commission proposes to direct that the ERO refine CIP–008–1, Requirement R2 to require responsible entities to maintain documentation of paper drills, full operational drills, and responses to actual incidents, all of which must include lessons learned. The Commission also proposes to direct the ERO to include language to require revisions to the Incident Response Plan to address these lessons learned.

d. Commission Proposal Summary

288. In summary, the Commission proposes to approve Reliability Standard CIP–008–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations to develop modifications to CIP–008–1 through its Reliability Standards development process that: (1) Develop and include language regarding the term ''reportable incident'' that takes into account a breach that may occur through cyber or physical means; (2) harmonize, but not necessarily limit, the meaning of the term reportable incident with other reporting mechanisms, such as DOE Form 417; (3) recognize that the term ''reportable incident'' should not be triggered by ineffectual and untargeted attacks that proliferate on the internet; (4) ensure that the guidance language that is developed results in a Reliability Standard that can be audited and enforced; (5) require a responsible entity to contact appropriate government authorities and industry participants in the event of a Cyber Security Incident as soon as possible, but at least within one hour of the event, even if it is a preliminary report; (6) require responsible entities to perform a ''full operational exercise'' at least once every three years, or to fully document its reason for not conducting an exercise in full operational mode pursuant to the technical feasibility parameters discussed earlier herein and provide guidance on the meaning of the term ''full operational exercise;'' (7) refine Requirement R2 to require responsible entities to maintain documentation of paper drills, full operational drills, and responses to actual incidents, all of which must include lessons learned; and (8) require revisions to the Incident Response Plan to address the lessons learned.

8. CIP–009–1—Recovery Plans for Critical Cyber Assets

289. The purpose of proposed Reliability Standard CIP–009–1 is to ensure that recovery plans for critical cyber assets are in place and following established business continuity and disaster recovery techniques and practices. This Reliability Standard establishes required development, updating, and testing of recovery plans, as well as storage and testing of associated backup data and backup media.

290. The Commission proposes to approve Reliability Standard CIP–009–1 as mandatory and enforceable. In addition, we propose to direct the ERO to develop modifications to this Reliability Standard. Further, the Commission also proposes to require the ERO to consider various other matters of clarification, guidance, and modification. In our discussion below, the Commission addresses its concerns in the following topic areas regarding CIP–009–1: (1) Recovery plans; (2) forensic data collection; (3) operational exercises; (4) recovery plan updates; (5) backup and storage of restoration data and (6) testing of backup media.

[111] We address the meaning of the term ''full operational exercise'' in section II.B.8.c below.

a. Recovery Plans

291. Requirement R1 of CIP–009–1 requires the responsible entity to create and annually review recovery plans for critical cyber assets. The CIP Assessment expressed concern that the ''events or conditions of varying duration and severity that would activate the recovery plan(s)'' language is very general and does not provide or require a definition of what constitutes a precipitating event or triggering condition necessary for recovery plan implementation.

292. NERC, MidAmerican, Xcel, and Allegheny comment that providing additional detail will limit the scope of potential ''precipitating events'' addressed by recovery plans, and will not provide for the needed flexibility. NERC states that the determination of which events warrant a recovery plan is intentionally left to the discretion of responsible entities. Wisconsin Electric and others agree with the CIP Assessment that additional clarification should be added to this Requirement.

Commission Proposal

293. The Commission shares the concern that ''precipitating events'' are readily recognized by responsible entities so that recovery plans are promptly implemented. While we do not propose to require modifications regarding the ''events and conditions'' language at this time, we do note that Requirement R1 fails to state that the plans it requires must be implemented when needed. That is, it requires that recovery plans must be ''created and reviewed'' but does not explicitly require actual implementation when the ''events or conditions of varying duration and severity'' occur. We propose to direct the ERO to modify to CIP–009–1 to include this requirement. In the interim period, the Commission will infer that implementation is embodied in this Requirement when enforcing it; *i.e.*, if an entity has the required recovery plan but does not implement it when the anticipated event or conditions occur, the entity will not be in compliance with this Reliability Standard.

b. Forensic Data Collection

294. The CIP Assessment pointed out that Requirement R1 does not provide guidance on whether and how the recovery plans should preserve data for forensics purposes. In particular, Requirement R1 does not specify whether forensics collection should occur prior to, contemporaneously with, or after recovery of the critical cyber assets.

295. NERC, ReliabilityFirst, and PG&E assert that there are no Bulk-Power System reliability issues associated with forensic data collection, and that there is a possibility that collection of forensic data could impede the restoration of cyber assets, which in turn could affect the reliable operation of the Bulk-Power System. NERC comments that each entity must consider the balance between data collection and actions required to rapidly restore the electric power transmission. NERC states that after-the-fact recovery of incident data cannot be assumed to be technically possible on legacy equipment and that, therefore, it cannot be a requirement. Georgia System stresses that restoring the Bulk-Power System should remain the foremost objective of all immediate efforts, over issues of data collection.

296. Allegheny comments that forensics collection should also be addressed within this range of plans. Noting again that one size does not fit all in regards to scenarios for recovery planning, Allegheny says that forensic collection should be addressed in each of the plans that addresses the various scenarios.

Commission Proposal

297. The Commission is concerned that Requirement R1 of CIP–009–1 does not require the collection of forensics data and does not address how such collection activities relate to restoration of service efforts. The Commission believes that concern for the reliability of the Bulk-Power System requires attention to forensics data collection. The Blackout Report also emphasized the need to improve forensics and diagnostic capabilities in Recommendation 37.[112] Obtaining forensic data will benefit the long-term reliability of the Bulk-Power System because the lessons learned from one event assist in eliminating or dealing with a repeat (or similar) event. Forensic data collection procedures could be as minimal as preserving a corrupted drive, making a data mirror of the system before proceeding with recovery, or taking the important assessment steps necessary to avoid reintroducing the precipitating or corrupted data. Technical capabilities to do so will likely vary with the facility, and many legacy systems present considerable technical limitations in this regard. In the interest of ''raising the bar'' above what the least capable equipment can do to collect forensic data, the Commission proposes to direct the ERO to modify CIP–009–1 to incorporate use of good forensic data collection practices into this CIP Reliability Standard.

298. In addition, we agree with commenters that recovery of critical cyber assets and the Bulk-Power System is of short-term critical importance, and information collection efforts should not impede or restrict system restoration. Nonetheless, it is also important to long-term reliability interests that responsible entities make solid forensic efforts in a given situation, such as collecting the data immediately after system restoration or the recovery of critical cyber assets, if that is what can be done. We recognize that collecting forensic data may not be ''technically feasible'' for all situations due to equipment limitations, such as older substation installations with little electronic monitoring. Therefore, we suggest that forensic data collection is an appropriate candidate for the ''where technically feasible'' exception clause, where, if invoked, the responsible entity would be required to propose interim actions, milestone schedules, and a mitigation plan, as described elsewhere in this NOPR. We agree with commenters that the recovery plans should include forensic data collection procedures. Therefore, we propose to direct the ERO, when incorporating the use of good forensic data collection practices into this Reliability Standard, to make clear that such practices should not impede or restrict system restoration and to consider whether it is necessary to include a ''technical feasibility'' provision.

c. Operational Exercises

299. Requirement R2 of CIP–009–1 requires the responsible entity to exercise recovery plans at least annually, and that such exercise can range from a paper drill, to a full operational exercise, to recovery from an actual incident. The CIP Assessment asked whether full operational exercises should be required to aid in identifying potential problems and in realizing opportunities for improving recovery plans.[113]

300. NERC and others believe that table-top exercises (or paper drills) are sufficient, and consistent with accepted practice used to test blackstart procedures. NERC cautions that full operational exercises may be extremely risky because many substations or power plants do not have backup or fully functional test systems. NERC, therefore, believes that a universal requirement for full operational

[112] *See* Blackout Report at 166, Recommendation 37.

[113] CIP Assessment at 38.

exercises may be unduly disruptive and burdensome to reliable operations.

301. ISA Group and others support required periodic operational testing of restoration plans. California PUC recommends annual testing through a full operational exercise; and Allegheny supports operational exercises on a three-year cycle. Wisconsin Electric suggests that a one-time full operational test of the process would be beneficial. Georgia Operators supports periodic operational testing, with the caveat that each entity should determine whether the benefit is worth the costs and reliability risks associated with such an exercise. MidAmerican states that it could support full operational exercises for a limited number of critical assets.

Commission Proposal

302. The Commission agrees with the commenters that stress the benefits of operational exercises; *i.e.*, that potential problems, some of which could significantly impair reliability, will not be found without them. We do not believe that table-top exercises alone, on an ongoing basis, will suffice, given the increasing complexity and interconnection of control systems. Some commenters acknowledge the benefits of operational exercises, but believe they should occur only on a limited basis. We agree with this approach, with the cautionary note that technical feasibility and risks must be carefully weighed with the possible benefits. We acknowledge that some infrastructure facilities exist for which even limited operational exercises present unsuitable reliability risks. However, we conclude that benefits from operational exercises are sufficient that the industry as a whole should develop suitable operational exercises in the course of evolving good cyber security practices.

303. Accordingly, the Commission proposes to direct the ERO to develop modifications to the Reliability Standard through its Reliability Standards development process to require a full operational exercise once every three years (unless an actual incident occurs), but to permit reliance on table-top exercises annually in other years. Further, we propose, in conjunction with the above proposed modification, that the ERO consider the appropriateness of a ''technical feasibility'' option, in the limited fashion proposed earlier in this NOPR.[114] For example, CIP–009–1 could be modified to allow for partial operational exercises, reduced from ''full operational exercises,'' only to the extent a responsible entity explains and documents, for a particular substation or a particular generating plant, technical infeasibility with the requisite interim actions, milestone schedules, and a mitigation plan, as described elsewhere in this NOPR.

304. We note that NERC points out a lack of clarity of the term ''full operational exercise.'' The Commission agrees and therefore proposes to direct the ERO, in conjunction with making the above modifications, to either define in its Glossary the term ''full operational exercise'' or provide more direction directly in the Reliability Standard as to the parameters of the term. As NERC and ReliabilityFirst note, many operational exercise practices include table-top components in significant proportions.

d. Recovery Plan Updates

305. Requirement R3 requires the responsible entity to update the recovery plans to reflect any changes or lessons learned from an exercise or the recovery from an actual event. It requires plan updates to be communicated to the personnel responsible for activating or implementing the recovery plan within 90 days of the change. The CIP Assessment noted that individuals responsible for activation and implementation of process changes in the recovery plans must have the most current information available, and questions whether a 90-day time lag is consistent with this objective.

306. NERC comments that a shorter time frame is impractical due to the number, kind and location of assets, especially field assets. Santa Clara agrees with the CIP Assessment that recovery plans must be updated as soon as possible after an event, but also states that 90 days is reasonable for completion of training for all affected personnel. Santa Clara notes that it may not be feasible to include all shift schedules of personnel in training sessions in a timeline shorter than 90 days.

307. ISO/RTO Council agrees with the CIP Assessment that that updates to such documents generally can be performed sooner than 90 days. ISO/RTO Council suggests that timely updating should be a formal component of any assessment or review process, especially with regard to after-the-fact analyses and timely application of lessons learned. ISA Group states that a 90-day time lag to activate or implement process changes in recovery plans after deficiencies are discovered is not acceptable. ISA Group suggests up to one week to identify any process workarounds and 30 days to modify equipment as necessary.

Commission Proposal

308. Requirement R3 of CIP–009–1 requires that updates to a recovery plan be communicated within 90 days to the personnel responsible for activating or implementing the recovery plan. The Commission is concerned that individuals responsible for activating and implementing the recovery plan must have the most current information available, and believes that a 90-day time lag between when a weakness in a recovery plan is discovered and when it is corrected and communicated to such responsible personnel is too long. Failure for such responsible personnel to have current information about a recovery plan could cause unnecessary delay in restoring critical cyber assets to service and thereby jeopardize the reliability of the Bulk-Power System. Therefore, the Commission proposes to direct the ERO to modify Requirement R3 of CIP–009–1 to shorten the timeline for updating recovery plans to 30 days, while continuing to allow up to 90 days for completing the communications of that update to responsible personnel. We believe a 30 day requirement for updating the recovery plans will promote timely incorporation of lessons learned during exercises and actual events. While key personnel should be informed as soon as possible, we agree with SPP and others that 90 days is reasonable for the completion of personnel training sessions, due to varied shifts schedules and other feasibility issues with regard to facility and organization.

e. Backup and Storage of Restoration Data

309. Requirement R4 requires that a recovery plan include processes and procedures for the backup and storage of information necessary to successfully restore critical cyber assets. The CIP Assessment asserted that the Requirement should specify that, when significant changes are made to the operational control system, a backup should be made for recovery purposes and that it should be tested as part of the system change before it is stored and assumed to be operational.

310. NERC and ReliabilityFirst state that this concern is mitigated by the generally accepted practice of maintaining multiple generations of backup. NERC states that ''backup made for recovery purposes'' is contained in the ''supporting configuration management activities'' clause of CIP–003–1, Requirement R6.

[114] *See* section II.A.5.b (Technical Feasibility and Acceptance of Risk).

311. Progress Energy agrees with the CIP Assessment that a backup should be tested before it is stored, but believes that the frequency of testing should be left to the discretion of the responsible entity. SPP asserts that backups should be routinely and regularly backed up, not just upon a significant change to the configuration. SPP notes that a properly configured backup and restoration testing process obviates the need to make special backups upon occurrence of the significant changes to existing critical assets defined by CIP–007–1, Requirement R1.

Commission Proposal

312. The Commission proposes to instruct the ERO to modify this Reliability Standard to incorporate guidance that the backup and restoration processes and procedures required by Requirement R4 should include, at least with regard to significant changes made to the operational control system, verification that they are operational before the backups are stored or relied upon for recovery purposes.

313. The Commission agrees with NERC that preserving multiple generations of restoration backups is common practice, and believes that competent and complete implementation of the CIP Reliability Standards would tend to include testing of recovery backups as they are created, also as a matter of good, efficient practice. However, we disagree with NERC that exercising these good practices is contained in, implied by, or readily understood from Requirement R6 of CIP–003–1. Adding language, such as ''these procedures are to include practices to test and verify the operability of the backup before it is stored and relied upon for recovery,'' would eliminate this ambiguity. As stated above, in our discussion of the change control processes required by Requirement R6 of CIP–003–1, the Commission reiterates its position, that there is a need for enhanced direction in issues related to proper change control. The CIP Reliability Standards should specifically state that a change control process should include procedures for a tested backup. No backups of any kind are mentioned in CIP–003–1, Requirement R6.

f. Testing of Backup Media

314. Requirement R5 requires annual testing of information stored on backup media to ensure information essential to recovery is available. The CIP Assessment noted the criticality of such information being accessible in the event of an actual incident, noted that the Reliability Standard does not specify any actions to be taken in the event of a failure in testing, and asked whether such testing should also be conducted on a more frequent basis.

315. NERC and ReliabilityFirst comment that, since the Reliability Standards cannot predict what technology will be used, they should not specify actions in response to testing. They believe that routine use of backups will serve to exercise the media more often than the specified one-year test. Likewise, Georgia System states that annual testing is more than adequate, even unnecessary, if no significant changes were made to the system; and more prescriptive Reliability Standards should be developed only if experience shows that discretion exercised in implementation of the Reliability Standards is abused.

316. Santa Clara agrees with the CIP Assessment that testing of information stored on backup media is crucial to the integrity of those backup systems. It submits that such testing could be done on a periodic basis, and in an ''off-line'' mode if necessary. Santa Clara has found it beneficial to maintain more than one set of backups so that, if the latest backup fails, the previous backup has been tested and validated, leaving a ''Plan B'' restoration solution available until the latest backup system is corrected.

317. Constellation adds that review of the backup and recovery plans is implicit if the annual review of the Cyber Security Policy already required by the CIP Reliability Standards is performed competently. SPP agrees that restoration testing is only one part of a more comprehensive backup plan, noting that the entity needs to have procedures to verify backups are successfully completed every cycle, and procedures for when the backup fails. SPP points out that failure to notice that a backup process has failed poses a far greater risk than infrequency of testing, as long as the backup process is properly managed.

Commission Proposal

318. The Commission agrees with commenters that, if these CIP Reliability Standards are implemented in a full and competent manner, then adequate backup verification measures will probably be in place. Reliability Standards, however, demand a higher degree of certainty. The proposed Reliability Standards do not provide the guidance that SPP offers—that responsible entities need to have procedures to verify backups are successfully completed every cycle and to have recovery procedures in place for when the backup fails. The Commission agrees with SPP on this point.

319. The Commission proposes to direct the ERO to modify this Reliability Standard to provide direction that backup practices include regular procedures to ensure verification that backups are successful and backup failures are addressed, thus guaranteeing that backups are available for future use. Insertion of language such as, ''backup procedures are to include regular verification of successful completion and procedures to address backup failures'' would satisfy this goal. We agree that inability to recognize the failure of a backup process poses a great risk, and that the annual restoration testing in this Requirement is adequate as long as the backup process is properly managed.

g. Commission Proposal Summary

320. In summary, the Commission proposes to approve Reliability Standard CIP–009–1 as mandatory and enforceable. In addition, the Commission proposes to direct the ERO, pursuant to section 215(d)(5) of the FPA and § 39.5(f) of our regulations to develop modifications to CIP–009–1 through its Reliability Standards development process that: (1) Clarify Requirement R1 to make clear that the required recovery plans must be implemented when the ''events or conditions of varying duration and severity'' occur; (2) incorporate use of good forensic data collection practices, and make clear that such practices should not impede or restrict system restoration and to consider whether it is necessary to include a ''technical feasibility'' provision with the parameters discussed above; (3) define in the NERC glossary the term ''full operational exercise'' or provide more direction directly in the Reliability Standard as to the parameters of the term; (4) require a full operational exercise once every three years (unless an actual incident occurs), but to permit reliance on table-top exercises annually in other years and consider the appropriateness of a technical feasibility option in connection with modified operational exercises; (5) shorten the timeline to updating recovery plans to 30 days, while continuing to allow up to 90 days to communicate those updates to responsible and affected personnel; (6) incorporate guidance that the backup and restoration processes and procedures required by Requirement R4 should include, at least with regard to significant changes made to the operational control system, verification that they are operational before the backups are stored or relied

upon for recovery purposes; and (7) provide direction that backup practices include regular procedures to ensure verification that backups are successful and available for future use.

C. Violation Risk Factors

1. Background

321. In a separate filing, NERC submitted over 1,000 Violation Risk Factors, including 162 that correspond to Requirements of the proposed CIP Reliability Standards.[115] While the Commission has addressed the Violation Risk Factors that correspond to the Requirements of the Commission-approved Reliability Standards, NERC requested that the Commission take action on the Violation Risk Factors when it takes actions on the associated Reliability Standards.[116] Accordingly, the Commission will address the Violation Risk Factors that correspond to the CIP Reliability Standards in this proceeding.

322. As part of its compliance and enforcement program, the ERO will use a three-step process to determine a monetary penalty for a standard violation. In the first of these steps, the ERO or Regional Entity will set an initial range for the base penalty amount for the violation. In order to accomplish this, the ERO or the Regional Entity will consider the applicable Violation Risk Factor [117] and Violation Severity Level [118] in the ''base penalty amount table'' in Appendix A to NERC's Sanction Guidelines. According to NERC, the base penalty amount table adds a measure of certainty for those subject to penalties and assists the ERO in executing its penalty authority.

323. NERC states that a Violation Risk Factor has been assigned to each Requirement of the Version 1 Reliability Standards to delineate the relative risk to the Bulk-Power System associated with the violation of each Requirement, and the Violation Risk Factors do not change the meaning or intent of the Reliability Standards. NERC explains that it has defined the following three levels of Violation Risk Factors: (1) High risk requirement; (2) medium risk requirement; and (3) lower risk requirement.[119]

2. Commission Proposal

324. In reviewing the proposed Violation Risk Factor assignments, the Commission has used the same guidelines it applied when evaluating NERC's submission of Violation Risk Factors as discussed in the May 18 Order. Specifically, to determine whether the proposed Violation Risk Factor assignments appropriately indicate the potential or expected impact to the reliability of the Bulk-Power System, the Commission considered: (1) Consistency with the conclusions of the Final Report on the August 14, 2003 Blackout in the United States and Canada, (2) consistency within a Reliability Standard, *i.e.*, among sub- and main Requirements of the same Reliability Standard, (3) consistency among Reliability Standards with similar Requirements, (4) consistency with NERC's proposed definition of the Violation Risk Factor level, and (5) assignment of a Violation Risk Factor level to those Requirements in certain Reliability Standards that co-mingle a higher risk reliability objective and a lesser risk reliability objective.[120]

325. Based on the application of these guidelines, and for the reasons explained below, the Commission proposes to approve the 162 proposed Violation Risk Factor assignments that correspond to the Requirements of the CIP Reliability Standards and direct NERC to revise 43 of them. In addition, the Commission notes that NERC did not assign Violation Risk Factors to the following nine Requirements and proposes to direct NERC to make these Violation Risk Factor assignments and file them for Commission approval:

CIP–002–1 Requirement R3.1
CIP–003–1 Requirement R4.1
CIP–003–1 Requirement R5.1.2
CIP–004–1 Requirement R2.2.2
CIP–004–1 Requirement R2.2.3
CIP–005–1 Requirement R1.5
CIP–007–1 Requirement R5.1
CIP–007–1 Requirement R5.3.3
CIP–007–1 Requirement R7

326. NERC has assigned a ''lower'' designation to almost 85 per cent of the Violation Risk Factors corresponding to the Requirements of the CIP Reliability Standards. No Requirements received a ''higher'' Violation Risk Factor assignment. By definition, a ''lower'' Violation Risk Factor assignment means that the Requirement is administrative in nature where a violation of the Requirement would not be expected to affect the electrical state, capability, monitoring or control of the Bulk-Power System. The Commission believes that NERC has mischaracterized many of the Requirements as ''administrative,'' resulting in a ''lower'' Violation Risk Factor assignment, where in fact a ''medium'' or ''high'' designation is more appropriate.

327. For example, CIP–002–1 Requirement R2, which requires the identification of assets that are critical to the Bulk-Power System, is assigned a ''lower'' Violation Risk Factor. While the product of the Requirement is a list of critical assets, this is clearly not an administrative Requirement. In fact, the failure to properly identify critical assets could place the Bulk-Power System at an unacceptable risk or restoration efforts could be hindered. Further, this Requirement has a controlling effect over all of the CIP Reliability Standards that follow. If an asset is critical and is not identified as such, the remaining CIP Reliability Standards will not be applied. Depending on the asset that is overlooked, and consequently not protected by the standards, a ''higher'' level of Bulk-Power System failure is possible. Thus, by NERC's definition, this Requirement should have a ''higher'' Violation Risk Factor assignment. In addition, the recommendations related to physical and cyber security contained in the Blackout Report,[121] while largely addressed by the proposed CIP Reliability Standards, would essentially be thwarted if a responsible entity does not comply with Requirements R2 and R3 of CIP–002–1. Accordingly, we are proposing to direct NERC to modify this Requirement to denote a ''higher'' Violation Risk Factor assignment.

328. Similarly, CIP–002–1 Requirement R3, which requires the identification of cyber assets that are essential to the operation of critical Bulk-Power System assets, has a ''medium'' Violation Risk Factor assignment. By definition, a ''medium'' Violation Risk Factor assignment means that the Requirement is unlikely, under

[115] *See* NERC's March 23, 2007 filing in Docket No. RR07–10–000, Exh. A.

[116] *See North American Electric Reliability Corporation,* 119 FERC ¶ 61,145 (2007) (May 18 Order) (approving and modifying Violation Risk Factors).

[117] A Violation Risk Factor of lower, medium, or high is assigned to each Requirement of each mandatory Reliability Standard to associate a violation of the Requirement with its potential impact on the reliability of the Bulk-Power System.

[118] For each Requirement of a Reliability Standard, NERC will define up to four Violation Severity Levels-lower, moderate, high, and severe—as measurements of the degree to which a Requirement is violated. In a June 7, 2007 order, the Commission approved NERC's proposal to apply the current Levels of Non-Compliance in lieu of Violation Severity Levels, while NERC develops a comprehensive set of Violation Severity Levels by March 1, 2008. *North American Electric Reliability Corp.,* 119 FERC ¶ 61,248 (2007).

[119] *See May 18 Order* at P 9 (providing the complete definition of each level of Violation Risk Factor).

[120] *See* May 18 Order at P 16–36. We also note that the May 18 Order explained that this list is not necessarily comprehensive. The Commission retains the flexibility to consider additional guidelines in the future. *Id.* at n.12.

[121] Blackout Report at 163–169, Recommendations 32–44.

emergency, abnormal, or restoration conditions to lead to Bulk-Power System instability, separation, or cascading failures, nor to hinder restoration to a normal condition. However, if this Requirement is violated, the Bulk-Power System could in fact be at an unacceptable risk of failure or restoration efforts could be hindered. Further, this Requirement has a controlling effect over all of the CIP Reliability Standards that follow. As with CIP–002–1 Requirement R2, depending on the asset that is overlooked, and consequently not protected by the Reliability Standards, a higher level of Bulk-Power System failure is possible. Also, proper compliance with CIP–002–1, Requirement R3 is essential to the ability of the proposed CIP Reliability Standards to satisfy the recommendations of the Blackout Report.[122] Thus, by NERC's definition this Requirement should have a ''higher'' Violation Risk Factor assignment. Accordingly, we are proposing to direct NERC to modify this Requirement to denote a ''higher'' Violation Risk Factor assignment.

329. The other modifications that the Commission is proposing to direct NERC to move the Violation Risk Factor from a ''lower'' to a ''medium'' assignment. The Commission's primary reason for directing these changes is to promote implementation of the recommendations contained in the Blackout Report; to establish consistency within a Reliability Standard, *i.e.*, among sub- and main Requirements of the same Reliability Standard; and consistency across Reliability Standards.

330. The Commission proposes to approve the proposed Violation Risk Factor assignments filed by NERC and proposes to direct NERC to modify the Violation Risk Factors corresponding to the Requirements as illustrated in the attached list of proposed disposition actions for the proposed Violation Risk Factors.

331. We propose to direct NERC to submit a filing containing these modifications within 60 days of the date of the Final Rule. We also propose to direct NERC to include in its filing a complete Violation Risk Factor matrix. The matrix should also include assignments for the missing Violation Risk Factor assignments discussed above.

III. Information Collection Statement

332. The Office of Management and Budget (OMB) Regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[123] The information collection requirements proposed in this NOPR are identified under the Commission data collection, FERC–725B ''Mandatory Reliability Standards for Critical Infrastructure Protection.'' These proposed information collections will be submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.[124] In addition, OMB regulations require OMB to approve certain reporting and recordkeeping requirements imposed by agency rule.[125]

333. The ''public protection'' provisions of the Paperwork Reduction of 1995 requires each agency to display a currently valid control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection or provides a justification as to why the information collection control number cannot be displayed. In the case of information collections published in regulations, the control number is to be published in the **Federal Register**.

334. *Public Reporting Burden:* The Commission developed its estimate of burden based upon the CIP Reliability Standards as proposed by NERC. The CIP Reliability Standards include only one actual reporting requirement. Specifically, CIP–008–1 requires responsible entities to report cyber security incidents to ESISAC. In addition, the eight CIP Reliability Standards require responsible entities to develop various policies, plans, programs and procedures. For example, each responsible entity must develop and document a risk-based assessment methodology to identify critical assets, which is then used to develop a list of critical cyber assets (CIP–002–1). A responsible entity that identifies any critical cyber assets must also document: a cyber security policy (CIP–003–1); a security awareness program (CIP–004–1, Requirement R1); a personnel risk assessment program (CIP–004–1, Requirement R3); an electronic security perimeter and processes for control of electronic access to all electronic access points to the perimeter (CIP–005–1, Requirements R1 and R2); a physical security plan (CIP–006–1); procedures for securing certain cyber assets (CIP–007–1); and recovery plans for critical cyber assets (CIP–008–1). The above is not an exhaustive list and, in addition, the CIP Reliability Standards require responsible entities to maintain various lists and access logs.

335. The CIP Reliability Standards do not require a responsible entity to report to the Commission, ERO or Regional Entities the various policies, plans, programs and procedures. However, the documentation of the policies, plans, programs and procedures must be available to demonstrate compliance with the CIP Reliability Standards. The Commission has included the cost of developing the required documentation for the required policies, plans, programs and procedures in its burden estimate. The Commission, however, did not include in our burden estimate the cost of substantive compliance with the CIP Reliability Standards, separate from the requirements to develop specific documentation.

In formulating our estimate of the reporting burden, the Commission has been guided by several factors.

Number of Entities: As of April 2007, NERC identified 1,266 registered entities in the United States. The Applicability section of each CIP Reliability Standard specifies nine categories of users, owners and operators of the Bulk-Power System (as well as NERC and the Regional Entities) that must comply with the CIP Reliability Standards. The nine categories of users, owners and operators are based on the categories of functions identified in the NERC Functional Model. Based on a review of NERC's registration list, the Commission estimates that approximately 1,000 entities will be required to comply with the CIP Reliability Standards.

Variations in Compliance Burden: The Commission's estimate is based on all 1,000 entities documenting an assessment methodology to identify critical assets and critical cyber assets pursuant to CIP–002–1. As explained above, only those entities that identify critical cyber assets pursuant to CIP–002–1 are responsible to comply with the requirements of CIP–003–1 through CIP–009–1. Accordingly, the cost burden estimate differs for those entities that identify critical cyber assets and those that do not.

Further, the reporting burden would vary with the number of critical cyber assets identified pursuant to CIP–002–1. An entity that identifies numerous critical cyber security assets, including assets located at remote locations, will likely require more resources to develop its policies, plans, programs and procedures compared to an entity that identifies one or two critical cyber assets, housed at a single location. Based on this distinction, the

[122] *Id.*

[123] 5 CFR 1320.11.

[124] 44 U.S.C. 3507(d).

[125] 5 CFR 1320.11.

Commission has developed separate estimates for large investor-owned utilities and other responsible entities such as municipals, generators and cooperatives.

Customary Practices: Prior to the development of CIP–002–1 through CIP–009–1, NERC approved through its urgent action process a cyber security standard known as ''UA–1200,'' which applied to entities ''such as control areas, transmission owners and operators, and generation owners and operators.'' UA–1200 addressed a number of the same reporting burdens as the CIP Reliability Standards at issue in this proceeding. For example, UA–1200 required the creation and maintenance of a cyber security policy, the identification of ''critical cyber assets,'' and the development of a cyber security training program. Thus, entities that voluntarily complied with UA–1200 will continue these practices when the mandatory CIP Reliability Standards are in effect.

Further, many entities, including those that did not comply with UA–1200, typically have followed certain practices specified in the CIP Reliability Standards. The Commission believes that practices such as conducting cyber security training, having procedures for whom to contact in case of a cyber security incident, and developing a plan for how to restore a computerized control system should it fail are usual and customary practices in the electric industry and others. The Commission has taken such customary practices into account when estimating the reporting burden.

Time Period: The CIP Reliability Standards were approved by the NERC board in May 2006, with a designated effective date of June 1, 2006.[126] The proposed implementation schedule submitted with the CIP Reliability Standards plans for responsible entities to be ''auditably compliant'' with most requirements by mid-2010 or later. Mid-2010 is four years after CIP Reliability Standards went into effect. Therefore, the Commission developed an annual burden estimate by dividing total costs by 4 years.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–725B				
Large investor-owned utility	155	1	2,080	322,400
Others, including munis and coops	795	1	1,000	795,000
Entities that have not identified critical cyber assets	50	1	160	8,000
Totals				1,125,400

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the costs to be:

Large investor-owned utility = 322,400 hours@$88 = $28,371,200.

Others, including munis and coops = 795,000 hours@$88 = $69,960,000

Entities that have not identified critical cyber assets = 8,000 hours@$88 = $704,000.

Because auditably compliant status is not required for many requirements until mid–2010, the Commission has projected the costs over a four-year period. On an annual basis the costs will be ($28,371,200 + $69,960,000 + $704,000)/4 years = $24,758,800 per year. The hourly rate of $88 is a composite figure of the average cost of legal services ($200 per hour), technical employees ($39.99 per hour) and administrative support ($25 per hour), based on hourly rates from the Bureau of Labor Statistics (BLS). Using the May 2006 OES Industry-Specific Occupational Employment and Wage Estimates, the median hourly rate wage estimate for a computer software engineer is $39.99.[127]

Title: Mandatory Reliability Standards for Critical Infrastructure Protection.

Action: Proposed collection.

OMB Control Number: To be determined.

Frequency of responses: On occasion.

Necessity for information: As discussed above, EPAct 2005 adds a new section 215 to the FPA, which requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards. Pursuant to section 215 of the FPA, the Commission proposes in this NOPR to approve eight Critical Infrastructure Protection (CIP) Reliability Standards submitted to the Commission for approval by NERC. The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets. The information collections proposed in this NOPR are needed to protect the electric industry's Bulk-Power System against malicious cyber attacks that could threaten the reliability of the Bulk-Power System.

336. *Internal Review:* The Commission has reviewed the CIP Reliability Standards proposed for approval in this NOPR and has made a preliminary determination that the proposed CIP Reliability Standards are necessary to safeguard the integrity of the nation's Bulk-Power System. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements (FERC–725B ''Mandatory Reliability Standards for Critical Infrastructure Protection'') proposed to be imposed by this NOPR.

337. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (*Attention:* Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail: *oira_submission@omb.eop.gov*).

338. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285].

[126] Although NERC designated an effective date of June 1, 2006, the CIP Reliability Standards are not mandatory and enforceable, *i.e.*, subject to penalties for non-compliance, until they are approved by the Commission.

[127] *See http://www.bls.gov/oes/current/naics2_22.htm.*

IV. Environmental Analysis

339. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[128] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[129] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[130] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

V. Regulatory Flexibility Act Certification

340. The Regulatory Flexibility Act of 1980 (RFA)[131] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. In a NOPR, an agency must either include an initial regulatory flexibility analysis or certify that the proposed rule will not have a ''significant impact on a substantial number of small entities.'' The Small Business Administration defines a small electric utility as one that has a total electric output of less than four million MWh in the proceeding year.

341. The RFA requires agencies in drafting a proposed rule: (1) To assess the affect that their regulation will have on small entities; (2) to analyze effective alternatives that may minimize a regulation's impact; and (3) to make their analyses available for public comment.[132] In its notice of proposed rule making (NOPR), the agency must either include an initial regulatory flexibility analysis (Initial RFA)[133] or certify that the proposed rule will not have a ''significant impact on a substantial number of small entities.''[134]

Affect on small entities

342. Our analysis shows that the DOE's Energy Information Administration (EIA) reports that there were 3,284 electric utility companies in the United States in 2005,[135] and 3,029 of these electric utilities qualify as small entities under the SBA definition. Of these 3,284 electric utility companies, the EIA subdivides them as follows: (1) 883 cooperatives of which 852 are small entity cooperatives; (2) 1,862 municipal utilities, of which 1842 are small entity municipal utilities; (3) 127 political subdivisions, of which 114 are small entity political subdivisions; (4) 159 power marketers, of which 97 individually could be considered small entity power marketers;[136] (5) 219 privately owned utilities, of which 104 could be considered small entity private utilities; (6) 25 state organizations, of which 16 are small entity state organizations and (7) nine federal organizations of which four are small entity federal organizations.

343. As explained above, the Commission is relying on NERC's compliance registry, applying the NERC Statement of Registry Criteria, to identify entities that must comply with the CIP Reliability Standards. To be included in the compliance registry, the ERO will have made a determination that a specific small entity has a material impact on the Bulk-Power System. Consequently, the compliance of such small entities is justifiable as necessary for Bulk-Power System reliability. Based on NERC's compliance registry as of June 2007, the Commission estimates that approximately 1,000 registered entities will be responsible for compliance with the CIP Reliability Standards. Of these, the Commission estimates that the CIP Reliability Standards will apply to approximately 632 small entities, consisting of 12 small investor-owned utilities and 620 small municipal and cooperatives.

344. The Commission believes that the CIP Reliability Standards will not have a significant economic impact on a substantial number of small entities. The majority of small entities are not required to comply with mandatory Reliability Standards based on the application of the NERC Registry Criteria. Moreover, as explained above, a small entity that is registered but does not identify critical cyber assets pursuant to CIP–002–1 will not have compliance obligations pursuant to CIP–003–1 through CIP–009–1. While a small entity that identifies only a few critical cyber assets must comply with CIP–003–1 through CIP–009–1, the Commission believes that the economic impact of such compliance will not be significant. Likewise, the housing of a limited number of critical cyber assets in a single location will lessen the economic impact of compliance.

345. In addition, as discussed further below, while not required or proposed by this NOPR, small entities can, if they choose, collectively select a single consultant to develop model software and programs to comply with the proposals in this NOPR on their behalf. Such an approach could significantly reduce the costs that would be incurred if each company would address these issues independently.

346. While there will be some portion of small entities that will have to expend significant amounts of resources on labor and technology to comply with the CIP Reliability Standards, the Commission believes that this will be a significant minority. Further, in such circumstances, the economic impact is justified as necessary to protect cyber security assets that support Bulk-Power System reliability.

Alternatives

347. In Order No. 693, which approved 83 Reliability Standard for the Bulk-Power System, the Commission discussed several alternatives that are also applicable to the CIP Reliability Standards.[137] Several of these have already been implemented such as the approval of the NERC definition of bulk electric system, which reduces significantly the number of small entities responsible for compliance with mandatory Reliability Standards.[138] Further, the Commission adopted the NERC compliance registry process to identify the entities responsible for compliance with mandatory Reliability Standards.

348. Another significant alternative is the ability for a small entity to join a joint action agency or similar organization. Such an organization may accept responsibility for compliance with mandatory Reliability Standards on behalf of its members and also may divide the responsibility for compliance with its members. The Commission generally approved the concept of joint action agencies in Order No. 693 and directed NERC to submit implementing

[128] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[129] 18 CFR 380.4.

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

[131] 5 U.S.C. 601–612 (2006).

[132] 5 U.S.C. 601–604 (2006).

[133] 5 U.S.C. 603(a) (2006).

[134] 5 U.S.C. 605(b) (2006).

[135] *See* Energy Information Administration Database, Form EIA–861, Dept. of Energy (2005), *available at http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[136] Most of these small entity power marketers and private utilities are affiliated with others and, therefore, do not qualify as small entities under the SBA definition.

[137] *See* Order No. 693 at P 1945.

[138] *Id.* at P 75, 1945.

procedures.[139] NERC submitted revisions to its Rules of Procedure to allow for joint action agencies and similar organizations and, in an order issuing concurrently with this NOPR, the Commission approves NERC's joint action agency rules. These rules, supported by APPA, NRECA and others, will provide significant flexibility for small entities on how they will achieve compliance with the CIP Reliability Standards or to assign compliance responsibility to a central organization.

Certification

349. Based on the above analysis, the Commission certifies that the proposed rulemaking will not have a significant impact on a substantial number of small entities.

VI. Comment Procedures

350. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 5, 2007. Comments must refer to Docket No. RM06–22–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

351. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

352. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

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

354. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

355. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll-free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 39

Administrative practice and procedure, Electric power, Penalties, Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[**Note:** The following appendices will not be published in the *Code of Federal Regulations.*]

APPENDIX A

List of Commenters	
Allegheny	Allegheny Power and Allegheny Energy Supply Company.
AMP–Ohio	American Municipal Power—Ohio, Inc.
APPA/LPPC	American Public Power Association and Large Public Power Council.
ATC	American Transmission Company, LLC.
Arizona Public Service	Arizona Public Service Company.
California PUC	California Public Utilities Commission.
Cleveland Public Power	City of Cleveland, Division of Public Power.
Constellation	Constellation Energy Group, Inc.
Dominion	Dominion Resources, Inc.
Duke	Duke Energy Corporation.
EEI	Edison Electric Institute.
EPSA	Electric Power Supply Association.
FirstEnergy	FirstEnergy Service Company.
Georgia System	Georgia System Operations Corporation.
ISA Group	Three members of the ISA–SP99.05 Leadership Group (Instrument Society of America).
ISO/RTO Council	ISO/RTO Council.
ISO–NE	ISO New England Inc.
MEAG Power	MEAG Power Motion to Intervene.
MidAmerican	MidAmerican Electric Operating Companies.
MITRE	MITRE Corporation.
National Grid	National Grid USA.
NERC	North American Electric Reliability Corporation.
NIST	National Institute of Standards and Technology.
Northeast Utilities	Northeast Utilities Service Company (on behalf of its transmission owning affiliates, the NU Companies).
NRECA	National Rural Electric Cooperative Association.
Ontario IESO	Ontario Independent Electricity System Operator.
PG&E	Pacific Gas and Electric Company.
PJM	PJM Interconnection, LLC.

[139] *Id.* at P 107.

APPENDIX A—Continued

List of Commenters	
Progress Energy	Progress Energy, Inc.
ReliabilityFirst	ReliabilityFirst Corporation.
Santa Clara	City of Santa Clara, for its municipal Silicon Valley Power.
SoCal Edison	Southern California Edison Company.
Southern	Southern Company Services, Inc.
Southwest TDUs	Southwest Transmission Dependent Utility Group.
SPP	Southwest Power Pool, Inc.
Tampa Electric	Tampa Electric Company.
Wisconsin Electric	Wisconsin Electric Power Company.
Xcel	Xcel Energy Services, Inc.

APPENDIX B.—VIOLATION RISK FACTORS: PROPOSED DISPOSITIONS

Standard No.	Requirement No.	Text of requirement	Violation risk factor		Guideline
			NERC proposal	Commission determination	
CIP–002–1	R1	Critical Asset Identification Method—The Responsible Entity shall identify and document a risk-based assessment methodology to use to identify its Critical Assets.	LOWER	MEDIUM	1, 3, 4
CIP–002–1	R1.2	The risk-based assessment shall consider the following assets:	LOWER	MEDIUM	2
CIP–002–1	R2	Critical Asset Identification—The Responsible Entity shall develop a list of its identified Critical Assets determined through an annual application of the risk-based assessment methodology required in R1. The Responsible Entity shall review this list at least annually, and update it as necessary	LOWER	HIGH	1, 3, 4
CIP–002–1	R3	Critical Cyber Asset Identification—Using the list of Critical Assets developed pursuant to Requirement R2, the Responsible Entity shall develop a list of associated Critical Cyber Assets essential to the operation of the Critical Asset. Examples at control centers and backup control centers include systems and facilities at master and remote sites that provide monitoring and control, automatic generation control, real-time power system modeling, and real-time interutility data exchange. The Responsible Entity shall review this list at least annually, and update it as necessary. For the purpose of Reliability Standard CIP–002, Critical Cyber Assets are further qualified to be those having at least one of the following characteristics:	MEDIUM	HIGH	1, 3, 4
CIP–003–1	R1	Cyber Security Policy—The Responsible Entity shall document and implement a cyber security policy that represents management's commitment and ability to secure its Critical Cyber Assets. The Responsible Entity shall, at minimum, ensure the following:	LOWER	MEDIUM	1
CIP–003–1	R2	Leadership—The Responsible Entity shall assign a senior manager with overall responsibility for leading and managing the entity's implementation of, and adherence to, Reliability Standards CIP–002 through CIP–009.	LOWER	MEDIUM	1
CIP–003–1	R4	Information Protection—The Responsible Entity shall implement and document a program to identify, classify, and protect information associated with Critical Cyber Assets.	LOWER	MEDIUM	1
CIP–004–1	R2.1	This program will ensure that all personnel having such access to Critical Cyber Assets, including contractors and service vendors, are trained within 90 calendar days of such authorization.	LOWER	MEDIUM	1
CIP–004–1	R2.2	Training shall cover the policies, access controls, and procedures as developed for the Critical Cyber Assets covered by CIP–004, and include, at a minimum, the following required items appropriate to personnel roles and responsibilities:	LOWER	MEDIUM	1, 2

APPENDIX B.—VIOLATION RISK FACTORS: PROPOSED DISPOSITIONS—Continued

Standard No.	Requirement No.	Text of requirement	Violation risk factor		Guideline
			NERC proposal	Commission determination	
CIP–004–1	R2.2.4	Action plans and procedures to recover or re-establish Critical Cyber Assets and access thereto following a Cyber Security Incident.	LOWER	MEDIUM	1, 4
CIP–004–1	R3	Personnel Risk Assessment—The Responsible Entity shall have a documented personnel risk assessment program, in accordance with federal, state, provincial, and local laws, and subject to existing collective bargaining unit agreements, for personnel having authorized cyber or authorized unescorted physical access. A personnel risk assessment shall be conducted pursuant to that program within 30 days of such personnel being granted such access. Such program shall at a minimum include:	LOWER	MEDIUM	1, 3, 4
CIP–004–1	R4.2	The Responsible Entity shall revoke such access to Critical Cyber Assets within 24 hours for personnel terminated for cause and within seven calendar days for personnel who no longer require such access to Critical Cyber Assets.	LOWER	MEDIUM	1, 3, 4
CIP–005–1	R1.1	Access points to the Electronic Security Perimeter(s) shall include any externally connected communication end point (for example, dial-up modems) terminating at any device within the Electronic Security Perimeter(s).	LOWER	MEDIUM	1, 2, 4
CIP–005–1	R1.2	For a dial-up accessible Critical Cyber Asset that uses a non-routable protocol, the Responsible Entity shall define an Electronic Security Perimeter for that single access point at the dial-up device.	LOWER	MEDIUM	1, 2, 4
CIP–005–1	R1.3	Communication links connecting discrete Electronic Security Perimeters shall not be considered part of the Electronic Security Perimeter. However, end points of these communication links within the Electronic Security Perimeter(s) shall be considered access points to the Electronic Security Perimeter(s).	LOWER	MEDIUM	1, 2, 4
CIP–005–1	R1.4	Any non-critical Cyber Asset within a defined Electronic Security Perimeter shall be identified and protected pursuant to the requirements of Reliability Standard CIP–005.	LOWER	MEDIUM	1, 2, 4
CIP–005–1	R2	Electronic Access Controls—The Responsible Entity shall implement and document the organizational processes and technical and procedural mechanisms for control of electronic access at all electronic access points to the Electronic Security Perimeter(s).	LOWER	MEDIUM	1, 2, 4
CIP–005–1	R2.4	Where external interactive access into the Electronic Security Perimeter has been enabled, the Responsible Entity shall implement strong procedural or technical controls at the access points to ensure authenticity of the accessing party, where technically feasible.	LOWER	MEDIUM	1, 2
CIP–005–1	R3	Monitoring Electronic Access—The Responsible Entity shall implement and document an electronic or manual process(es) for monitoring and logging access at access points to the Electronic Security Perimeter(s) twenty-four hours a day, seven days a week.	LOWER	MEDIUM	1, 2
CIP–005–1	R3.1	For dial-up accessible Critical Cyber Assets that use non-routable protocols, the Responsible Entity shall implement and document monitoring process(es) at each access point to the dial-up device, where technically feasible.	LOWER	MEDIUM	1
CIP–005–1	R3.2	Where technically feasible, the security monitoring process(es) shall detect and alert for attempts at or actual unauthorized accesses. These alerts shall provide for appropriate notification to designated response personnel. Where alerting is not technically feasible, the Responsible Entity shall review or otherwise assess access logs for attempts at or actual unauthorized accesses at least every 90 calendar days.	LOWER	MEDIUM	1

APPENDIX B.—VIOLATION RISK FACTORS: PROPOSED DISPOSITIONS—Continued

Standard No.	Requirement No.	Text of requirement	Violation risk factor		Guideline
			NERC proposal	Commission determination	
CIP–005–1	R4	Cyber Vulnerability Assessment—The Responsible Entity shall perform a cyber vulnerability assessment of the electronic access points to the Electronic Security Perimeter(s) at least annually. The vulnerability assessment shall include, at a minimum, the following:	LOWER	MEDIUM	1, 2
CIP–005–1	R4.2	A review to verify that only ports and services required for operations at these access points are enabled.	LOWER	MEDIUM	1, 2
CIP–005–1	R4.3	The discovery of all access points to the Electronic Security Perimeter;	LOWER	MEDIUM	1, 2
CIP–005–1	R4.4	A review of controls for default accounts, passwords, and network management community strings; and	LOWER	MEDIUM	1, 2
CIP–005–1	R4.5	Documentation of the results of the assessment, the action plan to remediate or mitigate vulnerabilities identified in the assessment, and the execution status of that action plan.	LOWER	MEDIUM	1, 4
CIP–006–1	R1.5	Procedures for reviewing access authorization requests and revocation of access authorization, in accordance with CIP–004 Requirement R4.	LOWER	MEDIUM	1, 3
CIP–006–1	R6.1	Testing and maintenance of all physical security mechanisms on a cycle no longer than three years.	LOWER	MEDIUM	2
CIP–007–1	R1.1	The Responsible Entity shall create, implement, and maintain cyber security test procedures in a manner that minimizes adverse effects on the production system or its operation.	LOWER	MEDIUM	1, 2
CIP–007–1	R2	Ports and Services—The Responsible Entity shall establish and document a process to ensure that only those ports and services required for normal and emergency operations are enabled.	LOWER	MEDIUM	1, 2
CIP–007–1	R2.3	In the case where unused ports and services cannot be disabled due to technical limitations, the Responsible Entity shall document compensating measure(s) applied to mitigate risk exposure or an acceptance of risk.	LOWER	MEDIUM	1, 2
CIP–007–1	R4	Malicious Software Prevention—The Responsible Entity shall use anti-virus software and other malicious software (“malware”) prevention tools, where technically feasible, to detect, prevent, deter, and mitigate the introduction, exposure, and propagation of malware on all Cyber Assets within the Electronic Security Perimeter(s).	LOWER	MEDIUM	1, 2
CIP–007–1	R4.1	The Responsible Entity shall document and implement anti-virus and malware prevention tools. In the case where anti-virus software and malware prevention tools are not installed, the Responsible Entity shall document compensating measure(s) applied to mitigate risk exposure or an acceptance of risk.	LOWER	MEDIUM	1, 2
CIP–007–1	R4.2	The Responsible Entity shall document and implement a process for the update of anti-virus and malware prevention “signatures.” The process must address testing and installing the signatures.	LOWER	MEDIUM	1, 2
CIP–007–1	R5.1.3	The Responsible Entity shall review, at least annually, user accounts to verify access privileges are in accordance with Reliability Standard CIP–003 Requirement R5 and Reliability Standard CIP–004 Requirement R4.	LOWER	MEDIUM	1, 2
CIP–007–1	R5.2.1	The policy shall include the removal, disabling, or renaming of such accounts where possible. For such accounts that must remain enabled, passwords shall be changed prior to putting any system into service.	LOWER	MEDIUM	1, 2
CIP–007–1	R5.2.3	Where such accounts must be shared, the Responsible Entity shall have a policy for managing the use of such accounts that limits access to only those with authorization, an audit trail of the account use (automated or manual), and steps for securing the account in the event of personnel changes (for example, change in assignment or termination).	LOWER	MEDIUM	1, 2

APPENDIX B.—VIOLATION RISK FACTORS: PROPOSED DISPOSITIONS—Continued

Standard No.	Requirement No.	Text of requirement	Violation risk factor		Guideline
			NERC proposal	Commission determination	
CIP–007–1	R6.1	The Responsible Entity shall implement and document the organizational processes and technical and procedural mechanisms for monitoring for security events on all Cyber Assets within the Electronic Security Perimeter.	LOWER	MEDIUM	1, 2
CIP–007–1	R6.2	The security monitoring controls shall issue automated or manual alerts for detected Cyber Security Incidents.	LOWER	MEDIUM	1, 2
CIP–007–1	R6.3	The Responsible Entity shall maintain logs of system events related to cyber security, where technically feasible, to support incident response as required in Reliability Standard CIP–008.	LOWER	MEDIUM	1, 2
CIP–007–1	R8.2	A review to verify that only ports and services required for operation of the Cyber Assets within the Electronic Security Perimeter are enabled;	LOWER	MEDIUM	1, 3
CIP–007–1	R8.3	A review of controls for default accounts; and	LOWER	MEDIUM	1, 3
CIP–007–1	R8.4	Documentation of the results of the assessment, the action plan to remediate or mitigate vulnerabilities identified in the assessment, and the execution status of that action plan.	LOWER	MEDIUM	1, 2, 3

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 25, 27 and 29
High-Intensity Radiated Fields (HIRF) Protection for Aircraft Electrical and Electronic Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, and 29

[Docket No. FAA–2006–23657; Amendment Nos. 23–57, 25–122, 27–42, and 29–49]

RIN 2120–AI06

High-Intensity Radiated Fields (HIRF) Protection for Aircraft Electrical and Electronic Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations by adding airworthiness certification standards to protect aircraft electrical and electronic systems from high-intensity radiated fields (HIRF). This action is necessary due to the vulnerability of aircraft electrical and electronic systems and the increasing use of high-power radio frequency transmitters. This action is intended to create a safer operating environment for civil aviation by protecting aircraft and their systems from the adverse effects of HIRF.

DATES: These amendments become effective September 5, 2007.

FOR FURTHER INFORMATION CONTACT: Richard E. Jennings, Aircraft Certification Service, Aircraft Engineering Division, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024; telephone (202) 385–4562; e-mail *Richard.Jennings@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

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

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact a local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701(a)(1). Under that section, the FAA is charged with prescribing regulations to promote safe flight of civil aircraft in air commerce by prescribing minimum standards in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers. By prescribing standards to protect aircraft electrical and electronic systems from high-intensity radiated fields, this regulation is within the scope of the Administrator's authority.

I. Background

The electromagnetic HIRF environment results from the transmission of electromagnetic energy from radar, radio, television, and other ground-based, shipborne, or airborne radio frequency (RF) transmitters. This environment has the capability of adversely affecting the operation of aircraft electrical and electronic systems.

Although the HIRF environment did not pose a significant threat to earlier generations of aircraft, in the late 1970s designs for civil aircraft were first proposed that included flight-critical electronic controls, electronic displays, and electronic engine controls, such as those used in military aircraft. These systems are more susceptible to the adverse effects of operation in the HIRF environment. Accidents and incidents involving civil aircraft with flight-critical electrical and electronic systems have also brought attention to the need to protect these critical systems from high-intensity radiated fields.

Further, the need to protect these systems in aircraft has increased substantially in recent years because of—

(1) A greater dependence on electrical and electronic systems performing functions required for the continued safe flight and landing of aircraft;

(2) The reduced electromagnetic shielding afforded by some composite materials used in aircraft designs;

(3) The increase in susceptibility of electrical and electronic systems to HIRF because of increased data bus or processor operating speeds, higher density integrated circuits and cards, and greater sensitivities of electronic equipment;

(4) Expanded frequency usage, especially above 1 gigahertz (GHz);

(5) The increased severity of the HIRF environment due to an increase in the number and power of RF transmitters; and

(6) The adverse effects experienced by some aircraft when exposed to HIRF.

Recognizing the need to address the vulnerability of aircraft electrical and electronic systems to HIRF, the FAA published a notice of proposed rulemaking (NPRM) on February 1, 2006 (71 FR 5553). The NPRM includes a description of the HIRF-related incidents that provided some of the impetus for this rulemaking. It also includes a description of the collaborative efforts the FAA undertook in developing these rule changes. We encourage interested readers to refer to the NPRM for additional information.

The comment period for the NPRM closed on May 2, 2006. We received thirty comments from twelve commenters. The commenters include two aviation industry associations, two avionics equipment manufacturers, one engine manufacturer, two airplane manufacturers and five individual commenters.

II. Discussion of the Rule

This final rule amends the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes certificated under part 23; transport category airplanes certificated under part 25; normal category rotorcraft certificated under part 27; and transport category rotorcraft certificated under part 29. Under the rule, applicants for certification of aircraft under these parts are required to demonstrate that any electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the aircraft must be designed and installed so that—

(1) Each function is not adversely affected during and after the time the aircraft is exposed to a specifically

designated HIRF environment (HIRF environment I);

(2) Each electrical and electronic system automatically recovers normal operation of that function, in a timely manner, after the aircraft is exposed to HIRF environment I, unless this conflicts with other operational or functional requirements of that system; and

(3) Each electrical and electronic system is not adversely affected during and after the aircraft is exposed to a less severe, but more commonly encountered HIRF environment (HIRF environment II).

HIRF environment I sets forth test and analysis levels that are used to demonstrate that an aircraft and its systems meet basic HIRF certification requirements. HIRF environment I represents the range of electromagnetic field strengths that an aircraft could encounter during its operational life. HIRF environment II is an estimate of the electromagnetic field strengths more likely to be encountered in the airspace above an airport or heliport at which routine departure and arrival operations take place.

The rule also contains specific provisions for rotorcraft that differ from those applicable to airplanes. The rule requires rotorcraft to meet additional HIRF certification standards because rotorcraft operating under visual flight rules (VFR) do not have to comply with the same minimum safe altitude restrictions for airplanes specified in § 91.119 and, therefore, may operate closer to RF transmitters. Accordingly, any electrical and electronic system that performs a function required during operation under VFR and whose failure would prevent the continued safe flight and landing of the rotorcraft must be designed and installed so that the function is not adversely affected during and after the time the rotorcraft is exposed to a specified HIRF environment unique to rotorcraft (HIRF environment III).

HIRF environment III presents worst-case estimates of the electromagnetic field strength in the airspace in which VFR rotorcraft operations are permitted. Rotorcraft operating under instrument flight rules (IFR), however, normally have to comply with more restrictive altitude limitations and, therefore, electrical and electronic systems with functions required for IFR operations must not be adversely affected when the rotorcraft is exposed to HIRF environments I and II.

This final rule also establishes equipment HIRF test levels for electrical and electronic systems. It requires each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition to be designed and installed such that it is not affected adversely when the equipment providing the function is exposed to equipment HIRF test level 1 or 2. HIRF test level 1 allows an applicant to use an industry standard test method for compliance. HIRF test level 2 allows an applicant to use equipment test levels developed for the specific aircraft being certificated. Either of these test levels may be used to demonstrate HIRF protection.

Additionally, the final rule requires each electrical and electronic system that performs a function whose failure would reduce (but not significantly) the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition to be designed and installed such that it is not affected adversely when the equipment providing these functions is exposed to equipment HIRF test level 3. HIRF test level 3, like HIRF test level 1, allows an applicant to use an industry standard test method for compliance that is not as rigorous as that specified by HIRF test levels 1 or 2. HIRF environments I, II, and III, and equipment HIRF test levels 1, 2, and 3 are found in the appendices to the parts revised by this rule.

The rule also includes provisions that provide relief from the new testing requirements for equipment previously certificated under HIRF special conditions issued in accordance with § 21.16. These provisions permit the installation of an electrical or electronic system that performs a function whose failure would prevent the continued safe flight and landing of the aircraft, if an applicant can show that the system continues to comply with previously issued HIRF special conditions. This relief, however, will only be available for a five-year period and will only apply to equipment certificated under HIRF special conditions issued before December 1, 2007. To obtain this relief an applicant must be able to—

(1) Provide evidence that the system was the subject of HIRF special conditions issued before December 1, 2007;

(2) Show that there have been no system design changes that would invalidate the HIRF immunity characteristics originally demonstrated under the previously issued HIRF special conditions; and

(3) Provide the data used to demonstrate compliance with the HIRF special conditions under which the system was previously approved.

Reference Material

For further information on the development of the HIRF environments, consult the Naval Air Warfare Center Aircraft Division (NAWCAD) Technical Memorandum, Report No. NAWCADPAX–98–156–TM, High-intensity Radiated Field External Environments for Civil Aircraft Operating in the United States of America (Unclassified), dated November 12, 1998. A copy of the NAWCAD Technical Memorandum is available in the docket for this final rule.

Related Activity

When we published the HIRF NPRM on February 1, 2006, we also announced the availability of a draft Advisory Circular (describing a method for applicants to comply with the proposed HIRF standards (71 FR 5570). We have revised the draft AC based on the comments we received. You can get copies of the final AC 20–158, ''The Certification of Aircraft Electrical and Electronic Systems for Operation in the High Intensity Radiated Fields (HIRF) Environment'', from the FAA's Regulatory and Guidance Library (RGL) at the Web site: *http://www.airweb.faa.gov/rgl.* On the RGL Web site, click on ''Advisory Circulars.''

A. Revision of Proposed HIRF Test Levels

1. Deletion of Proposed HIRF Test Level 1

In the NPRM, we proposed to include four specific equipment HIRF test levels for electrical and electronic systems. Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition was required to be designed and installed so the system is not adversely affected when the equipment providing those functions is exposed to equipment HIRF test levels 1, 2, or 3. Additionally, we proposed that equipment be exposed to HIRF test level 4 for those functions that would cause any reduction in the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition.

RTCA, Inc. Special Committee 135, which develops HIRF test procedures for aircraft equipment, recommended deleting one of the proposed equipment HIRF test levels included in the appendices to the proposed regulations. Comments from Boeing, GAMA, and an individual commenter also supported this change.

The commenters noted that proposed § 23.1308(b) would require each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition to be designed and installed so the system is not adversely affected when the equipment providing the function is exposed to equipment HIRF test level 1, 2, or 3. Proposed §§ 25.1317(b), 27.1317(b), and 29.1317(b) also contained corresponding provisions.

The commenters noted that the amplitudes and modulations defined in equipment HIRF test levels 1 and 2 were similar, but not identical. HIRF test level 1 specified the use of a pulse modulated waveform with 150 volts per meter (V/m) amplitude and 0.1 percent duty cycle, along with a square wave modulated waveform with 28 V/m amplitude and 50 percent duty cycle, for frequencies from 400 megahertz (MHz) to 8GHz. Test level 2 used a pulse modulated waveform 150 V/m amplitude and 4 percent duty cycle, but no square wave modulated waveform in the same frequency range. The commenters also noted that compliance with proposed § 23.1308(b) and corresponding provisions would be more consistent if only one of the two definitions of test amplitude and modulation were included in the regulations. RTCA, Inc. Special Committee 135 also noted that eliminating one equipment test level would help standardize equipment tests and minimize confusion in selecting the appropriate equipment test level. Both RTCA and an individual commenter recommend that this single test level conform to the proposed requirements in equipment HIRF test level 2.

The FAA agrees with these comments and has eliminated proposed equipment HIRF test level 1 from the appendices to parts 23, 25, 27, and 29. We have renumbered the remaining test levels accordingly in the final rule. Equipment HIRF test levels 2, 3, and 4 in the proposed rule have therefore become test levels 1, 2, and 3, respectively, in the final rule. We have also revised §§ 23.1308(b), 25.1317(b), 27.1317(b), and 29.1317(b) to refer to equipment HIRF test levels 1 and 2. Additionally, we have revised §§ 23.1308(c), 25.1317(c), 27.1317(c), and 29.1317(c) to refer to equipment HIRF test level 3. Equipment HIRF test levels are specified in paragraphs (c), (d), and (e) of Appendix J to Part 23; paragraphs (c), (d), and (e) of Appendix L to Part 25; paragraphs (d), (e), and (f) of Appendix D to Part 27; and paragraphs (d), (e), and (f) of Appendix E to Part 29.

2. Revision of Conducted Current Susceptibility Test Requirements

RTCA, Inc. Special Committee 135 also recommended changes to the conducted current susceptibility test requirements in proposed equipment HIRF test levels 1, 2, and 4. These equipment HIRF test requirements define the amplitude and modulation of radio frequency current that equipment and its wiring must be exposed to in a laboratory to demonstrate that equipment is immune to HIRF.

RTCA, Inc. Special Committee 135 stated that it has worked with the Aviation Rulemaking Advisory Committee (ARAC) Electromagnetic Effects Harmonization Working Group (EEHWG) to define equipment HIRF test requirements. The Special Committee stated that the changes it proposes would modify conducted radio frequency current amplitude to make the conducted radio frequency current decrease linearly with frequency so that the radio frequency current at 400 MHz would be one tenth the current at 30 MHz. The Special Committee asserted that this change would make the test levels more consistent with values measured on aircraft. HIRF tests on aircraft show that the conducted radio frequency current decreases above a certain frequency, and that this frequency depends on the size of the aircraft.

The FAA generally agrees with RTCA's comment, however, data used to develop the HIRF AC shows the current decreases logarithmically with frequency. Therefore, the FAA has changed the conducted current amplitude in proposed equipment HIRF test levels 2 and 4 (test levels 1 and 3 in the final rule) so that the conducted current decreases at 20 decibel (dB) per frequency decade starting at 40 MHz and continuing to 400 MHz. This change results in a current at 400 MHz that is one tenth the current at 40 MHz and simplifies the procedures necessary to show compliance with equipment HIRF test levels. Since the FAA is not adopting proposed HIRF test level 1 (as discussed earlier in this preamble), no additional changes have been made to the final rule in response to this comment.

B. Effect of the Rule on Systems That Have Demonstrated Compliance With Previously Issued HIRF Special Conditions

In the NPRM, the FAA proposed that the HIRF certification requirements would apply to all electrical and electronic systems designed and installed in an aircraft for which the new rules constitute part of its certification basis. In their comments, the General Aviation Manufacturers Association (GAMA) and Rockwell Collins expressed general support for the rule yet stated that a number of systems have been installed on aircraft that have demonstrated compliance with HIRF special conditions issued pursuant to § 21.16. The commenters assert that when application is made for certification of equipment in an aircraft and that same equipment has already been found to be in compliance with HIRF special conditions issued for another aircraft, the test requirements set forth in the proposal would impose significant costs with little additional safety benefit. Another commenter, Meggitt/S–TEC, expressed similar concerns.

The commenters recommend that systems previously installed on an aircraft should be considered compliant with the HIRF protection requirements of the rule if those systems have been found to meet existing HIRF special conditions when installed on another aircraft.

The FAA agrees that there are a number of systems installed under HIRF special conditions that have a proven service history and that compliance with the rule, as originally proposed, would require additional testing and costs. In an effort to address this concern, the FAA has revised the rule to permit the installation of an electrical or electronic system that performs a function whose failure would prevent the continued safe flight and landing of the aircraft, if it can be shown that the system to be installed continues to comply with HIRF special conditions issued before December 1, 2007. This relief is contained in paragraph (d) of each section of the rule and is limited to a five-year period.

To utilize this relief from the general requirements of the rule, an applicant must: (1) Provide evidence that the system was the subject of previously issued HIRF special conditions; (2) show that there have been no system design changes that would invalidate the HIRF immunity characteristics originally demonstrated under the previously issued HIRF special conditions; and (3) provide the data used to demonstrate compliance with the HIRF special conditions under which the system was previously approved.

Upon issuance of this rule, the FAA does not foresee the need to issue special conditions, like those previously issued for HIRF, to include special

conditions permitting equipment evaluations in a laboratory environment using test levels of 100 V/m (200 V/m for VFR rotorcraft). Therefore, if an installation cannot meet the requirements of paragraph (d), the installation will need to comply with the HIRF certification requirements specified in paragraph (a).

Paragraph (d)(1) requires an applicant to provide objective evidence that the system was the subject of HIRF special conditions that were issued before December 1, 2007. In meeting subparagraph (d)(1), it is not essential that the HIRF special conditions be issued for the same make and model of aircraft, but only that they were used as the basis for showing HIRF compliance for the electrical or electronic system intended for the specific installation. After the rule becomes effective, the FAA generally will no longer use special conditions as a means for an applicant to show protection from the HIRF environment for new equipment installation certifications. The date specified in paragraph (d)(1), however, provides a sufficient time period beyond the effective date of the rule to allow applicants to use HIRF special conditions that are currently being developed as part of a new installation's certification basis to be processed and issued.

Paragraph (d)(2) requires the applicant to show that there have been no system design changes that would invalidate the HIRF immunity characteristics originally demonstrated under previously issued HIRF special conditions. If a change has been made to the system, and the change cannot be substantiated through analysis as having no impact on the previously demonstrated HIRF immunity characteristics, the system must comply with the general requirements of the rule as specified in paragraph (a) of each section.

Paragraph (d)(3) requires the applicant to provide the data used to demonstrate compliance with HIRF special conditions. The term ''data'' includes, but is not limited to, items such as the HIRF certification/qualification test report used to demonstrate compliance; installation instructions, as appropriate, to support HIRF immunity of the system; and instructions for continued airworthiness (ICA) to maintain the integrity of the system's demonstrated HIRF immunity. To assist prospective applicants, Appendix 2 of AC 20–158 provides guidance on one means, but not the only means, of complying with these provisions.

Although these revisions will affect aircraft intended for certification under parts 23, 25, 27 and 29, the FAA believes that the changes will primarily afford relief to persons installing equipment in aircraft intended for certification under part 23. The FAA estimates that as many as 30–35% of the applicants that apply for installation of a Level A system in aircraft certificated under part 23 will be seeking approval of equipment that has been shown to comply with previously issued HIRF special conditions (a Level A system is a system that performs a function whose failure would prevent the continued safe flight and landing of an aircraft, such as a flight display system certificated for IFR operations or a full authority digital engine control (FADEC) system). Such systems have been shown to meet appropriate certification standards and, based on comments received, the FAA believes that the burden associated with re-testing this equipment to the new certification standards is not justified by a corresponding benefit.

In determining the extent of the relief that could be provided, the FAA sought clarification of GAMA's earlier comment. GAMA noted that if the FAA were to accept its comment to consider equipment previously certified under HIRF special conditions as compliant with the proposed HIRF requirements, it may not be feasible for the FAA to make such a provision open-ended. GAMA stated that if the FAA were to establish a specific time period during which such equipment would be considered compliant, that determination should give full consideration to the technological life of the product. The FAA concurs with this recommendation. We have therefore provided applicants with a five-year period during which equipment shown to comply with previously issued HIRF special conditions will be considered to meet the requirements of this rule. This decision was based on a number of factors.

Due to the dynamic and highly competitive nature of the current avionics industry, new avionics models are being rapidly introduced into the marketplace in response to public demand. As special conditions for HIRF generally will no longer be issued after the effective date of the rule, it will become increasingly difficult to find new equipment in compliance with previously issued HIRF special conditions. Equipment manufacturers will therefore not be able to take advantage of the provisions of new paragraph (d), and the equipment will have to meet the general requirements of the rule. The FAA also believes that major design changes will, in most cases, necessitate retesting of previously approved equipment in accordance with the general provisions of the rule, again significantly decreasing the number of systems that will be able to use the provisions of paragraph (d) within a short period of time.

Additionally, avionics manufacturers now compete in a global marketplace. Many foreign civil aviation authorities are adopting airworthiness standards similar to those found in paragraphs (a), (b), and (c) of each section added by the rule, but are not adopting airworthiness standards which contain provisions similar to those contained in paragraph (d) of those sections. Manufacturers intending to market their equipment for installation on aircraft registered in countries other than the United States will therefore need to ensure compliance with the general provisions of the rule to export their products.

Technological advances and the necessity for manufacturers to comply with standards established by foreign aviation authorities to globally market their products will require that newer systems comply with the general test standards established by the final rule. The FAA therefore believes that the relief permitted by the revision, while of immediate benefit to manufactures, will neither be practical nor warranted within five years after the effective date of the rule, and has limited the relief to that period accordingly.

C. Applicability of HIRF Requirements

1. Applicability of HIRF Requirements to Aircraft Certificated Under Part 23

Thielert Aircraft engines commented on the HIRF Risk Analysis report used in the regulatory evaluation (DOT/FAA/AR–99/50). This risk analysis forms the basis of the benefits analysis in the FAA's regulatory evaluation. According to Thielert, a comparison of estimated HIRF risks for transport category airplanes (table 9 of the report) with estimated HIRF risks for non-transport category aircraft, including Part 23 small airplanes (table 10 of the report), shows that HIRF risks are higher for transport category airplanes. Thielert therefore believes the proposed HIRF protection requirements for small airplanes should not be the same as those proposed for transport category airplanes. Additionally, Thielert believes that table 10 of the report indicates the proposal provides a decreased level of safety for airplanes certificated under Part 23.

The FAA does not agree with Thielert's contentions. The HIRF Risk Analysis report shows that the HIRF

requirements provide a substantial HIRF risk reduction for both transport category airplanes and non-transport category aircraft, including small airplanes certificated under Part 23, even when compared to existing HIRF special conditions (page 13 of the report).

The FAA agrees, however, that both tables 9 and 10 of the report could be misconstrued. With regard to the data used to evaluate the HIRF risk to transport category airplanes, a crucial component affecting the risk analysis is the aircraft's position with respect to an emitter's location. HIRF protection requirements are predicated on various minimum (i.e., safe) distances between aircraft and emitters. Inconsistencies in the values for transport category aircraft in table 9 noted by Thielert can be attributed to inaccuracies in recording aircraft position data due to the normal variability inherent in radar tracking. When the minimum distance assumptions on which the rule is based are taken into account, only a few flights in the analysis were exposed to field strengths that exceeded the rule's certification levels. As these discrepancies are likely the result of the normal variability inherent in determining an aircraft's position using radar, there was no evidence that HIRF certification levels were exceeded for flights involving transport category aircraft (in the Denver and Seattle study areas).

The same positional inaccuracies are also the probable cause of the inconsistent results in table 10 of the analysis that were noted by the commenter. To account for this possible error, the FAA's benefits analysis was conducted using data from table 11 of the report to obtain the number of flights that exceeded the various protection (or comparison) levels. Similar to the results of the analysis for transport category aircraft, the risk analysis for part 23 aircraft shows that the HIRF requirements provide a substantial risk reduction compared to existing HIRF special conditions. The FAA's risk-avoidance analysis for part 23 airplanes does, however, differ from that for part 25 airplanes in that it combines information from an actual HIRF incident with the theoretical analysis of the Risk Analysis study. That incident was the basis of the finding in the benefits analysis of greater risk for part 23 airplanes.

The report also includes a detailed discussion of how to interpret the information presented in tables 9 and 10. It clearly states that the proposed HIRF requirements reduce the risk of HIRF-related accidents by a factor of 3.5 compared to the existing HIRF special conditions for non-transport category airplanes, which include small airplanes certificated under Part 23 (page 16). Thus, the report supports the benefits of the rule for non-transport category aircraft, which includes small airplanes certificated under Part 23.

2. Applicability of the Requirements to Airplane-Level Functions

Boeing Commercial Airplanes requested a change to proposed § 25.1317(a)(1). The proposed section stated ''Each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the airplane must be designed and installed so that *the function* is not adversely affected during and after the time the airplane is exposed to HIRF environment I . * * *'' (Emphasis added). In the commenter's view, the phrase ''the function'' should be changed to ''the airplane-level function'' since only top-level functions may be observable in multi-system integrated avionics configurations where several systems can contribute to correct operation of an airplane-level function.

The FAA disagrees with the comment. The wording of proposed § 25.1317(a)(1) is consistent with the wording of existing § 25.1316, which governs system lightning protection. The FAA has taken a similar approach in addressing protection from lightning and HIRF as both constitute external environmental hazards to an aircraft. A failure of a system as a result of lightning or HIRF would have an identical effect on the operation of the aircraft, and the FAA believes that their failure effects should therefore be treated similarly. For this reason, we did not make the requested change to the final rule.

3. Limiting § 25.1317(a)(2) and Corresponding Requirements to Functions, Rather Than Systems Whose Failure Would Prevent Safe Flight and Landing of the Aircraft

Boeing Commercial Airplanes requested clarification of proposed § 25.1317(a)(2) which states ''Each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the airplane must be designed and installed so that *the system* automatically recovers normal operation, in a timely manner, after the airplane is exposed to HIRF environment I * * *.'' (Emphasis added). The commenter requested clarification that the expectation of automatic recovery of an electrical or electronic system is limited to functions whose failure would prevent safe flight and landing. Other functions may not be required to return to ''normal operation,'' which is interpreted to mean the ability to perform functions to the extent necessary to continue safe flight and landing, not necessarily full functional performance and redundancy.

The FAA agrees with Boeing. The requested change clarifies the rule's intent that an automatic recovery of an electrical or electronic system be limited to those functions whose failure would prevent safe flight and landing. We have therefore changed the wording of final § 25.1317(a)(2) to state that ''The system automatically recovers normal operations *of that function,* in a timely manner. * * *'' (Emphasis added). We have also made corresponding changes to final §§ 23.1308(a)(2), 27.1317(a)(2), and 29.1317(a)(2).

4. Expanding the Scope of the HIRF Protection Requirements to Equipment Whose Failure Does Not Have Safety Consequences

An individual commenter recommended that equipment required by FAA certification or operating regulations should be subject to this rulemaking even though failure of that equipment would not have safety consequences.

The FAA does not agree with the commenter. The FAA's general approach to system safety is to define requirements based on the hazard consequences of system failures. This rulemaking follows the FAA's longstanding system safety approach to aircraft design and defines requirements based on their impact on overall aircraft safety. For example, this approach is followed in 14 CFR 25.1309, which provides general aircraft equipment, systems, and installation safety requirements. The EEHWG, which developed the recommendations upon which the NPRM is based, specifically recommended that the rule apply only to systems with failure classifications that are major, hazardous, or catastrophic. The FAA notes that this final rule does not preclude any aircraft or avionics manufacturer or supplier from testing equipment not subject to the rule for susceptibility to HIRF effects using the standards contained in the rule.

D. Continued Airworthiness Requirements

One individual commenter expressed general support for the NPRM, but was concerned that the cost of maintaining aircraft airworthiness after aircraft

delivery should be considered in the regulatory evaluation for the rulemaking.

The FAA agrees with the commenter. The regulatory evaluation includes costs for both designing and installing HIRF protection, as well as costs for maintaining this protection over the service life of the aircraft. The EEHWG collected this cost data from aircraft and avionics manufacturers and provided this information to the FAA for inclusion in the regulatory evaluation. We believe the commenter's concerns have been addressed in the rulemaking process.

E. Concerns Regarding the Ability of the HIRF Certification Standards To Afford Adequate Protection of Aircraft

An individual commenter expressed general support for the proposal, but had a concern about ''a flight that went down off Long Island a few years back.'' The commenter questioned whether the proposed standards will sufficiently protect aircraft. Two commenters urged the FAA to include standards in this final rule to protect aircraft from an electromagnetic pulse (EMP) generated by a nuclear weapon or some other EMP-based disabling device.

We believe the first commenter is referring to the crash of TWA Flight 800, which broke up in flight off Long Island, New York on July 17, 1996. The investigation of the accident was conducted by the National Transportation Safety Board (NTSB). The NTSB in its Aircraft Accident Report (NTSB/AAR–00/03) did not find that the probable cause of the accident was related to HIRF effects. As discussed in the notice, the FAA has worked extensively with aircraft and equipment manufacturers, foreign civil aviation authorities and engineers who have an extensive knowledge of the HIRF environment in its efforts to develop the protection regulations for the HIRF environment found in this rule. This rule is based to a significant degree upon their detailed recommendations and for these reasons, the FAA believes that the commenter's concern is not warranted.

In response to concerns regarding EMP protection, the FAA notes that the EEHWG participants who assisted the agency in developing the HIRF NPRM were familiar with issues related to EMP. The aircraft protection requirements for lightning and HIRF provide some inherent protection from EMP. However, EMP generated from a nuclear or other device is not part of the normal HIRF environment. The FAA considers protection of aircraft from the hazards of EMP generated by such devices to be beyond the scope of this rulemaking effort.

F. Use of Similar HIRF Protection Requirements for Systems With Major and Hazardous Failure Conditions

An individual commenter recommends that the HIRF requirements for systems with major failure conditions should meet the same equipment HIRF test levels as systems with hazardous failure conditions. The commenter believes that this is the general practice of most aircraft manufacturers and that such a requirement would provide additional protection against the effects of portable electronic devices (PEDs) that may transmit during flight. These PEDs include mobile phones and two-way pagers.

The FAA agrees, in part, with the commenter. Radiated emissions from PEDs on aircraft are a growing concern, and FAA has requested RTCA, Inc., through Special Committee 202 to investigate PED emissions (both intentional and unintentional emitters) and their possible impact on required aircraft electronic systems. However, the hazards related to radiated fields generated by PEDs are not considered part of the external HIRF environment encountered by an aircraft, and consideration of their effects is therefore beyond the scope of this rulemaking. Such effects would have to be addressed by a separate rulemaking activity when Special Committee 202 completes its assigned task. In addition, the FAA has reviewed certification plans that indicate many manufacturers do not require systems with major failure conditions to meet the same equipment HIRF test levels as systems with hazardous failure conditions. Therefore, we have not made any changes to this final rule based on the comment.

G. Harmonization of HIRF Certification Standards

Thielert Aircraft Engines commented that the European Aviation Safety Agency (EASA) classified the consequence of a failure of their reciprocating engine as major or hazardous, while the FAA has required HIRF tests that assume the engine failures are catastrophic. Thielert commented that this decision has not fulfilled the intent to harmonize HIRF standards because the FAA requires more expensive HIRF tests on Thielert's FADEC systems than EASA does. Thielert states that the FAA HIRF compliance requirements are more expensive to comply with because the engine and engine electronic controls must be tested when they are installed on an airplane rather than prior to any installation. Based on these concerns, Thielert proposed changes to § 23.1308(a) that would eliminate the need for the more expensive airplane tests.

The FAA does not agree with the changes proposed by Thielert. The HIRF regulations neither define the specific failure classification for particular aircraft systems nor establish requirements used to classify any particular system. The failure classification must be established by the certification applicant and agreed on by the FAA for the specific aircraft and system being certified. Once a specific failure classification has been established, the HIRF regulations set forth in the final rule only specify those requirements that must be met for that specific failure classification. In fact, EASA currently issues HIRF Certification Review Items (CRI) (equivalent to the FAA's special conditions) that use the same approach as that generally set forth in the rule. The example provided by Thielert is not a consequence of the proposed HIRF regulations, but rather a difference in classification of failure severity.

Additionally, this final rule, with the exception of the provisions contained in paragraph (d) of each section, is consistent with current EASA practices. The FAA, however, does recognize that for an aircraft to be exported it may not be acceptable to a foreign authority if a system installed on the aircraft has been certificated in accordance with the provisions of paragraph (d) of each section of the final rule.

H. Addition of Explanatory Note to HIRF Environment Tables

A note was added to each HIRF Environment table in the appendices to this rule. The note states that, ''In this table, the higher field strength applies at the frequency band edges.'' Although not included in the proposal, this note was included in the draft AC that was the subject of a Notice of Availability published in the **Federal Register** (71 FR 5570) on February 1, 2006 concurrent with the notice for this rule. During the public comment period of the draft AC, we received no comments with regard to this note. The note was added to standardize testing and to remove any ambiguity when applying field strength values at frequency band edges.

III. Regulatory Notices and Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the

FAA consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. We have determined that there are no new information collection requirements associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Who Is Affected by This Rulemaking

Manufacturers of transport category airplanes will incur no incremental costs; manufacturers of transport category rotorcraft and non-transport category aircraft will incur varying costs.

Occupants in, and operators of, affected aircraft receive safety benefits.

Assumptions and Standard Values

- *Discount rate:* 7%.
- *Period of analysis:* Costs are based on a 10-year production period and benefits are based on 25-year operating lives of newly-certificated aircraft.
- *Value of statistical fatality avoided:* $3 million.
- *Benefits/costs are evaluated from two perspectives:* (1) The 'base case'—a comparison of the costs and benefits concomitant with current industry practice to those associated with meeting the rule's requirements, and (2) the 'regulatory case'—a comparison of the costs and benefits of complying with current U.S. special conditions to those associated with meeting the rule. Current industry practice for manufacturers of all airplanes certificated under part 25, for manufacturers of the majority of aircraft certificated under parts 23 and 29, and for manufacturers of a sizeable minority of part 27 rotorcraft, is to comply with the European Aviation Safety Agency's (i.e., EASA's, as noted earlier in this preamble) HIRF interim policy, which, with the exception of the provisions of paragraph (d) of each section, is equivalent to the rule. On the other hand, manufacturers of the remaining aircraft (some aircraft certificated under parts 23 and 29 and most rotorcraft certificated under part 27) currently manufacture their aircraft to meet U.S. special conditions, which are not as stringent as the provisions in this final rule. These affected aircraft manufacturers will experience additional costs under the rule.
- The rule is assumed to be nearly 100 percent effective in preventing HIRF-related accidents.

Alternatives Considered

Although earlier and current special condition levels of HIRF protection were considered, EASA's HIRF interim policy (formerly Joint Aviation Authorities (JAA) policy) was selected for this rule because of both the proven high levels of protection demonstrated and the potential cost savings associated with adoption of substantially harmonized U.S. and European HIRF-requirements.

Costs and Benefits of the Rule

Costs

ESTIMATED PRESENT VALUE COSTS

[$millions over a 10-year period]

	Current practice to rule	Special conditions to rule
Part 23 certificated airplanes	$21.8	$72.8
Part 25 certificated airplanes	0	308.1
Part 27 certificated rotorcraft	1.5	2.0
Part 29 certificated rotorcraft	5.3	26.6
Total estimated costs	28.6	409.5

In the first column (or, the base case, which reflects actual costs to industry), there are no additional HIRF-protection costs for manufacturers of airplanes certificated under part 25 and for manufacturers of the majority of aircraft certificated under parts 23 and 29, since most U.S. large manufacturers have produced these aircraft to comply with current EASA HIRF interim policy standards (generally equivalent to the requirements in this final rule) to market their aircraft in Europe. There are moderate incremental costs for manufacturers of the remaining portion of aircraft certificated under parts 23 and 29 and relatively lower costs for the majority of rotorcraft certificated under part 27 that do not currently meet EASA's HIRF interim policy standards either because (1) their aircraft do not yet have complex electronic systems installed or (2) they have chosen not to market their aircraft outside the United States. This ''current practice to rule'' is the base perspective in this analysis. The total estimated ten-year costs of $28.6 million (the sum of column one) represent the true incremental impact on the industry.

However, most manufacturers of aircraft certificated under parts 23, 25, 27, and 29 believe that U.S. special conditions afford sufficient protection from HIRF. Therefore, in the second column (or, the regulatory case, ''special conditions to rule''), the FAA shows the incremental compliance costs between the current U.S. special conditions (essentially equivalent to industry's self-determined protection) and the rule's more stringent requirements. These regulatory costs equal $409.5 million, and represent the costs for more robust HIRF protection that industry would not have voluntarily incurred.

Benefits

Estimated benefits of this rule are the accidents, incidents, and fatalities avoided as a result of increased protection from HIRF-effects provided to electrical and electronic systems. Quantified benefits are partly based on a study titled ''High-Intensity Radiated Fields (HIRF) Risk Analysis,'' by EMA Electro Magnetic Applications, Inc. of Denver, CO. (DOT/FAA/AR–99/50, July 1999). The complete study is available in the docket for this rulemaking. Using the study's risk analysis results for airplanes certificated under parts 23 and 25 and FAA accident/incident data for rotorcraft certificated under parts 27 and 29, the FAA calculated the difference between the expected number of accidents under the new standards versus those expected under current U.S. special conditions.

ESTIMATED PRESENT VALUE BENEFITS

[$millions over a 34-year period]

	Current practice to rule	Special conditions to rule
Part 23 certificated airplanes	$37.1	$123.5
Part 25 certificated airplanes	0	3,683.9
Part 27 certificated rotorcraft	33.3	44.4
Part 29 certificated rotorcraft	17.7	88.6
Total estimated benefits	88.1	3,940.4

Following FAA's rationale as stated in the cost section earlier, column one (the base case) in the benefits table above shows incremental benefits of $88.1 million resulting from averted accidents in future compliant parts 23, 27, and 29 aircraft. Part 25 airplanes already meet similar EASA standards, hence no additional benefits attributable to part 25 airplanes accrue to society. Column two in the table presents the regulatory case; it shows the additional benefits associated with going from industry's self-determined protection standards (or current special conditions) to the new HIRF standards. Total regulatory incremental benefits equal $3,940.4 million and represent the value of avoiding the following numbers of accidents over the 34-year analysis period:

(1) Part 23 airplanes, 24 accidents; (2) part 25 airplanes, 22 accidents; (3) part 27 rotorcraft, 41 accidents, and (4) part 29 rotorcraft, 14 accidents. The FAA believes that, based on the aforementioned risk assessment, the predicted accidents could occur absent the new HIRF standards in this rule if manufacturers of all airplanes certificated under part 25, manufacturers of the majority of aircraft certificated under parts 23 and 29, and manufacturers of a sizeable minority of part 27 rotorcraft, choose in the future not to market their aircraft abroad and therefore no longer meet EASA's enhanced HIRF requirements (but rather meet only current less stringent U.S. special conditions).

Comments to the Docket on Costs and Benefits

Although there were no comments directly criticizing FAA's cost estimates, GAMA, Rockwell Collins, and Meggitt/S–TEC were concerned that companies which previously installed electrical systems in aircraft pursuant to HIRF special conditions could experience significant additional testing costs, with little additional safety benefit, if those systems required re-certification before installation on other aircraft. A comment from Thielert questioned the efficacy of the risk analysis, which is the basis of the benefits analysis in FAA's regulatory evaluation. Thielert believes the HIRF requirements for small airplanes certificated under part 23 should not be the same as those for transport category airplanes certificated under part 25. The FAA's detailed response to these comments is discussed earlier in this preamble and in the full regulatory evaluation (available in the docket to this rulemaking). Although the FAA has revised the final rule in response to the comments, the benefit and cost estimates remain the same.

Summary of Costs and Benefits (at Present Value)

For a ten-year period, the incremental costs of meeting the new requirements versus current industry practice equal $28.6 million and the associated benefits are $88.1 million, for a benefit-to-cost ratio of 3.1 to 1. Alternatively, the incremental costs of meeting the new requirements versus current U.S. special conditions equal $409.5 million and the benefits are $3,940.4 million, for a benefit-to-cost ratio of 9.6 to 1. From either perspective, this rule is clearly cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

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

The FAA believes that this final rule will not have a significant economic impact on a substantial number of small entities for the following reasons:

As noted in the regulatory evaluation and preamble to the NPRM, this rule will affect manufacturers of aircraft intended for certification under parts 23, 25, 27, and 29. For manufacturers, the RFA considers a small entity to be one with 1,500 or fewer employees. None of the part 25 or part 29 manufacturers has 1,500 or fewer employees; consequently, none is considered a small entity. There are, however, currently about four part 27 (utility rotorcraft) and ten part 23 (small non-transport category airplanes) manufacturers, who have fewer than 1,500 employees and are considered small entities.

Based on a sampling of the affected small manufacturers of parts 23 and 27 aircraft, the incremental costs are expected to represent significantly less than one percent of the typical small manufacturer's annual revenues; these compliance costs do not constitute a significant economic impact. There were no comments to the docket disputing this finding.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it is in accord with the Trade Agreements Act in that it uses European standards as the basis for United States regulation.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation since the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million. This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 308(c)(1) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Certification, Safety.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Certification, Safety.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Certification, Rotorcraft, Safety.

14 CFR Part 29

Air transportation Aircraft, Aviation safety Certification, Rotorcraft, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. §§ 106(g), 40113, 44701, 44702, and 44704.

■ 2. Add § 23.1308 to subpart F to read as follows:

§ 23.1308 High-intensity Radiated Fields (HIRF) Protection.

(a) Except as provided in paragraph (d) of this section, each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the airplane must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to HIRF environment I, as described in appendix J to this part;

(2) The system automatically recovers normal operation of that function, in a timely manner, after the airplane is exposed to HIRF environment I, as described in appendix J to this part, unless the system's recovery conflicts with other operational or functional requirements of the system; and

(3) The system is not adversely affected during and after the time the airplane is exposed to HIRF environment II, as described in appendix J to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing the function is exposed to equipment HIRF test level 1 or 2, as described in appendix J to this part.

(c) Each electrical and electronic system that performs a function whose failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing the function is exposed to equipment HIRF test level 3, as described in appendix J to this part.

(d) Before December 1, 2012, an electrical or electronic system that performs a function whose failure would prevent the continued safe flight and landing of an airplane may be designed and installed without meeting the provisions of paragraph (a) provided—

(1) The system has previously been shown to comply with special conditions for HIRF, prescribed under § 21.16, issued before December 1, 2007;

(2) The HIRF immunity characteristics of the system have not changed since compliance with the special conditions was demonstrated; and

(3) The data used to demonstrate compliance with the special conditions is provided.

■ 3. Add appendix J to part 23 to read as follows:

Appendix J to Part 23—HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 23.1308. The field strength values for the HIRF environments and equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

In this table, the higher field strength applies at the frequency band edges.

(b) HIRF environment II is specified in the following table:

TABLE II.–HIRF ENVIRONMENT II

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

In this table, the higher field strength applies at the frequency band edges.

(c) *Equipment HIRF Test Level 1.*

(1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibels (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 30 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 3 mA at 400 MHz.

(4) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(5) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(d) *Equipment HIRF Test Level 2.* Equipment HIRF test level 2 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(e) *Equipment HIRF Test Level 3.*

(1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 7.5 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 0.75 mA at 400 MHz.

(4) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 4. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. §§ 106(g), 40113, 44701, 44702, 44704.

■ 5. Add § 25.1317 to subpart F to read as follows:

§ 25.1317 High-intensity Radiated Fields (HIRF) Protection.

(a) Except as provided in paragraph (d) of this section, each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the airplane must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to HIRF environment I, as described in appendix L to this part;

(2) The system automatically recovers normal operation of that function, in a timely manner, after the airplane is exposed to HIRF environment I, as described in appendix L to this part, unless the system's recovery conflicts with other operational or functional requirements of the system; and

(3) The system is not adversely affected during and after the time the airplane is exposed to HIRF environment II, as described in appendix L to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the

capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 1 or 2, as described in appendix L to this part.

(c) Each electrical and electronic system that performs a function whose failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing the function is exposed to equipment HIRF test level 3, as described in appendix L to this part.

(d) Before December 1, 2012, an electrical or electronic system that performs a function whose failure would prevent the continued safe flight and landing of an airplane may be designed and installed without meeting the provisions of paragraph (a) provided—

(1) The system has previously been shown to comply with special conditions for HIRF, prescribed under § 21.16, issued before December 1, 2007;

(2) The HIRF immunity characteristics of the system have not changed since compliance with the special conditions was demonstrated; and

(3) The data used to demonstrate compliance with the special conditions is provided.

■ 6. Add appendix L to part 25 to read as follows:

Appendix L to Part 25—HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 25.1317. The field strength values for the HIRF environments and equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

In this table, the higher field strength applies at the frequency band edges.

(b) HIRF environment II is specified in the following table:

TABLE II.–HIRF ENVIRONMENT II

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

In this table, the higher field strength applies at the frequency band edges.

(c) *Equipment HIRF Test Level 1.*

(1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibels (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 30 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 3 mA at 400 MHz.

(4) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(5) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(d) *Equipment HIRF Test Level 2.* Equipment HIRF test level 2 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(e) *Equipment HIRF Test Level 3.*

(1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 7.5 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 0.75 mA at 400 MHz.

(4) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 7. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. §§ 106(g), 40113, 44701, 44702, 44704.

■ 8. Add § 27.1317 to subpart F to read as follows:

§ 27.1317 High-intensity Radiated Fields (HIRF) Protection.

(a) Except as provided in paragraph (d) of this section, each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the rotorcraft must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment I, as described in appendix D to this part;

(2) The system automatically recovers normal operation of that function, in a timely manner, after the rotorcraft is exposed to HIRF environment I, as described in appendix D to this part, unless this conflicts with other operational or functional requirements of that system;

(3) The system is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment II, as described in appendix D to this part; and

(4) Each function required during operation under visual flight rules is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment III, as described in appendix D to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition must be

designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 1 or 2, as described in appendix D to this part.

(c) Each electrical and electronic system that performs a function whose failure would reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 3, as described in appendix D to this part.

(d) Before December 1, 2012, an electrical or electronic system that performs a function whose failure would prevent the continued safe flight and landing of a rotorcraft may be designed and installed without meeting the provisions of paragraph (a) provided—

(1) The system has previously been shown to comply with special conditions for HIRF, prescribed under § 21.16, issued before December 1, 2007;

(2) The HIRF immunity characteristics of the system have not changed since compliance with the special conditions was demonstrated; and

(3) The data used to demonstrate compliance with the special conditions is provided.

■ 9. Add appendix D to part 27 to read as follows:

Appendix D to Part 27—HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 27.1317. The field strength values for the HIRF environments and laboratory equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

In this table, the higher field strength applies at the frequency band edges.

(b) HIRF environment II is specified in the following table:

TABLE II.—HIRF ENVIRONMENT II

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

In this table, the higher field strength applies at the frequency band edges.

(c) HIRF environment III is specified in the following table:

TABLE III.—HIRF ENVIRONMENT III

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–100 kHz	150	150
100 kHz–400 MHz	200	200
400 MHz–700 MHz	730	200
700 MHz–1 GHz	1,400	240
1 GHz–2 GHz	5,000	250
2 GHz–4 GHz	6,000	490
4 GHz–6 GHz	7,200	400
6 GHz–8 GHz	1,100	170
8 GHz–12 GHz	5,000	330
12 GHz–18 GHz	2,000	330
18 GHz–40 GHz	1,000	420

In this table, the higher field strength applies at the frequency band edges.

(d) *Equipment HIRF Test Level 1.*

(1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibels (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 30 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 3 mA at 400 MHz.

(4) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(5) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(e) *Equipment HIRF Test Level 2.* Equipment HIRF test level 2 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(f) *Equipment HIRF Test Level 3.*

(1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 7.5 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 0.75 mA at 400 MHz.

(4) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 10. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. §§ 106(g), 40113, 44701, 44702, 44704.

■ 11. Add § 29.1317 to subpart F to read as follows:

§ 29.1317 High-intensity Radiated Fields (HIRF) Protection.

(a) Except as provided in paragraph (d) of this section, each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the rotorcraft must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment I, as described in appendix E to this part;

(2) The system automatically recovers normal operation of that function, in a timely manner, after the rotorcraft is exposed to HIRF environment I, as

described in appendix E to this part, unless this conflicts with other operational or functional requirements of that system;

(3) The system is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment II, as described in appendix E to this part; and

(4) Each function required during operation under visual flight rules is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment III, as described in appendix E to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 1 or 2, as described in appendix E to this part.

(c) Each electrical and electronic system that performs such a function whose failure would reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 3, as described in appendix E to this part.

(d) Before December 1, 2012, an electrical or electronic system that performs a function whose failure would prevent the continued safe flight and landing of a rotorcraft may be designed and installed without meeting the provisions of paragraph (a) provided—

(1) The system has previously been shown to comply with special conditions for HIRF, prescribed under § 21.16, issued before December 1, 2007;

(2) The HIRF immunity characteristics of the system have not changed since compliance with the special conditions was demonstrated; and

(3) The data used to demonstrate compliance with the special conditions is provided.

■ 12. Add appendix E to part 29 to read as follows:

Appendix E to Part 29–HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 29.1317. The field strength values for the HIRF environments and laboratory equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

In this table, the higher field strength applies at the frequency band edges.

(b) HIRF environment II is specified in the following table:

TABLE II.—HIRF ENVIRONMENT II

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

In this table, the higher field strength applies at the frequency band edges.

(c) HIRF environment III is specified in the following table:

TABLE III.—HIRF ENVIRONMENT III

Frequency	Field strength (volts/meter)	
	Peak	Average
10 kHz–100 kHz	150	150
100 kHz–400 MHz	200	200
400 MHz–700 MHz	730	200
700 MHz–1 GHz	1,400	240
1 GHz–2 GHz	5,000	250
2 GHz–4 GHz	6,000	490
4 GHz–6 GHz	7,200	400
6 GHz–8 GHz	1,100	170
8 GHz–12 GHz	5,000	330
12 GHz–18 GHz	2,000	330
18 GHz–40 GHz	1,000	420

In this table, the higher field strength applies at the frequency band edges.

(d) *Equipment HIRF Test Level 1.*

(1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibel (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 30 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 3 mA at 400 MHz.

(4) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(5) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(e) *Equipment HIRF Test Level 2.* Equipment HIRF test level 2 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(f) *Equipment HIRF Test Level 3.*

(1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 40 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 40 MHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 7.5 mA at 40 MHz, decreasing 20 dB per frequency decade to a minimum of 0.75 mA at 400 MHz.

(4) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

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Marion C. Blakey,

Administrator.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1 / Public Law 110-53

Implementing Recommendations of the 9/11 Commission Act of 2007 (Aug. 3, 2007; 121 Stat. 266; 285 pages)

H.R. 2429 / Public Law 110-54

To amend title XVIII of the Social Security Act to provide an exception tothe 60-day limit on Medicare reciprocal billing arrangements between two physicians during the period in which one of the physicians is ordered to active duty as a member of a reserve component of the Armed Forces. (Aug. 3, 2007; 121 Stat. 551; 1 page)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

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